

In 2014, the Enforcement division conducted several large-scale parallel investigations into cases with an international element. The number of proceedings against ultimate management and employees of licence holders, in particular those focusing on business conduct, also increased.

FINMA's enforcement activities involve sanctioning violations of supervisory law and restoring compliance under procedural law.⁶⁹ FINMA takes enforcement action against licence holders and their employees when the normal supervisory process does not suffice to deal with identified or suspected shortcomings. To protect investors, FINMA also acts against companies engaged in unauthorised activity in the Swiss financial market.

Organisational aspects

FINMA's enforcement activities are directed by the Enforcement Committee (ENA),⁷⁰ which comprises members of the FINMA Executive Board. ENA has delegated to the Enforcement division the tasks of initiating proceedings regarding suspected unauthorised activities, ordering precautionary measures, issuing certain rulings related to insolvency and international cooperation and, most recently, issuing final rulings on unauthorised activities.

Focus on business conduct

The main focus of attention in 2014 was the business conduct of licence holders, especially in relation to market conduct, combating money laundering and due diligence obligations in cross-border services. FINMA identified a number of violations of supervisory law, initiated corrective measures, ordered restrictions on business operations and imposed further measures such as disgorging of profits, ordering industry and activity bans and publishing rulings issued. The unauthorised activities identified mostly involved accepting deposits from the public without the requisite licence, illegal securities trading and illegal financial intermediation. FINMA ordered the liquidation or bankruptcy of the companies in question and the preventive publication of measures taken such as cease and desist orders. The insolvency of Banque Privée Espírito Santo SA domiciled in Pully proved especially challenging.⁷¹

Complex cases

The Enforcement division conducted a number of large-scale proceedings against institutions in 2014, increasingly with an international element. These included BNP Paribas (Suisse),⁷² the Coop Bank because of market manipulation⁷³ and UBS because of manipulation of foreign exchange trading.⁷⁴ Some required extensive investigations of trading data to bring the abuse to light.

Cases of companies operating without a licence also have a growing international component, often involving global structures and holding companies abroad. The structures are increasingly diverse and multi-layered, sometimes including the legal activities of group companies. The division's work was, nonetheless, of uniformly high quality, despite having to conduct wide-ranging investigations into several major cases at the same time, sometimes with tight deadlines.

More proceedings against ultimate management and employees of licence holders

In 2014, FINMA conducted more separate proceedings against ultimate management and employees of licence holders owing to serious violations of supervisory law. Individuals were found responsible for misconduct either by engaging in manipulation themselves or by failing to comply with their due diligence and supervision obligations. Such proceedings are inevitably complex. For example, an industry ban may have a lasting adverse impact on the financial well-being of the individuals concerned, which makes them less likely to cooperate. FINMA's stricter approach is also reflected in its new enforcement policy, under which it takes targeted action against individuals responsible for serious violations of supervisory law.⁷⁵

⁶⁹ See "Enforcement policy", p. 30.

⁷⁰ See "Board of Directors and Executive Board", section on Enforcement Committee, p. 92.

⁷¹ See "Resolution proceedings at banks", section on Insolvency proceedings, p. 85.

⁷² See "Handling of US legal risks", section on Investigations and proceedings related to US legal risks, p. 81.

⁷³ See "Manipulation of exchange rates", section on Examples taken from enforcement practice, p. 83.

⁷⁴ See "Manipulation of exchange rates", p. 82.

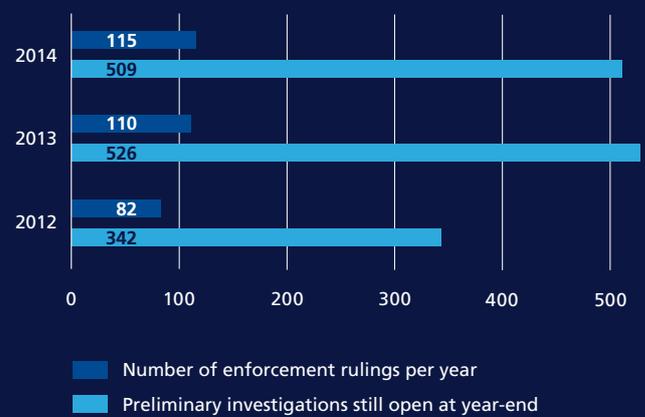
⁷⁵ See "Enforcement policy", p. 30.

Selected enforcement figures

Increasing importance of international cooperation

As cases involving both licence holders and unauthorised companies become more and more international, cooperation with authorities abroad plays a major role. FINMA also receives a steadily growing number of requests for assistance from foreign financial market supervisory authorities and Swiss prosecutors. In 2014, many of these again related to market supervision (insider trading, market manipulation, failure to comply with disclosure obligations) or individuals' compliance with business conduct requirements. The growing complexity of market supervision was reflected in the requests FINMA received.

Preliminary investigations and enforcement rulings⁷⁶



Although the Enforcement division conducted some exceptionally wide-ranging and complex proceedings in 2014 and had to deal with numerous appeals and an increased number of individual proceedings against employees of licence holders, the overall number of enforcement rulings remained practically unchanged compared with the previous year.

⁷⁶Discrepancies arising from the introduction of a new system were corrected retrospectively.

Enforcement statistics⁷⁷

	Outstanding as of 1 Jan. 2014	Proceedings initiated	Proceedings concluded	Outstanding as of 31 Dec. 2014
Enforcement proceedings	42	62	59	45
– in supervision of institutions	15	20	21	14
– conducted separately against employees of licence holders	12	26	16	22
– due to unauthorised activity	15	16	22	9
Preliminary investigations	526	765	782	509
Liquidations	28	16	6	38
– of licence holders	3	3	1	5
– of companies engaged in unauthorised activities	25	13	5	33
Bankruptcies	110	30	29	111
– involving licence holders	10	3	1	12
– of companies engaged in unauthorised activities	100	27	28	99
Recognition of foreign insolvency measures	12	7	1	18
– insolvency measures	12	7	1	18
– involving unauthorised activities	0	0	0	0
Recognition of foreign resolution measures	2	0	0	2
– involving licence holders	2	0	0	2
– involving unauthorised activities	0	0	0	0
Appeal proceedings	41	40	46	35
– Federal Administrative Court	37	29	38	28
– Federal Supreme Court	4	11	8	7

⁷⁷ Discrepancies arising from the introduction of a new system were corrected retrospectively.

Cases involving unauthorised activities by companies and individuals

EXAMPLE

Do crowdfunding models need a licence?

Crowdfunding is a way of obtaining funding from a large number of donors. Project developers use a crowdfunding platform to publicise their projects and seek funding for it. If platform operators collect the funds for their projects in their own accounts in order to pass them on to the developer should the project come about, the operator may be subject to licensing requirements under the banking and anti-money laundering legislation. If project developers seek to obtain funding through third-party capital (in particular loans), this may also require a licence under the Banking Act. To clarify the legal situation in this area, FINMA published a fact sheet on crowdfunding at the end of 2014.⁷⁸

EXAMPLE

Investing in trees

FINMA also conducted preliminary investigations into a number of companies offering the opportunity to invest in trees (such as tropical wood, olive trees or the like) and promising investors income from the sale of the timber or harvests. Depending on how they are structured, such business models may require a licence under the Banking Act. In two cases, FINMA had to initiate enforcement proceedings for illegal banking activity and appointed an investigating agent to examine one of the companies concerned. In other cases, the suspicion of unauthorised activity could not be substantiated, and proceedings were therefore discontinued.

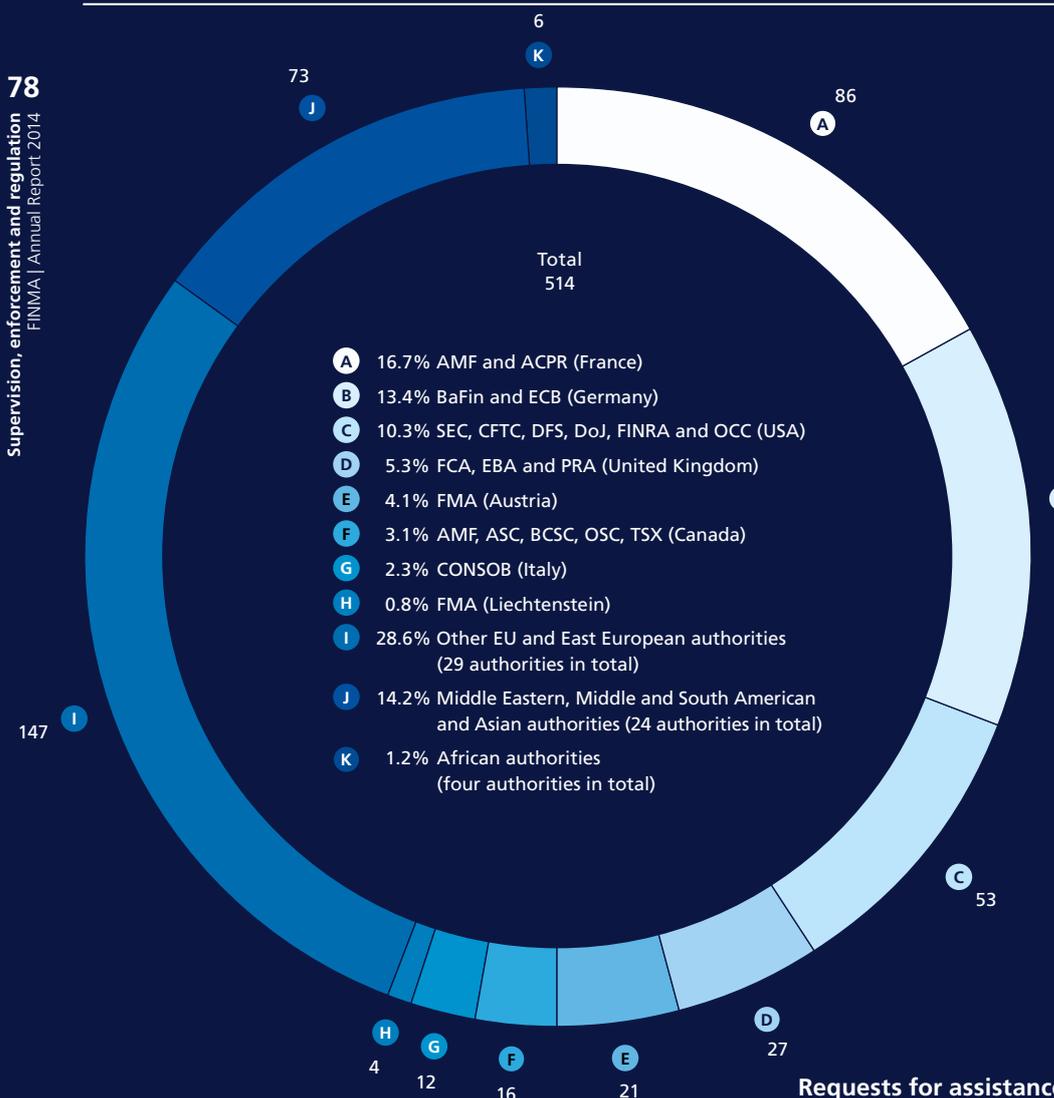
⁷⁸ See FINMA fact sheet "Crowdfunding" dated 1 December 2014 (<http://www.finma.ch/e/finma/publikationen/faktenblaetter/documents/fb-crowdfunding-e.pdf>).

International cooperation

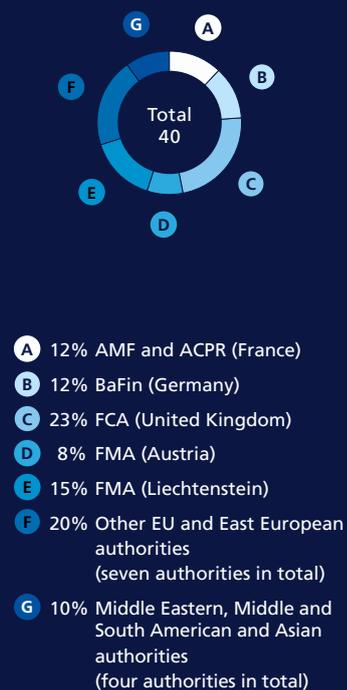
FINMA receives the third largest number of requests for international assistance of any authority worldwide. In the majority of cases it is able to comply with them, though the Swiss "client procedure", which leads to delays and requires those affected to be informed in advance, has prompted criticism.

Incoming requests by authority

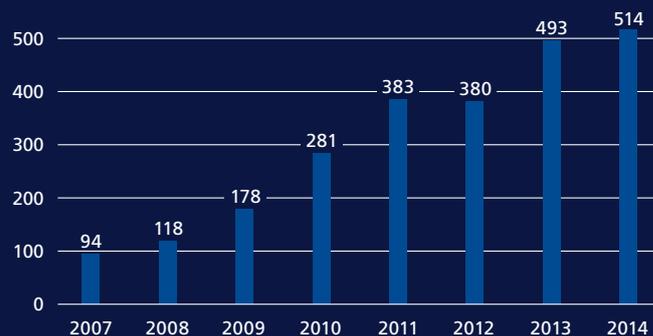
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Outgoing requests by authority



Requests for assistance per year (2007–2014)⁷⁹



⁷⁹ The figures for 2009 and 2010 were updated since the previous annual reports.

International cooperation statistics

In its ongoing supervision, FINMA works closely with foreign supervisory authorities. Providing those authorities with adequate assistance is central to the fulfilment of FINMA's statutory mandate and is increasingly key to preserving access to foreign markets for Swiss market participants.

Incoming requests

In 2014, FINMA received 514 requests for assistance from 80 foreign supervisory authorities. Of these, 362 concerned financial intermediaries and 2,240 related to clients. A total of 352 client procedures have been initiated to date and 25 rulings issued. Eleven of those rulings were the subject of appeals to the Federal Administrative Court, which has so far ruled in FINMA's favour in eight cases, with three still outstanding at the end of 2014. FINMA is in third place worldwide in terms of the number of requests received, reflecting the importance of Switzerland as a private banking centre. The statistics compiled each year by IOSCO confirm that FINMA handles the majority of requests to the satisfaction of the foreign supervisory authorities, despite criticism that prior information is given to the parties involved.

Outgoing requests

FINMA submitted 40 requests for assistance to foreign supervisory authorities in 2014, including nine to the UK's FCA, six to Liechtenstein's FMA, five to Germany's BaFin, four to France's AMF, one to the French authority ACPR, and 15 to 12 supervisory authorities in other countries.