"Too big to fail" legislation and small banks?

Small Bank Symposium 2026

Break-out session 2: proportionality in the regulation of small banks

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Background and current situation

10 April 2024
Federal Council report on banking stability

17 Dec 2024
PInC report on the CS crisis

6 June 2025
Federal Council parameters

26 Sept. 2025
BA consultation: capitalisation of foreign participations
(until 9 January 2026)

22 April 2026
Dispatch on BA to parliament; CAO adopted (in effect 1 January 2027)

12 Aug. 2026
Consultation on "remaining measures" legislative package incl. LiqO-LoLR
(until 19 Nov. 2026)

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Overall package: three focus areas, 34 fields of action

Strengthen prevention framework

Accountability regime A	Periodic penalty payments (PPP) A	FINMA governance B
Corporate governance A	Speed up procedures A	Capitalisation of foreign participations S
Remuneration: basic principles A	Audit firms (rotation) A	Pillar 2 add-ons, stress tests S
Remuneration: cooling-off periods & clawbacks S	Public information A	Prudent valuation (PVA) A
Institutional guarantee, organisational changes A	Prohibition from practising a profession, disgorgement of profits A	Software: handling of CET1 S
Early intervention A	Duty to disclose & report A	Withholding tax – exemption A
Fines (pecuniary sanctions) A		

Strengthen liquidity

- LoLR preparation: quantitative S
- LoLR preparation: qualitative K
- Liquidity reporting in the event of a crisis S
- Public Liquidity Backstop (PLB) S

Set of crisis instruments

- Recovery planning S
- Parent company resolution planning S
- Resolution options S
- Bail-in: legal certainty S
- Collaboration with authorities B

Other measures

- Expand TBTF aims S
- Restrict the relief provisions S
- Art. 52: evaluation S
- MoU FINMA–FAOA B
- COMCO/FINMA: mergers B
- Depositor protection (incl. IT directive) A

A = all banks / financial institutions **S** = only systemically important banks (SIBs) **K** = banks in categories 1 to 3 **B** = authorities

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What applies to the small banks

Strengthen prevention framework

- Accountability regime – A
- Corporate governance – A
- Remuneration: basic principles – A
- Remuneration: cooling-off periods & clawbacks – S
- Institutional guarantee, organisational changes – A
- Early intervention – A
- Fines (pecuniary sanctions) – A
- Periodic penalty payments (PPP) – A
- Speed up procedures – A
- Audit firms (rotation) – A
- Public information – A
- Prohibition from practising a profession, disgorgement of profits – A
- Duty to disclose & report – A
- FINMA governance – B
- Capitalisation of foreign participations – S
- Pillar 2 add-ons, stress tests – S
- Prudent valuation (PVA) – A
- Software: handling of CET1 – S
- Withholding tax – exemption – A

Strengthen liquidity

- LoLR preparation: quantitative – S
- LoLR preparation: qualitative – K
- Liquidity reporting in the event of a crisis – S
- Public Liquidity Backstop (PLB) – S

Set of crisis instruments

- Recovery planning – S
- Parent company resolution planning – S
- Resolution options – S
- Bail-in: legal certainty – S
- Collaboration with authorities – B

Other measures

- Expand TBTF aims – S
- Restrict the relief provisions – S
- Art. 52: evaluation – S
- MoU FINMA–FAOA – B
- COMCO/FINMA: mergers – B
- Depositor protection (incl. IT directive) – A

A = all banks / financial institutions **S** = only systemically important banks (SIBs) **K** = banks in categories 1 to 3 **B** = authorities

15 of the 34 fields of action apply to small banks – however, those measures tailored specifically to the systemic risk (capitalisation, quantitative liquidity, recovery & resolution, PLB, cooling-off periods and clawbacks) only apply to SIBs.
The remaining measures apply the principle of proportionality.

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Accountability regime (AR): a sensible scope of application

What is included within the AR: complex institutions

Complex institutions – from 250 FTE

- **People:** The Board of Directors and the Executive Board, as well as key roles which have a considerable influence on the bank's risk profile but are not already included in the Executive Board
- **Documentation**: individual statement of responsibility and an institution-wide overview of responsibilities

Non-complex institutions – under 250 FTE

- **Proportionality applies**
  No new people in a position of responsibility
  No requirement for documentation
- FINMA may treat non-complex institutions under AR conditions as an **early intervention measure**

Duty of due diligence for all those subject to fitness and propriety checks

Standards of conduct
The obligation set out in the Swiss Code of Obligations (CO) to take appropriate measures within a person's own area of responsibility is standardised in the Banking Act (BA)

Breach of duty
A breach of the duty must have been committed for a sanction to be applied: No automated sanctions and no assumption of fault.

Implications
Primary bank: Remuneration measures, disciplinary measures
Secondary FINMA: Measures set out in FINMASA (e.g. prohibition from practising a profession) only to be taken for a serious breach of supervisory law

Proportionality in practice:

- **AR conditions generally restricted to complex institutions**
- **No new obligations or people in a position of responsibility for small banks.** Individual accountability is promoted in a pragmatic and proportionate manner.

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Early intervention: address it before it reaches the customers

All banks
Standard supervision – nothing changes on an everyday basis

Issues identified
Dialogue and rectification in the normal supervisory process

Issues are unresolved
FINMA orders corrective measures

What it's about

- Prevent crises before they happen: Where issues are rectified co-operatively in the event of an impending breach of supervisory law or if the economic situation is deteriorating, FINMA will have no reason to order corrective measures
- Addressing issues with the few who need it, protects the reputation of everyone, and the financial centre as a whole.
- Customers of small banks expect – quite rightly – the same protection as they would get from a large institution

Relatively early intervention measures – as part of a continuous process: from the ongoing supervision up until the crisis

(Impending) breach of supervisory law
Measures to safeguard a valuable organisation

(Impending) deterioration of the economic situation / risk to customers' interests
Further reaching structural and financial measures

Point of non-viability
Protective measures

- *Measures are enforceable by law immediately, however, in justified cases the court may order the suspensive effect.*
- *Irrespective of this, measures are subject to full judicial review at all times. FINMA bears liability*

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Fines: only for serious breaches

Existing set of instruments
Restoration of compliance with the law, declaratory ruling, profit disgorgement – as before

Fine possible
only fine the institution (legal entity) – not the individuals

Setting the guard rails
- Maximum amount set by law (objectively determinable size)
- Amount imposed in individual cases according to the severity and the size of the institution – never on a scale that would threaten its survival
- Reduction through co-operation (settlements)

Periodic penalty payments (PPP): enforcement, no penalty – conclude with restoration of compliance with the law

Scale of fine/PPP dependent on the size of the institution amongst other things. And for everyone: no additional costs if adhering to the supervisory requirements

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Proportionality is in-built – not just promised

	SIBs	Small banks
Accountability regime	The circle of people included grows with the structure, size and business model	**Largely congruent with the previous positions of responsibility (Board of Directors, Executive Board); institutions under 250 FTE excepted**
Early intervention	Full range of instruments – through to measures for stabilisation scenarios (crisis intervention)	**Specific weaknesses are a prerequisite; Application is proportional (size, business model, risks)**
Fines	Only for serious breaches; Maximum amount set by law, amount imposed according to the severity	**Same regime: never on a scale that would threaten their survival; reduction through co-operation (settlements)**
Public information	Publication of final rulings; optional information regarding investigations and early intervention	Same rules: no publication without proceedings; individuals anonymised
Remuneration	Specific requirements (deferrals, clawbacks and in-year adjustments)	Minimum principle-based guidelines
Liquidity reporting	New: data and scenario analyses in a crisis (SIB section of the LiqO)	No new crisis reporting – Art. 7 LiqO and Art. 29 FINMASA continue to apply
LoLR preparation	Minimum quantitative requirement of prepared collateral	Include in contingency funding plan (Art. 10 LiqO) and check connection to ELF (Extended Liquidity Facility)
Capitalisation, resolution, PLB	Core piece of the package	Does not apply – except PVA: applies to all banks, relief provisions for cat. 4/5 possible

You have the opportunity to comment on the specific structure of the proportional implementation during the consultation process

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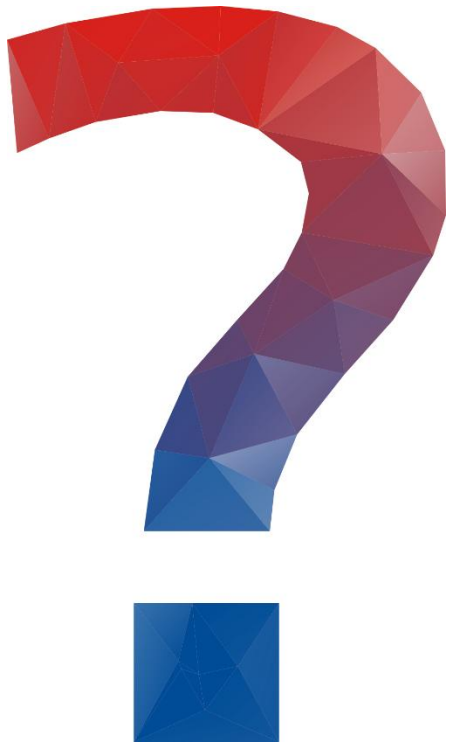

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THANK YOU!