



# HALF DAY OF BANKING SUPERVISION LAW DEMI-JOURNÉE DE DROIT DE LA SURVEILLANCE BANCAIRE

**BANKING SUPERVISION: ART OR SCIENCE?  
LA SURVEILLANCE DES BANQUES: UN ART OU UNE SCIENCE?**

**Friday 24 November 2023**  
**Vendredi 24 novembre 2023**  
**11.45 – 17.30**

**UNIL – Sorge**  
**Amphipôle building**  
**Room 315**



**University of  
Zurich**  
UZH

*Unil*

**UNIL | Université de Lausanne**  
**CEDIDAC**

# CONFERENCE DOCUMENTATION

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- 5. The regulatory framework for systematically-relevant banks and its contribution to the financial stability – room for improvement?**  
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- 8. Le rôle du conseil d'administration vis-à-vis des autorités de supervision**  
*Eftychia Fischer and Carlo Lombardini*
- 9. Panel: The aspiration of the supervisor and the reality – an expectation gap ? Has criminal law a role to play?**  
*Eftychia Fischer, Myriam Meissner, Andreas Blumer, Thomas Hirschi and Rolf Sethe*

# PROGRAMME OF THE CONFERENCE

## Amphipôle 315

Organisation: Prof. Carlo Lombardini, Dr. Reto Schiltknecht, Prof. Rolf Sethe,  
Prof. Alexandre Richa and Prof. Damiano Canapa

- 11h45 Registration and Standing Lunch
- 13h00 Welcome and Opening Remarks
- 13h10 **Banking Supervision in Switzerland**  
**Thomas Hirschi**, Chief of Banking Division and Management Board Member, FINMA
- 13h45 **The regulatory framework for systemically-relevant banks and its contribution to the financial stability – room for improvement?**  
**Reto Schiltknecht**, Dr. iur., Attorney-at-Law, Senior Counsel, Geissbühler Weber & Partner AG, former responsible for “Too-big-to-fail”, FINMA
- 14h20 **The European Banking Supervisory Framework**  
**Christos Gortsos**, Professor at the National and Kapodistrian University of Athens, President of the Academic Board European Banking Institute, Vice-President of the European Supervisory Authorities’ Board of Appeal
- 14h55 *Break*
- 15h25 **The role of the prudential audit to support the supervisor**  
**Myriam Meissner**, Partner, Deloitte  
**Andreas Blumer**, Professor, Chairman, Senior Audit Partner Financial Services, Ernst & Young  
**Moderation: Alexandre Richa**, Professor at the University of Lausanne, Attorney-at-Law in Geneva, Aegis Partners
- 16h05 **Le rôle du conseil d’administration vis-à-vis des autorités de supervision**  
**Eftychia Fischer**, Chairwoman of the Board of Directors, Banque Cantonale Vaudoise  
**Carlo Lombardini**, Professor at the University of Lausanne, Attorney-at-Law, Poncet Turrettini Avocats
- 16h40 **Panel: The aspiration of the supervisor and the reality – an expectation gap? Has criminal law a role to play?**  
**Eftychia Fischer, Myriam Meissner, Andreas Blumer and Thomas Hirschi**  
**Moderation: Rolf Sethe**, Professor at the University of Zurich, Counsel, Niederer Kraft Frey SA
- 17h30 Closing of the Conference

# LIST OF PARTICIPANTS



Organisateurs				
CANAPA	Damiano	Professeur	Université de Lausanne	Lausanne
LOMBARDINI	Carlo	Professeur, avocat	Université de Lausanne / Poncet Turrettini Avocats	Lausanne
RICHA	Alexandre	Professeur, avocat	Université de Lausanne / Aegis Partners	Lausanne
SCHILTKNECHT	Reto	Dr.iur., Attorney-at-Law	Geissbühler Weber & Partner AG	Zürich
SETHE	Rolf	Professeur	Université de Zürich	Zürich
Intervenant-e-s				
BLUMER	Andreas	Professor, Chairman, Senior Audit Partner Financial Services	Ernst & Young	
FISCHER	Eftychia	Présidente du conseil d'administration	Banque Cantonale Vaudoise	
GORTSOS	Christos	Professor, President, Vice-President	National and Kapodistrian University of Athens / Academic Board European Banking Institute / European Supervisory Authorities' Board of Appeal	
HIRSCHI	Thomas	Chef de la division Banques et membre de la direction	FINMA	
LOMBARDINI	Carlo	Professeur, avocat	Université de Lausanne / Poncet Turrettini Avocats	Lausanne
MEISSNER	Myriam	Partner	Deloitte	
RICHA	Alexandre	Professeur, avocat	Université de Lausanne / Aegis Partners	Lausanne
SCHILTKNECHT	Reto	Dr.iur., Attorney-at-Law	Geissbühler Weber & Partner AG	Zürich
SETHE	Rolf	Professeur	Université de Zürich	Zürich
Collaborateurs-trices du CEDIDAC				
BASTIAN	Enzo	Assistant diplômé, doctorant	Université de Lausanne	Lausanne
BURGAT	Nadia	Secrétaire	Université de Lausanne	Lausanne
CAMIOLO	Ophélie	Secrétaire	Université de Lausanne	Lausanne
CANAPA	Damiano	Professeur, directeur du CEDIDAC	Université de Lausanne	Lausanne
LEU	Anastasia	Assistante diplômée, doctorante	Université de Lausanne	Lausanne

<b>A</b>				
AIGNER	David	Av. stagiaire	Obersonabels SA	Grand-Lancy
AMSCHWAND	Isabelle	Membre du Conseil d'administration	Astia SA	Châtel-St-Denis
ANTONIETTI	Adriano	Avocat - Associé	Walder Wyss SA	Genève
APOLLONIO	Manuel	Étudiant		Odogno
ATKINSON	Antoine	Étudiant		Bussy-Chardonney
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BÉGOIN	Olivier	General Counsel	Hyposwiss Private Bank	Genève
BERETTA	Nils	Étudiant		Yverne
BLUM	Janos	Chairman	Swiss Risk Association	Zürich
BONGARD	Pierre	Managing Partner	Wisebow Advisers	Genève
BRAIDI	Guillaume	Avocat – Associé	Poncet Turrettini Avocats	Genève
BRODARD	Nathalie	Avocate Enforcement	FINMA	Berne
BUDRY CARBÓ	Adrià	Journaliste	Public Eye	Lausanne
<b>C</b>				
CALOIA	Beresford	Associé	PwC SA	Genève
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CHOLLET	Pascal	Auditeur Responsable	Banque Cantonale Vaudoise	Lausanne
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DE KALBERMATTEN	Christophe	Avocat et Notaire	Python Avocats	Sion
DE SIMONE	Milena	Partner	Ernest & Young SA	Lancy
DE STEIGER	Adrien	Avocat	Étude Aïoutz - de Steiger	Fribourg
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DESPONDS	Jérôme	Associé	KPMG SA	Genève
DI BRUNO	Mariella	Associate General Counsel	HSBC Private Bank (Suisse) SA	Genève
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FASEL	Sarah	Associate	Homburger AG	Zürich
<b>G</b>				
GENEQUAND	Emmanuel	Associé	PricewaterhouseCoopers SA	Genève
GRANITO	David	Analyste financier	MPC	Berne
GUGGENHEIM	Joachim	Av. stagiaire	Walder Wyss SA	Renens
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HERBEZ	Jean-Luc	Avocat - Associé	MLL Legal	Genève
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HODARA EL BEZ	Stéphanie	Associée	Altenburger Ltd Legal + tax	Genève
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HUSS	Robert	Étudiant		Thônex
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KOLLY	Didier	Avocat	Banque Lombard Odier & Cie SA	Genève
KRATZER	Christophe	Partner	PricewaterhouseCoopers SA	Genève
<b>L</b>				
LAURENT	Sophie	Co-responsable Département Legal	Banque Cantonale du Valais	Sion
LAURENT-BELLUE	Jean	Administrateur	Edmond de Rothschild (Suisse) SA	Genève
LUYET DEIRI	Catherine	Secrétaire générale, avocate	CA Indosuez (Switzerland) SA	Genève

<b>M</b>				
MALEK	Benjamin	Av. stagiaire / Doctorant	Walder Wyss SA	Genève
MANGEAT	Grégoire	Avocat	Mangeat Avocats Sàrl	Genève
MARGUERAT	Jean-Michel	Founder	SR FS	Etagnières
MATTATIA	Rachel	General Counsel	HSBC Private Bank (Suisse) SA	Genève
MAYOR	Isabelle	Avocate	SwissLegal Rouiller & Associés Avocats SA	Lausanne
MEYLAN	Arielle	Av. stagiaire	Bloch Avocats	Yverdon-les-Bains
MILLER	Hugo		Bloomberg	Genève
MONESTES	Isabelle	Chief Compliance Officer Switzerland	HSBC Private Bank (Suisse) SA	Genève
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OYON	Daniel	Professeur	Université de Lausanne	Lausanne
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PANTALEO	Nicola	Doctorant / Assistant diplômé	Université de Lausanne	Lausanne
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PERLES	Philippe	Administrateur	Edmond de Rothschild (Suisse) SA	Genève
PEYRONNARD	Jean-François	Compliance	EFG Bank	Corsier
PIGUET	Floriane	Doctorante		Neuchâtel
PUDER	Oren-Olivier	Avocat - Associé	Junod, Muhlstein, Lévy & Puder	Genève
PUGLIA PIOT	Thérèse	Group Head Compliance	Swissquote Bank	Gland
<b>R</b>				
REYMOND	Antoine	Av. stagiaire	Swisslegal Rouiller & Associés Avocats SA	Lausanne
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WERLEN	Thomas	Managing Partner	Quinn Emanuel Urquhart & Sullivan (Schweiz) GmbH	Zürich
WEY	Renate	General counsel	Mirabaud & Cie SA	Genève
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ZUFFEREY	Samuel	Étudiant		Granges

# **PRESENTATION OF THE SPEAKERS**

Half-Day of Banking Supervision Law  
Friday 24<sup>th</sup> November 2023

  
UNIL | Université de Lausanne  
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## Andreas Blumer

Andreas Blumer studied business administration at the University of St. Gall (lic. oec. HSG). He obtained his doctorate in 1996 at the University of St. Gall with a thesis on the banking supervision and external banking audits, in particular on the basic concepts, problems and perspectives of the institutional design of selected banking supervision systems, under the supervision of Professor Claude Bourqui. He is a Swiss certified accountant and accredited qualified auditor for banks. Since 1995 Andreas Blumer has been working for Ernst & Young, first in Geneva, then in New York and now in Zurich as a senior audit partner and Chairman of Ernst & Young Switzerland. He is an honorary professor at the University of St. Gallen, where he teaches auditing, accounting and advising of financial institutions in Switzerland.

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## Eftychia Fischer

Eftychia (La) Fischer est actuellement administratrice non exécutive de Vaudoise Assurances et présidente de la Banque Cantonale Vaudoise à Lausanne. Elle est aussi administratrice d'Avenir Suisse, ainsi que de l'ESAG (Ecole suisse d'archéologie en Grèce).

Au cours de ses 35 ans de carrière dans le secteur bancaire et financier, où elle a occupé diverses fonctions, notamment celles de trésorière du groupe, de responsable des risques du groupe et de responsable de la gestion des investissements, elle a acquis une expérience dans le négoce, la gestion d'actifs et de patrimoine, la gestion et le contrôle des risques, ainsi que dans les affaires réglementaires.

Née à Athènes, elle possède la double nationalité grecque et suisse. Elle est mariée et n'a pas d'enfant. Elle est titulaire d'une licence en physique de l'Imperial College de Londres (Royaume-Uni) et d'une licence en mathématiques de l'Open University (Royaume-Uni). Elle est également titulaire du certificat CFA, du certificat FRM et du diplôme AMP de Wharton School.

## Christos Gortsos

Christos Gortsos has a tenured position as Professor of Public Economic Law at the Law School of the National and Kapodistrian University of Athens. During the winter semester of the current Academic Year, he is also Visiting Professor at the Faculty of Law of the University of Zürich. The main fields of his academic activity include international and EU monetary law, financial regulation, central banking law and institutional economics. Furthermore (among his other academic and professional activities), he is Vice-President of the Board of Appeal of the European Supervisory Authorities (ESAs) and President of the Academic Board of the Frankfurt-based European Banking Institute (EBI). His publications at the SSRN are available under: <https://ssrn.com/author=1808375>.

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## Thomas Hirschi

Thomas Hirschi (1975) holds a Master's degree from the University of Geneva in international relations and a Master's degree from the University of Vienna in European studies and has successfully completed the INSEAD Executive Education Programme. Thomas Hirschi headed FINMA's Asset Management division from 2020 to January 2022. From 2015 to 2019, he was responsible for the supervision of banks and insurance companies licensed by the Financial Services Regulatory Authority of the Abu Dhabi Global Market (ADGM) where he was in charge of developing and implementing the relevant licensing and supervisory concepts. Between 2004 and 2015 he held various senior positions at FINMA and its predecessor authority, the Swiss Federal Banking Commission. Most recently, he acted as the Head of the Risk Management section within the Banks division. Prior to this, he was in charge of supervising a large Swiss bank and then responsible for the supervision of retail, commercial and trading banks. Previously he worked in risk management for J.P. Morgan (Suisse) SA in Geneva. Thomas Hirschi has been Deputy CEO ad interim since 1 October 2023. He has been a member of the FINMA Executive Board since 1 January 2020 and is in charge of the Banks division.

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## **Carlo Lombardini**

Avocat au Barreau de Genève et associé auprès de l'Étude Poncet Turrettini, à Genève, Me Carlo Lombardini représente et assiste des banques, des maisons de titres et des gérants de fortune. Professeur associé à la Faculté de droit de l'Université de Lausanne, il est l'auteur de nombreuses publications en droit bancaire. Il est également membre du conseil d'administration et du comité des risques de EFG Private Bank et de EFG Bank. Il est le président du comité des crédits de ces établissements. Me Lombardini siège également au conseil d'administration de Credit Agricole Next Bank (Suisse) SA et est Président du comité des risques de cette banque.

## **Myriam Meissner**

Myriam Meissner studied economics at HEC Lausanne. She obtained her license in 1995. She is a Swiss certified accountant and accredited qualified auditor for banks and asset managers. Since 1995 Myriam Meissner has been working for Deloitte in Geneva focusing mainly on Financial services. She has experience in auditing banks, securities houses, asset managers, pension funds and external asset managers. She is an audit partner since 2012 and has been nominated at the Board of Deloitte AG in 2022.

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## **Alexandre Richa**

Alexandre Richa est Professeur associé à l'Université de Lausanne, HEC Lausanne, où il enseigne le droit commercial et le droit des marchés financiers, et avocat associé de l'Etude Aegis Partners à Genève. Il est docteur en droit de l'Université de Genève et titulaire d'un LL.M. de la Harvard Law School.

Il conseille et représente des clients en droit bancaire, financier et commercial. Il est également actif en matière de protection des données et secrets commerciaux, notamment dans le cadre de procédures contentieuses.

## **Reto Schiltknecht**

Reto Schiltknecht studied law at the University of Berne (lic.iur. and Dr.iur.) and obtained his permission as lawyer and notary public of the Canton of Lucerne. He started out his professional career as a legal counsel at a private bank, has been for several years at a large Swiss manufacturing group, finally as Deputy Group General Counsel and moved then as Group General Counsel and Member of the Executive Committee to the largest Swiss Insurance Group. Before joining Zurich based consulting firm gwp financial services he held various senior management positions at Swiss Financial Market Supervisory Authority FINMA where he was, among others, responsible for “too-big-to-fail” issues.

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## **Rolf Sethe**

Rolf Sethe studied law at the University of Tübingen and the London School of Economics and Political Science (LL.M.). He obtained his doctorate in 1994 at the University of Tübingen (DE) with a comparative thesis on company law. Afterwards he wrote his habilitation thesis on the topic of investor protection in portfolio management. From 2003 till 2008 he worked as a full professor in Germany. Since 2008, he has been a full professor of civil law, commercial and business law at the University of Zurich. Since 2013 he heads the Research Program on Financial Market Regulation. He is member of the Academic Board of the European Banking Institute, Of Counsel with the Zurich law firm of Niederer Kraft & Frey AG and member of the Regulatory Board of SIX Swiss Exchange Regulation, Zurich.

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<https://www.ius.uzh.ch/de/staff/professorships/alphabetical/sethe.html>

# **BANKING SUPERVISION IN SWITZERLAND**

**By**

**Thomas Hirschi**

Chief of Banking Division and Management Board Member,  
FINMA



# Banking Supervision in Switzerland

Thomas Hirschi, Head of Banks division, FINMA

24 November 2023

Banking Supervision in Switzerland  
24 November 2023  
Page 2



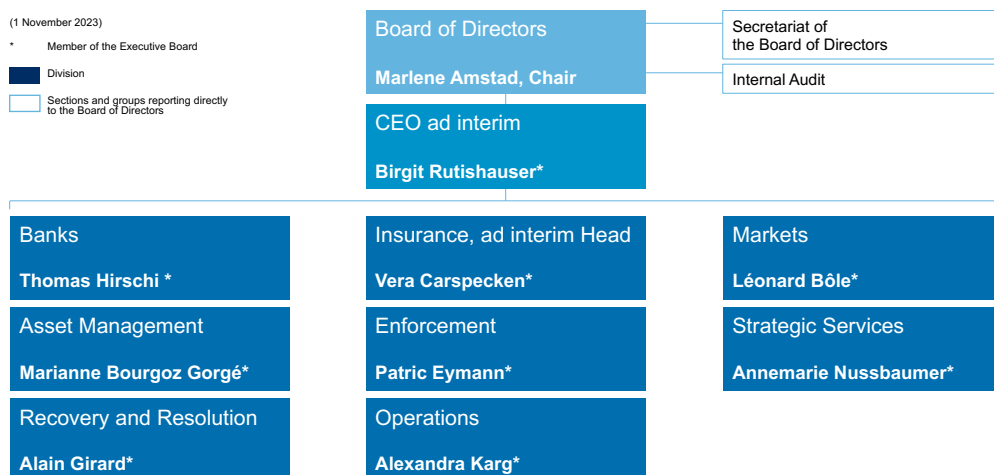
## FINMA Organization

(1 November 2023)

\* Member of the Executive Board

■ Division

□ Sections and groups reporting directly to the Board of Directors



## Legal mandate of financial market supervision (Art. 4 FINMASA)

### Protecting individuals

Protecting creditors, investors  
and insured persons

### Protecting market functioning

Ensuring the proper functioning  
of the financial market

Contributing to enhancing  
the reputation, competitiveness and  
sustainability of Switzerland's financial  
centre

The **objectives** to protect individuals and proper market functioning are  
at the **forefront of FINMA's mandate**

## Four FINMA core activities

Authorisation	Supervision	Enforcement
<ul style="list-style-type: none"> <li>Activities on the financial market require a licence.</li> <li>FINMA grants a licence if the statutory requirements are met.</li> </ul>	<ul style="list-style-type: none"> <li>Risk-based approach</li> <li>Focus on prudential issues (capital, liquidity, risk control)</li> <li>Protection of the financial system, recovery and resolution</li> <li>Growing importance of conduct issues</li> </ul>	<ul style="list-style-type: none"> <li>Enforcement of supervisory law with administrative enforcement measures, if necessary.</li> </ul>
<p><b>Regulation</b> and international cooperation</p>		

## FINMA's regulatory mandate: what can FINMA regulate based on Article 7 FINMASA?

FINMA exercises its regulatory powers by issuing:

Ordinances	+	Circulars
where so provided in the financial market legislation, or in the case of delegation by higher-level law, <b>generally in the case of highly technical requirements</b>		on the application of the financial market legislation in order to ensure <b>transparency and legal equality in the application of the financial market legislation</b> .

e.g. SR 952.024.1 FINMA **Ordinance** on Accounting; FINMA **Circular** 2019/02 on Interest Rate Risks

## Supervision as FINMA's core task

### Forward-looking supervision of the financial sector

#### Prudential supervision

- Focus on solvency and **financial stability** of individual institutions and the functioning of the financial system

The institutions must at all times have a sufficiently high capital buffer (according to the authorisation requirements), be liquid and have their risks under control. They must also ensure that those in senior management functions meet the high professional and personal requirements.

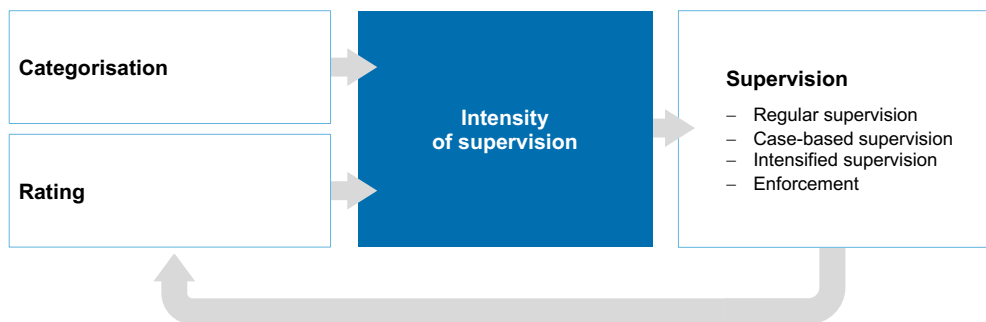
#### Conduct supervision

- Supervision of **conduct towards clients** (transparency about risks, costs and conflicts of interest)

Conduct – elements from a supervisory perspective:

- *Market conduct*: Integrity of the financial markets
- *Due diligence requirements*: E.g. money laundering, reputation
- *Risk control*: Lending, underwriting
- *Conduct rules*: Contractual relationship with clients

### Risk-based supervisory approach – process



### Ongoing supervision – ongoing dialogue



## Specific supervisory instruments

<b>Assessment letter</b>	Sets out the risk rating and supervisory expectations of the most important supervised institutions
<b>Supervisory reviews</b>	(Planned and ad hoc) On-site reviews on a broad range of risk topics such as Interest Rate Risk, Credit Risk, AML/Sanctions Compliance, Cross-Border, etc.
<b>Pillar 2</b>	Institution-specific capital add-ons (e.g. due to increased interest rate risk / credit risks)
<b>Crisis preparation and planning</b>	Recovery and Resolution planning for Systemically Important Banks; ad hoc crisis preparation measures.
<b>Stress testing</b>	FINMA "Loss Potential Analysis" for Systemically Important Banks and specific stress tests (e.g. mortgage risk, IRR)

## International supervisory cooperation

- **Bilateral** cooperation with selected partner authorities
- **Colleges** as a platform for cooperation, especially for systemically important banking and insurance groups

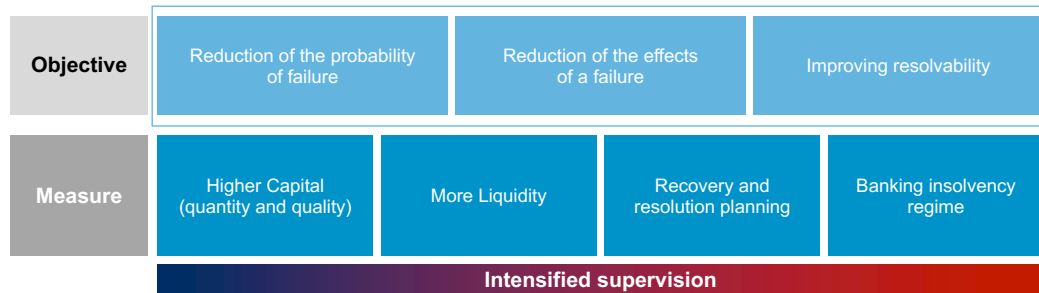
Supervisory colleges	Crisis management colleges
Ongoing, group-wide supervision	Recovery and resolution of financial groups

- 
- ▶ Way to exchange information and discuss experience gained, coordinate supervisory action and carry out joint audit measures
  - ▶ Physical meetings and other interactions
-



## Supervision of systemically important banks

Four core measures to limit the “too big to fail” (TBTF) risk as part of ongoing supervisory activities



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# THANK YOU!

# **THE REGULATORY FRAMEWORK FOR SYSTEMATICALLY-RELEVANT BANKS AND ITS CONTRIBUTION TO THE FINANCIAL STABILITY – ROOM FOR IMPROVEMENT?**

**By**

**Reto Schiltknecht**

Dr. iur., Attorney-at-Law, Senior Counsel, Geissbühler Weber  
& Partner AG, former responsible for “Too-big-to-fail”,  
FINMA



## Some thoughts as introduction

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- What is the **consequence of Credit Suisse's rescue** to Swiss financial stability?
- **Mission completed?** Yes. Financial markets calmed down, bank-run stopped, a global financial crisis avoided. **But:** What is the price?
- **Financial stability** was **protected** – all is well that ends well?
- «**Too-big-to-fail**» (TBTF) after the global financial crises and the UBS rescue 2008 suddenly in the spotlight again.
- **Crucial contribution of TBTF** regime for **Swiss financial stability**.
- However, for **strengthening the financial stability** a further increase of loss absorbency and financial resilience as well as a better resolution preparation needs to be evaluated.

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## Roles and responsibilities

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- Legislator:

Crucial role given that the **Parliament sets the legal framework and standards** for all stakeholders, i.e. SNB, FINMA and Banks

- SNB:

Mandate to **contribute to financial stability**, e.g. by way of the lender of last resort responsibility = emergency liquidity assistance (ELA) => article 5 paragraph 2 lit. e of the law regarding SNB

- FINMA:

Mandate for proper functioning of the financial markets

- one of FINMASA objectives => article 4 paragraph 1 of FINMASA
- FINMA's responsibility to **contribute to financial stability** together with SNB

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## Systemic Relevance - determination

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### Determination of systemically important banks and functions

SNB, after consultation with FINMA

### Determination of special requirements of systemically important banks

FINMA, after consultation with SNB

### Criteria of article 8 of banking law

- Market share of systemically important functions
- Amount of protected deposits exceeding maximum amount
- Total assets vs Switzerland's GDP
- Bank's risk profile, e.g. business model or balance sheet structure

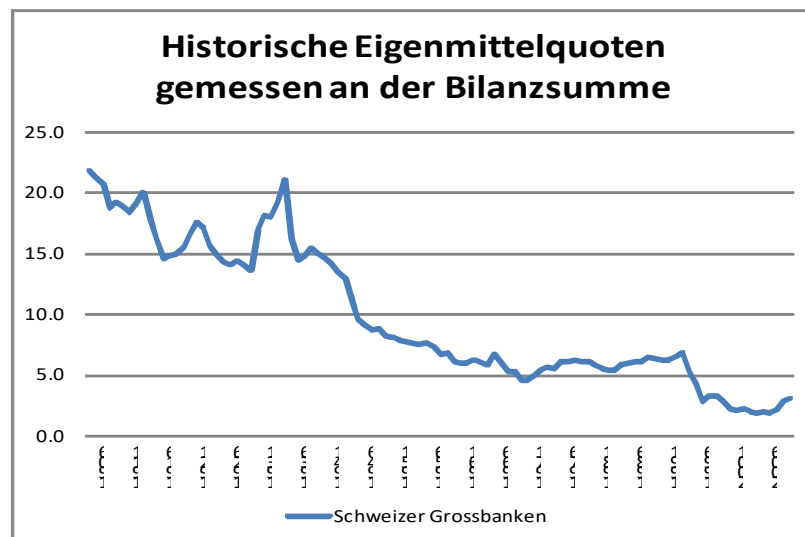
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## Special requirements for systemically important banks

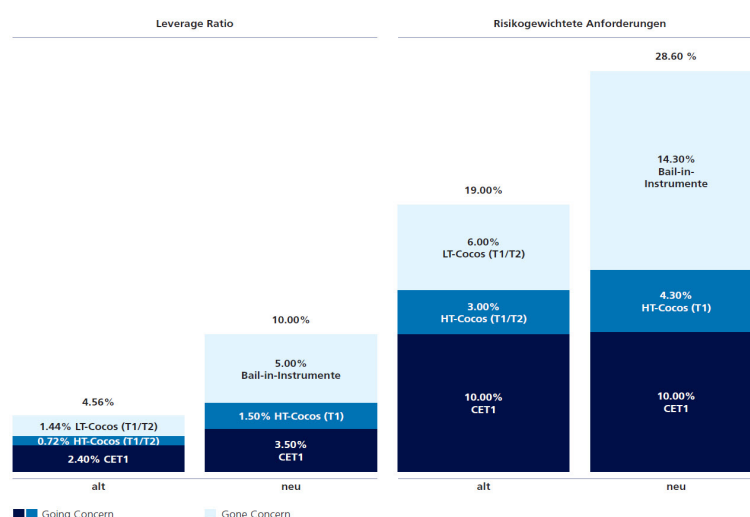


## Special requirements for systemically important banks

- Article 9 of the Swiss banking law:
  - Special requirements** in the area of capital, liquidity, risk diversification and emergency planning.
- Purpose of the special requirements:
  - Risk reduction** of systemically important banks in favour of **Switzerland's financial stability**.
  - Maintaining **seamless continuation** certain **important functions** like bank deposits, credits and payment services to avoid damage for Swiss economy.
  - Avoidance of state aids**.
- Observe the following principles:
  - Proportionality**.
  - Ramifications** to the banks and **level playing field**.
  - Adherence to international standards**, e.g. Basel Standards on Banking Supervision (BCBS) or guidelines of Financial Stability Board (FSB).

Development of capital ratios compared with balance sheet gwp

7

Development of Swiss TBTF capital requirements gwp

10

## Elements of liquidity

gwp

### Definiton of liquidity

Bank is able to comply with its payment obligations at any time.

### Objective of liquidity regulation

Bank is able to comply with its payment obligations in a severe liquidity stress and is resistant against liquidity shocks.

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### Major element of liquidity regulation

Bank holds enough High Quality Liquid Assets (HQLA), e.g. liquidity at Central Bank or highly liquide securities to monetize HQLA on short notice.

## Emergency Planning (articles 60 et al. Banking Ordinance)

gwp

- Bank must ensure that **systemically important functions** will work seamlessly in case of an insolvency, indepently of the rest of the bank.
- Bank must establish an **emergency plan** and submit it to FINMA for review annually.
- If necessary, **certain measures** have to be **implemented** by the bank in «**peace time**» already, e.g. the separation of Swiss business in an own legal entity.
- FINMA reviews the emergency plan submitted and approves the **plan** if it is **credible** and **feasible**.
- **FINMA Resolution Report 2022** (published 2023):
  - UBS, CS and Raiffeisen: effective plan.
  - ZKB: plausible plan for reaching effectiveness.
  - PostFinance: no plausible plan for reaching effectiveness.

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## Recovery, Resolution and Resolvability (Article 64 et al. of Banking Ordinance)

gwp

- Recovery-Plan:
  - **Stabilize** the **bank** in the event of a crisis.
  - Demonstrate **sustainable recovery options** and avoidance of state's intervention.
  - Annual plan submission for FINMA approval.
- Resolution-Plan (for G-SIBs only):
  - **FINMA** must establish a **resolution plan**
  - Demonstrate **feasible restructuring** (Sanierung) and **orderly wind-down** (Konkurs).
  - Bank must contribute and submit required information.
- Resolvability:
  - Resolvability criteria (article 65a), e.g. organizational structure, capital and liquidity requirements or access to the financial market infrastructure.
  - FINMA to impose capital add-on in the event of non-compliance (article 65b).

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## Room for improvement? (I/II)

gwp

### Capital:

- Seems to be adequate, given the Basel III implementation and the progression of capital adequacy ordinance in the case of «new» UBS.
- However, an additional in-depth analysis of financial resilience may be justified.

### Liquidity:

- ELA enlargement by SNB to all banks has been a useful decision.
- Implementation of Public Liquidity Backstop (PLB) is a «must».
- Enhance eligible ELA assets and check haircut reliefs.

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## Room for improvement? (II/II)

### Resolution:

- G-SIB => Make orderly liquidation a «real» fallback option. Structural changes to proof, e.g. steps towards more decentralization (multiple point of entry).
- D-SIBs => emergency plans to complete rapidly and start testings/simulation exercises.
- Cat 3 banks => recovery and resolution preparation = a contribution to financial stability.
- Bank insolvency laws => check introduction of a «run-off» (no new business, orderly wind-down), at least for systemically-important banks.



# **THE EUROPEAN BANKING SUPERVISORY FRAMEWORK**

**By**

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Authorities' Board of Appeal

# The European Banking Supervisory Framework

**Professor Dr. Christos V. Gortsos**

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**November 2023**

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## Outline

**1. The transition from national banking prudential supervision to the creation of the Single Supervisory Mechanism (SSM)**

**2. Prudential Regulation and Supervision under the Single Rulebook**

**3. The SSM**

*EXCURSUS 1: Early intervention powers*

*EXCURSUS 1: The role of the ECB and NCAs in resolution*

**4. Considerations on the Future of EU Banking Supervision**

2

## 1. The transition from national banking prudential supervision to the creation of the Single Supervisory Mechanism (SSM)

### (1) The EU “bank safety net” until 2014

- banking prudential regulation was gradually harmonised (at minimum level)
- the licensing of credit institutions and their prudential supervision was a competence of national competent authorities (NCAs)
- macro-prudential oversight was (only) established in 2011 (ESRB)
- there was no framework on banking resolution
- deposit guarantee schemes were national (*and still are*)
- winding-up procedures for credit institutions were national (*and still are*)
- last-resort lending to credit institutions (even within the euro area as of 1999) is provided by national central banks – the ECB has the power to prohibit that (Article 14.4 ESCB/ECB Statute)

### (2) The decision to create the Banking Union (June 2012)

The rationale is summarised in the following sentence of the June 2012 Euro Summit’s Statement:

*“We affirm that it is imperative to break the vicious circle between banks and sovereigns”*

**TABLE 1: The key legal sources of the three main pillars of the Banking Union**

	Prudential supervision and regulation of credit institutions	Resolution of non-viable credit institutions	Deposit guarantee schemes
<b>European “Single Mechanisms”</b> (“children” of the euro area “fiscal crisis”)	<b>Single Supervisory Mechanism:</b> <ul style="list-style-type: none"> <li>• Council Regulation (EU) No 1024/2013 (<b>“SSM Regulation”</b>)</li> <li>• ECB Regulation (EU) No 468/2014 (<b>“ECB Framework Regulation”</b>)</li> <li>• other ECB legal acts</li> </ul>	<b>Single Resolution Mechanism and Fund:</b> <ul style="list-style-type: none"> <li>• Regulation (EU) No 806/2014 of the European Parliament and of the Council (<b>“SRM Regulation”</b>), and Commission delegated and implementing acts</li> <li>• Intergovernmental Agreement (2014) (<b>“SRF”</b>)</li> </ul>	Proposal for a Regulation of the European Parliament and of the Council “amending Regulation EU No 806/2014 to establish an <b>“EDIS”</b> ”

**TABLE 1: The key legal sources of the three main pillars of the Banking Union (*cont'd*)**

	Prudential supervision and regulation of credit institutions	Resolution of non-viable credit institutions	Deposit guarantee schemes
Substantive rules (“single rulebook”) (“children” of the 2007-2009 Global Financial Crisis)	<ul style="list-style-type: none"> <li>Regulation (EU) No 575/2013 of the European Parliament and of the Council (‘CRR’), and Commission delegated and implementing acts</li> <li>Directive 2013/36/EU of the European Parliament and of the Council (‘CRD IV’), and Commission delegated and implementing acts</li> </ul>	<ul style="list-style-type: none"> <li>Directive 2014/59/EU of the European Parliament and of the Council (‘BRRD’), and Commission delegated and implementing acts</li> </ul>	<ul style="list-style-type: none"> <li>Directive 2014/49/EU of the European Parliament and of the Council, and a Commission delegated act (‘DGSD’)</li> </ul>

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**TABLE 2: The overall tasks conferred upon the ECB**

Category of ECB tasks	Legal basis	Implementation in euro area Member States	Implementation in Member States with a derogation
1. <b>Basic tasks</b> (within the Eurosystem)	Article 127(2) TFEU	Yes	No
2. <b>Other tasks</b>	Several TFEU articles	Yes	As a rule, no
3. <b>Specific tasks</b> on the macroprudential oversight of the European financial system (within the EFSF)	Council Regulation 1096/2010 (based in Article 127(6) TFEU)	Yes	Yes
4. <b>Specific tasks</b> on the microprudential supervision of credit institutions (within the SSM)	Council Regulation 1024/2013 (SSM Regulation, based on Article 127(6) TFEU)	Yes	Under the conditions of the ‘close cooperation procedure’

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**TABLE 3: Micro-prudential financial supervision in the EU:  
the asymmetry in the three sectors of the financial system**

	Banking sector	Capital markets sector	Insurance sector
<b>EU level supervision</b>	<b>ECB (Article 127(6) TFEU):</b> <ul style="list-style-type: none"> <li>• ‘significant’ credit institutions in the euro area (+)</li> <li>• certain ‘significant’ holding companies in the euro area (+)</li> </ul>	<b>ESMA (Article 114 TFEU) – e.g.:</b> <ul style="list-style-type: none"> <li>• CRAs</li> <li>• trade repositories</li> </ul>	–
<b>National supervision</b>	<ul style="list-style-type: none"> <li>• ‘less significant’ credit institutions in the euro area (+)</li> <li>• all other holding companies in the euro area (+)</li> <li>• all credit institutions in member-states with a derogation</li> <li>• financial institutions (including e-money institutions)</li> <li>• payment institutions</li> </ul>	All other regulated entities providing services on capital markets	<ul style="list-style-type: none"> <li>• insurance companies</li> <li>• reinsurance companies</li> <li>• insurance intermediaries</li> </ul>

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## 2. Prudential Regulation and Supervision under the Single Rulebook

### 2.1 The system of rules of the CRR and the CRD IV

(1) In line with the provisions of the ‘Basel III regulatory framework’ (and even beyond), the CRR and the CRD IV contain rules concerning the “three pillars” of this framework (as adjusted, in relation to the Basel II framework).

(2) The CRR lays down uniform rules concerning the following general prudential requirements that institutions, financial holding companies and mixed financial holding companies supervised under the CRD IV must comply with:

- *first*, own funds requirements relating to uniform and standardised elements of credit risk, market risk, operational risk, settlement risk and leverage;
- *second*, requirements on the limitation of large exposures;
- *third*, liquidity requirements relating to specific elements of liquidity risk;
- *fourth*, reporting requirements related to the above points (all above, **Pillar 1**); and
- *finally*, public disclosure requirements (**Pillar 3**)

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## 2.1 The system of rules of the CRR and the CRD IV (*cont'd*)

(3) The principle of proportionality applies (in principle) only in relation to institutions defined as “small and non-complex” (Article 4(1), point (145) CRR) – note: the *Silicon Valley Bank* would not have been covered by this definition

(4) In the context of the “three pillars” framework, the rules of the CRD IV on ‘Pillar 1’ pertain to:

- macroprudential capital buffers (namely the capital conservation buffer, the institution-specific CCyB; the G-SII buffer; the O-SII buffer);
- a systemic risk buffer); as well as
- capital conservation measures in the form of restrictions on distributions

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## 2.1 The system of rules of the CRR and the CRD IV (*cont'd*)

(5) The supervisory framework governing credit institutions’ compliance with the above rules is set out in Articles 49-117 CRD IV and covers three aspects:

- NCAs’ powers to conduct prudential supervision and impose sanctions;
- The “review processes” (Pillar 2), which cover five areas: the internal capital adequacy assessment process (‘ICAAP’); credit institutions’ arrangements, processes and mechanisms (including, *inter alia*, the internal liquidity adequacy assessment process (‘ILAAP’)), and their internal governance and remuneration policies; the SREP, which has a predominant role in the supervisory framework; supervisory measures and powers; and the field of application of these processes;
- Prudential supervision on a consolidated basis

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## 2.2 The overall spectrum of capital ratios and requirements

Ratio/requirement	Composition	Level
<b>CET 1 capital ratio</b>	The CET 1 capital of the institution expressed as a percentage of the total risk exposure amount	4,5%
<b>Tier 1 capital ratio</b>	The Tier 1 capital of the institution expressed as a percentage of the total risk exposure amount	6%
<b>Total capital ratio</b>	The own funds of the institution expressed as a percentage of the total risk exposure amount	<b>8%, if less than = FOLF</b>
<b>Total SREP Capital Ratio (TSCR)</b>	<ul style="list-style-type: none"> <li>➤ Total capital ratio (8%) +</li> <li>➤ Pillar 2 (additional) capital requirements (P2R)</li> </ul>	Variable over the total capital ratio
<b>Overall Capital Requirement (OCR)</b>	<ul style="list-style-type: none"> <li>➤ TSCR +</li> <li>➤ Combined buffer requirement</li> </ul>	Variable over the TSCR
<b>Pillar 2 guidance (P2G)</b>	<i>Additional buffer to withstand stressed situations</i>	Variable over the OCR

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## 2.3 An overview of capital buffers

	Capital conservation buffer	Institution-specific countercyclical buffer	Capital buffer on G-SIIs	Capital buffer on O-SIIs	Systemic risk buffer
Scope	All credit institutions	All credit institutions	G-SIIs	O-SIIs	All or certain credit institutions
Basis	Individual and consolidated	Individual and consolidated	Consolidated	Individual, sub-consolidated or consolidated	Individual, sub-consolidated or consolidated
Requirement amount (*)	2.5%	0-2.5%	1-3.5%	0-2%	1-3% (under conditions 5%)
Own funds	Common Equity Tier 1 capital items				
Timeframe	Gradually: 2016-2019 (0.625-2.5%)		2016 (gradually in terms of the percentage)	2016	2014

(\*) as a percentage of total risk exposure amounts (TREA)

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## 2.4 Implications

- (1) The drop of the capital ratio **below the TSCR** may trigger a **“failing or likely to fail” determination** by the ECB/NCAs (**SRMR, Article 18(1)** – BRRD, Article 32(1))
- (2) If the capital ratio drops **below the TSCR + 1.5% of RWAs**, the ECB or the NCA may take **early intervention measures** (**Article 27 BRRD**)
- (3) The **“recovery trigger”** set by institutions themselves contains **an add-on over the OCR**. In case of a drop of the capital ratio below that level, the senior management may decide the application of recovery option(s) provided for in the recovery plan (e.g. share capital increase, divestments, cost reduction)
- (4) If the capital ratio drops below the OCR, applicable are the restrictions on distributions (i.e., dividends, bonuses, payments on AT1 coupons, **Article 141 CRD IV**)
- (5) If the P2G cannot be met, the credit institution must submit a capital plan to restore compliance – the supervisory reaction to the breach is dependent underlying reasons

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## 3. The SSM

### Allocation of tasks between ECB and NCAs

	Significant supervised entities	Less significant supervised entities
Granting and withdrawal of authorisation	ECB	ECB
Assessment of applications for the acquisition and disposal of 'qualifying holdings'	ECB	ECB
Conduct of micro-prudential supervision	ECB	NCA
Conduct of macro-prudential regulation	NCA or NDA	NCA or NDA
Carrying out supervisory tasks in relation to recovery plans and early intervention	ECB	NCA
Conduct of stress-tests	ECB	NCA
Participation in colleges of supervisors	ECB	NCA
Protection of the economic interests of consumers transacting with financial service providers	NCA	NCA
Prevention of the use of the financial system for the purposes of money laundering and terrorist financing	NCA	NCA

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**TABLE 4:****The criteria for classifying supervised entities as significant**

1. Size criterion: in principle (unless particular circumstances justify otherwise), supervised entities and groups if the total value of their assets exceeds 30 billion euros.
2. Economic importance criterion: in principle (unless particular circumstances justify otherwise), supervised entities and groups meeting any one of the following criteria:
  - the ratio of their total assets over the GDP of the participating Member State of establishment exceeds 20%, unless the total value of their assets is below 5 billion euros, or
  - following a notification by their NCA that it considers such institutions of significant relevance with regard to the domestic economy, the ECB takes a Decision confirming such significance.
3. Cross-border activities criterion: those considered by the ECB, on its own initiative, to be of significant relevance if:
  - they have established banking subsidiaries in more than one participating Member States, and
  - their cross-border assets or liabilities represent a significant part of their total assets or liabilities.

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**TABLE 4 (cont'd):****The criteria for classifying supervised entities as significant**

4. Direct financial assistance criterion: those for which public financial assistance has been requested or received directly from the EFSF or the ESM.
5. In any case, the three most significant credit institutions or supervised groups in each Member State, unless otherwise justified by particular circumstances.
6. When necessary to ensure consistent application of high supervisory standards, the ECB may at any time, on its own initiative after consulting with national authorities or upon request by an NCA, decide to exercise directly the supervision of a less significant supervised entity or group, including in the case where financial assistance has been requested or received indirectly from the EFSF or the ESM (**Article 6(5), point (b) SSMR**).

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TABLE 5: Supervision on a consolidated basis and participation of the ECB and NCAs in colleges of supervisors			
SSM consolidating supervisors			
Supervised entity	Consolidating supervisor	College of supervisors' members	College of supervisors' observers
Significant supervised entity on a consolidated basis	ECB		NCA
Less significant supervised entity on a consolidated basis	NCA		
Non - SSM consolidating supervisors			
Supervised entities in participating Members are:	Consolidating supervisor	College of supervisors' members	College of supervisors' observers
All significant entities	Non - SSM NCA	ECB	NCAs
All less significant supervised entities	Non - SSM NCA	NCAs	
Both significant and less significant supervised entities	Non - SSM NCA	ECB NCAs	NCAs of the participating Member States where the significant supervised entities are established

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TABLE 6: The powers of the ECB and national competent authorities (NCAs) to impose administrative penalties under the SSMR and the SSM Framework Regulation	
1. Breach of directly applicable EU legal acts (EU Regulations)	
Significant supervised entities	<ul style="list-style-type: none"> <li>The ECB may impose <b>administrative pecuniary penalties</b> (Article 18(1) SSMR)</li> <li>The ECB may ask NCAs to impose <b>non-pecuniary penalties</b> (Article 134(1) SSM-FR)</li> </ul>
Less significant supervised entities	Only NCAs may impose penalties (notification to the ECB)
Natural persons in significant supervised entities	<ul style="list-style-type: none"> <li>The ECB may ask NCAs to impose <b>non-pecuniary and/or pecuniary penalties</b> (Article 134(1) SSM-FR)</li> <li>An NCA may ask the ECB to request it to open proceedings (Article 134(2) SSM-FR)</li> </ul>
Natural persons in less significant supervised entities	Only NCAs may impose penalties

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TABLE 6 (cont'd):

The powers of the ECB and national competent authorities (NCAs) to impose administrative penalties under the SSMR and the SSM Framework Regulation

**2. Breach of national legislation (including breach of national rules transposing EU Directives)**

Significant supervised entities	<ul style="list-style-type: none"> <li>The ECB may ask NCAs to impose pecuniary penalties (Article 18(5) SSMR) and/or non-pecuniary penalties (Article 134(1) SSM-FR)</li> <li>An NCA may ask the ECB to request it to open proceedings (Article 134(2) SSM-FR)</li> </ul>
Less significant supervised entities	Only NCAs may impose penalties (notification to the ECB)
Natural persons in significant supervised entities	<ul style="list-style-type: none"> <li>The ECB may ask NCAs to impose administrative penalties or measures (Article 18(5) SSMR), as well as non-pecuniary or pecuniary penalties (Article 134(1) SSM-FR)</li> <li>An NCA may ask the ECB to request it to open proceedings (Article 134(2) SSM-FR)</li> </ul>
Natural persons in less significant supervised entities	Only NCAs may impose penalties

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TABLE 6 (cont'd):

The powers of the ECB and national competent authorities (NCAs) to impose administrative penalties under the SSMR and the SSM Framework Regulation

**3. Breach of ECB legal acts (Regulations and Decisions) (Article 18(7) SSMR)**

Significant supervised entities	<ul style="list-style-type: none"> <li>The ECB may impose fines and periodic penalty payments</li> </ul>
Less significant supervised entities	<ul style="list-style-type: none"> <li>The ECB may impose fines and periodic penalty payments, only if the relevant ECB legal acts impose obligations on such entities <i>vis-à-vis</i> the ECB</li> </ul>

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**TABLE 7:**  
**A comparison: ECB (as a supervisory authority), EBA and ESRB**

	<b>ECB</b>	<b>EBA</b>	<b>ESRB</b>
<b>Objective</b>	contribution to the safety and soundness of credit institutions and the stability of the financial system within the EU and each Member State (SSMR, Article 1)	protection of the public interest by contributing to the stability of the financial system, for the EU economy, its citizens and businesses (EBA Regulation, Article 1(5))	contribution to the prevention/mitigation of systemic risks to financial stability in the EU arising from developments within the financial system (ESRB Regulation, Article 3(1))
<b>Tasks</b>	micro-prudential supervision of credit institutions (SSMR, Articles 4 and 5)	various (EBA Regulation, Articles 8-9), but not a supervisory authority	macro-prudential oversight of the financial system (ESRB Regulation, Article 3(1))
<b>Seat</b>	Frankfurt	Paris	Frankfurt

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### ***EXCURSUS 1: Early intervention***

(1) The ECB is called upon to carry out supervisory tasks, *inter alia*, in relation to early intervention, if a credit institution or group, in relation to which it is the consolidating supervisor, does not meet or is likely to breach the applicable prudential requirements.

(2) The **EBA 2015 “Guidelines on the triggers for using early intervention measures”** ensure the necessary link between the on-going supervision conducted by the ECB/NCAs in accordance with the SSMR/CRD IV, and the BRRD. They identify the following triggers:

- overall SREP score and pre-defined combinations of the Overall SREP score and scores for individual SREP elements;
- material changes or anomalies identified in the monitoring of key financial and nonfinancial indicators under SREP revealing that the conditions for early intervention are met; and
- significant events indicating that the conditions for early intervention are met

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**EXCURSUS 2: The role of the ECB and NCAs in resolution****(1) Conditions for resolution of credit institutions**

Criteria	Case 1	Case 2	Case 3
The credit institution is <b>“failing or likely to fail”</b>	✓	✓	✓
No reasonable prospect for effective <b>“alternative private sector measures”</b> (or supervisory action)	✗	✓	✓
A resolution action is <b>“necessary in the public interest”</b>	✓	✓	✗
<b>Outcome</b>			
	<b>1. Recapitalisation with the use of private sector funds</b>	<b>1. Resolution</b> 2. Potential use of the SRF's available financial means 3. Potential use of the GFSTs (only under the BRRD)	<b>1. Winding up under normal insolvency proceedings</b> <b>2. Activation of DGS to repay covered depositors</b>

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**(2) The link between the “SREP” and the first condition for resolution**

The first condition for resolution consists in that the competent authority (i.e., the ECB for significant credit institutions or the NCA for less significant ones) determines, after consulting the resolution authority, that the credit institution is ‘failing or likely to fail’

**(1) A credit institution is deemed to be in such a situation upon assessment of one or several of the objective elements relating to the following areas:**

<b>Capital position</b>	<p>(a) It infringes, or there are objective elements to support a determination that it will, in the near future, infringe <b>own fund requirements</b> relating to the continuing of its authorisation, in a way that would justify its withdrawal by the competent authority. This includes, but is not limited to, the fact that the institution has incurred or is likely to incur losses that might deplete the entirety or a significant amount of its own funds</p> <p>(b) Its assets are, or there are objective elements to support a determination that they will, in the near future, be less than its liabilities</p>
<b>Liquidity position</b>	It infringes, or there are objective elements to support a determination that it will, in the near future, infringe <b>regulatory liquidity requirements</b> for continuing authorisation in a way that would justify its withdrawal by the competent authority

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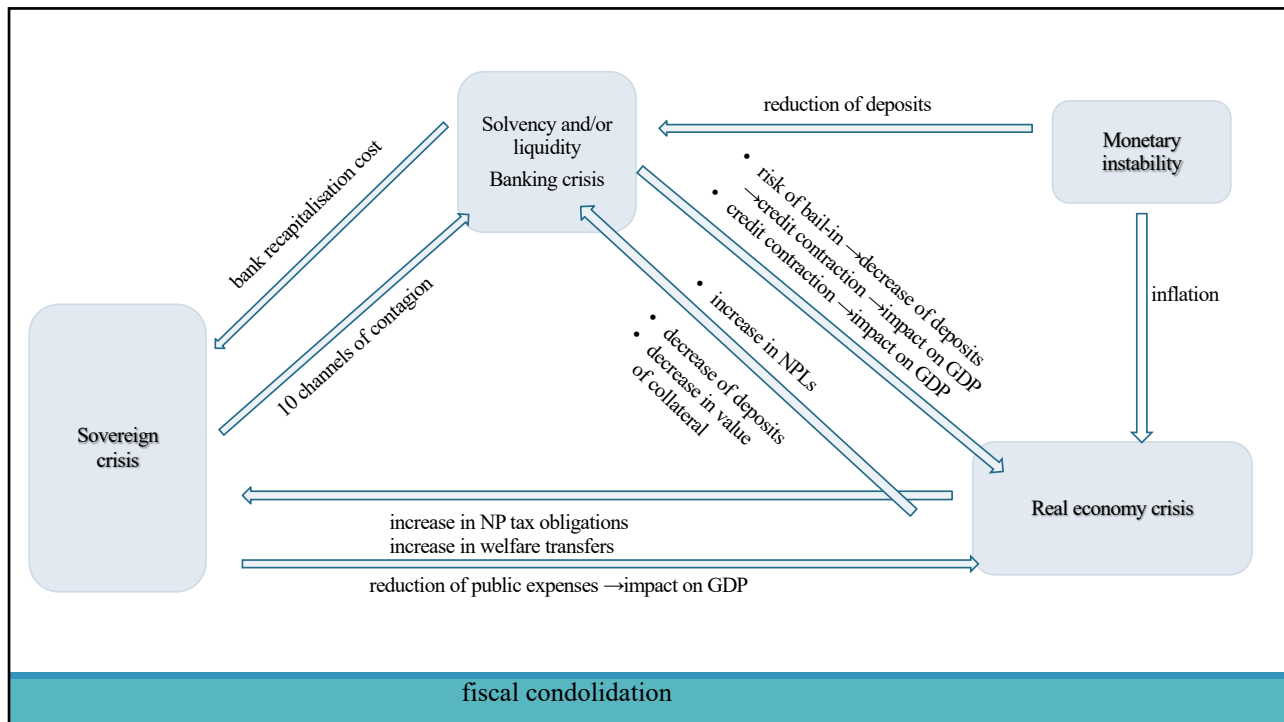
(2) The 'SREP' and its link to resolution ( <i>cont'd</i> )	
<b>Other requirements for continuing authorisation</b>	<p>It infringes, or there are objective elements to support a determination that it will, in the near future, infringe <b>other requirements</b> of its authorisation, in a way that would justify its withdrawal by the competent authority.</p> <p>For that purpose, the competent and/or the resolution authority should consider:</p> <ul style="list-style-type: none"> <li>• governance arrangements, and</li> <li>• the reliability and operational capacity to provide regulated activities</li> </ul>
The assessment of the objective elements is usually carried out by the competent authority in the course of the <b>SREP</b> which is performed in accordance with the “ <b>EBA SREP Guidelines</b> ”	
(2) “ <b>Extraordinary public financial support</b> ” is required, unless that takes any of the three permissible forms set out in the BRRD/SRMR – including the so-called “ <b>precautionary recapitalisation</b> ”	

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## 4. Considerations on the Future of EU Banking Supervision

- (1) Managing the smooth operation of the SSM; judicial review of ECB decisions by the CJEU
- (2) Reform of the single rulebook – heavy impact from international financial law
  - Transposition of the “Basel IV framework” (2021 Banking Package, *still not adopted*)
  - Need for a “regulatory pause”?
- (3) Need for further enhancement (*inter alia*):
  - prudential framework for NPLs:
  - prudential framework for sovereign exposures (**benchmark case**: 2012 haircutting of Greek government bonds)
- (4) Overcoming macro-economic policy failures as a precondition for a safer and resilient banking and (in general) financial system (see **GRAPH below**)
- (5) A radical proposal: amending the Treaties to anchor a general “**financial stability mandate**”

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# **THE ROLE OF THE PRUDENTIAL AUDIT TO SUPPORT THE SUPERVISOR**

**By**

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Professor, Chairman, Senior Audit Partner Financial Services,  
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# **THE ROLE OF THE PRUDENTIAL AUDIT IN SWITZERLAND TO SUPPORT FINMA**

**By**

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Professor, Chairman, Senior Audit Partner Financial Services,  
Ernst & Young



### Agenda

**Key takeaways**

Dualistic system of banking supervision with experienced audit professionals and financial services specialists to support the prudential supervision by FINMA has proven to be effective and efficient

**Prof. Dr. Andreas Blumer**

- 1 Dualistic system of banking supervision in Switzerland
- 2 Dual role of External Auditors in Financial Services
- 3 IMF Financial Sector Assessment Program of Switzerland
- 4 Enhancements of the dualistic approach over the last few years
- 5 Developments to improve audit quality to support prudential supervision
- 6 Summary

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The role of the prudential audit to support the supervisor

EY

## 1. Dualistic system of banking supervision in Switzerland

### Dualistic system of banking supervision in Switzerland in place since 1934:

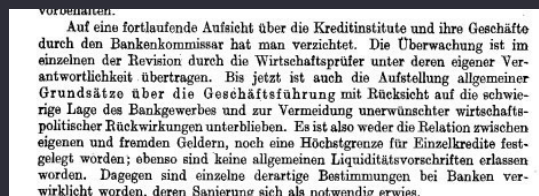
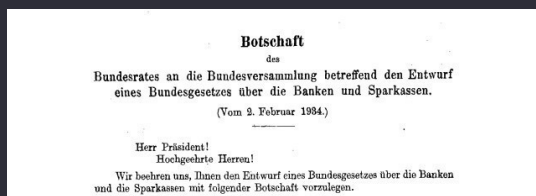
- Direct and indirect supervision by FINMA
- On-site interventions conducted by the bank's external auditors reporting to FINMA

### Reasons at inception:

- A relatively small supervisor responsible for a large and diverse financial sector can benefit from a pool of experienced audit professionals
- External auditors have to be independent anyway
- Big accounting firms have in-depth know-how due to audit and advising a large number of institutions

### Other countries with selected support from external auditors for prudential supervision:

- More comprehensive approach: e.g., Austria, Belgium, Germany, Luxembourg
- More specific support: e.g., Australia, UK, Netherland, Singapore



## 2. Dual role of the external auditors

### Regulatory audit = forward looking

Assessment of the institution's adherence to the provisions in the financial markets regulations

In addition, audit firms have to assess the ability of the institution to adhere to these provisions in the foreseeable future (forward looking)

### Financial audit = backward looking

Audit firms have to audit as financial auditor the institution's financial statements in accordance with the Swiss Code of Obligations and the applicable auditing standards

Regulatory and financial audit have to be performed conceptually and functionally separately

Audit firms have to strictly separate the working papers for the financial and the regulatory audit

FINMA may request in founded cases that audits are performed by two separate lead auditors and audit teams

### 3. IMF Financial Sector Assessment Program of Switzerland



- ▶ Monitoring and analysis of its member states' economic and financial market policy every five years, last in 2019
- ▶ Recommendations over the years regarding the dualistic approach, mainly around:
  - ▶ FINMA must be more in the driver seat
    - ▶ Must be able to perform own on-site inspections
    - ▶ Must be able to appoint third parties to perform interventions
  - ▶ More forward and less backward looking
  - ▶ More risk oriented approach
  - ▶ More use of internal audit
  - ▶ Reduce conflict of interest as auditors are paid by their supervised institutions for audits and additional services
    - ▶ Should FINMA appoint the regulatory auditor?
    - ▶ Should FINMA pay?

### 4. Enhancements of the dualistic approach over the last few years

- ▶ **Supervisory categories & Risk Rating:**
  - ▶ Each institution assigned to a supervisory category based on different size criteria
  - ▶ Risk Rating Process based on CAMELS
- ▶ **Risk oriented approach based on supervisory category and rating triggers, among others:**
  - ▶ KAM or own team for large banks
  - ▶ More on-site inspections or more interventions by the external auditors
  - ▶ Regular assessment letter
  - ▶ More regular reportings from the institutions to FINMA including additional stress tests
  - ▶ Principle of proportionality — small banking regime
- ▶ **Approval of audit strategy:**
  - ▶ External auditors provide risk assessment & audit strategy to FINMA before execution
  - ▶ FINMA approves audit strategy or develops an own audit strategy for the external auditors
- ▶ **Execution:**
  - ▶ FINMA develops or approves general or specific audit work programs to be performed by the auditors
  - ▶ Systematically relevant banks need to separate regulatory and financial audit lead or teams
  - ▶ FINMA can appoint third party for interventions
  - ▶ FINMA Circular 2013/3 and EXPERTsuisse Audit Practice Statement for regulatory audit (PH70)
- ▶ **Reporting:**
  - ▶ From detailed long form reports to exception reporting
  - ▶ Reporting through an electronic platform to analyze reports systematically
  - ▶ Strengthening independence of external auditors: additional independence requirements for regulatory auditors
  - ▶ FINMA positively concludes on the ex-post evaluation of the audit approach since 2019



## 5. Developments to improve audit quality to support prudential supervision

- ▶ Audit firms are supervised by the FAOA
  - ▶ Work papers of both financial and regulatory audits are inspected by the FAOA
- ▶ Enhancement of Standards
  - ▶ Introduction of International Standard on Quality Management (ISQM) 1 — Quality Management for Firms and ISQM 2 — Quality Management for appointment and eligibility of the engagement quality reviewer
  - ▶ EXPERTsuisse Audit Practice Statement for regulatory audit (PH70)
- ▶ More use of specialists — many topics require more and more specialists in the field of
  - ▶ Risk Management (Market, Credit, Capital/Liquidity, Operational Risk)
  - ▶ Technology Risk and Cyber
  - ▶ Data Analytics
  - ▶ Fraud
  - ▶ Legal, Regulatory & Compliance
- ▶ More use of complete set of data at supervised institutions
  - ▶ More data analytics used for whole data sets
  - ▶ Data analytics used to choose a more risk oriented sample
  - ▶ More discussion with Management and Board at the supervised institutions
  - ▶ More interaction with FINMA and tripartite meetings

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The role of the prudential audit to support the supervisor



## 6. Summary

- ▶ Support of experienced audit professional and financial services specialists in the prudential supervision by FINMA has proven to be effective and efficient
- ▶ There are synergies by using the external auditor of the supervised institutions as regulatory auditor
- ▶ Over the years, a more risk-oriented approach has been developed and applied successfully
- ▶ FINMA is in control over the whole of interventions at their supervised institutions, either by own on-site inspections or through approval or instructions of audit strategy performed by external auditors or appointed third parties including providing work program
- ▶ Established exchange of information between FINMA and external auditors or through tripartite meetings including the supervised institution
- ▶ External auditors need to remain independent and remember that financial audit and regulatory audits are two separate mandates with different focus

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The role of the prudential audit to support the supervisor



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# **CURRENT HOT TOPICS AND TRENDS**

**By**

**Myriam Meissner**

Partner, Deloitte

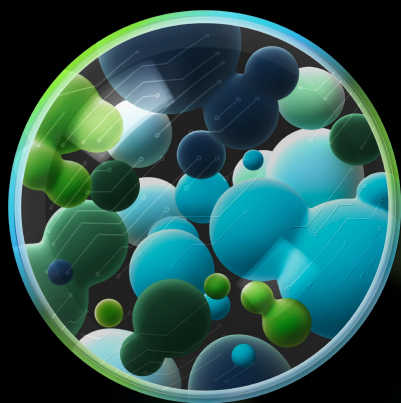


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## The role of the prudential auditor to support FINMA

### Part II – Current hot topics and trends

November 24, 2023 – Myriam Meissner

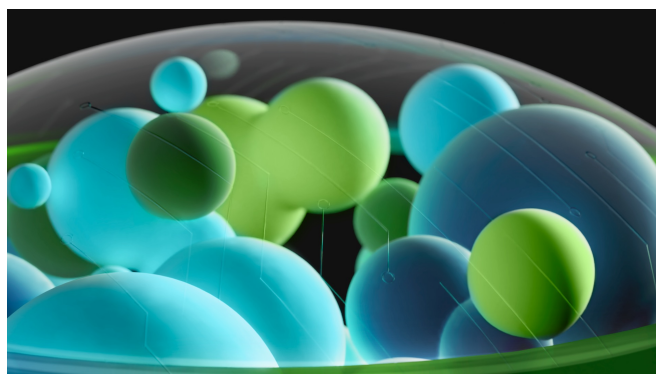


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## Current hot topics for intervention by FINMA or auditors

### Current topics FINMA Risk Monitor

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#### Thematic reviews by FINMA

FINMA can perform **onsite reviews** on specific topics (supervisory reviews or deep dive).

The themes are often related to hot topics that FINMA has identified in its Risk Monitor, published every year. The Risk Monitor 2023 has been published on November 9, 2023.



Risk Monitor 2023	Trend
Interest rate risk	→
Credit risk : mortgages	→
Credit risk : other loans	→
Market risk : credit spread risk	→
Liquidity and funding risk	NEW
Cyber risks	→
Money laundering and sanctions	→
Market access in Europe	→
Outsourcing	NEW

## Current topics

### Challenge for the regulatory auditor

Auditors have also to adapt in order to be able to audit new topics and report appropriately to FINMA.

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#### Understanding the risk

- Focus on technical research
- Internal trainings
- External trainings

#### Understand the risk appetite of the bank

- Based on knowledge of the bank
- Review of risk matrix and risk appetite statement
- Review of Board meetings minutes

#### Understand the processes and controls

- First line of defense
- Second line of defense
- Third line of defense

#### Involvement of specialists

- Involvement of specialists
- Variety of specialists needed increased over time
- Increased quality of audit work and interactions with banks and FINMA

Part II : Current topics and trends

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## Trends on the horizon

Trends on the horizon

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Artificial intelligence (FINMA risk monitor 2023)

Challenges :

- No clear definition
- Extent of use can vary significantly
- FINMA survey results:
  - 1/3 of institutions use AI
  - Larger institutions use more AI
  - Most institutions in early stages
  - Frequent use of external providers

Cloud

Challenges and related risks:

- Different type of vendors :
  - E.g. Software as a Service (SaaS)
  - E.g. Platform as a Service (PaaS)
- Different type of development:
  - Public
  - Private
  - Hybrid

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# **LE RÔLE DU CONSEIL D'ADMINISTRATION VIS-À- VIS DES AUTORITÉS DE SUPERVISION**

**By**

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Chairwoman of the Board of Directors, Banque Cantonale  
Vaudoise

**and**

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# Le rôle du conseil d'administration vis-à-vis des autorités de supervision

Demi-journée de droit de la surveillance bancaire

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Présidente du conseil d'administration, Banque Cantonale Vaudoise  
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**CEDIDAC**

24 novembre 2023

## Plan

- I. Introduction**
- II. Surveillance**
- III. Rôle**
- IV. Nomination**
- V. Indépendance**
- VI. Conclusion**

## I. Introduction

- Barclays et Jess Staley

<https://www.fca.org.uk/news/press-releases/fca-decides-fine-ban-james-staley>

- CS
- Raiffeisen et Pierin Vincenz
- Autrefois : UBS et Marcel Ospel

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## II. Surveillance

- Avantage de « swissness »
- Taux de refinancement
- Réputation place financière
- But surveillance
- Rôle autorités de surveillance : BNS et FINMA
- Rôle auditeurs

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### III. Rôle CdA

- Fonctions CA en droit suisse : Circulaire 2017/1 FINMA
- Stratégie
- Politique en matière de risques
- SCI
- Culture entreprise

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### III. Rôle CdA

- Veille réglementaire
- Associations faitières
- Rapports FINMA :
  - classification banque
  - *deep dives* ou *supervisory reviews*
  - information : art. 29 al. 2 LFINMA et 22 al. 1 OBA-FIMA
  - *assessment letter*

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## IV. Nomination

- Composition

le conseil doit disposer « dans sa globalité des compétences de gestion suffisantes ainsi que des connaissances techniques et de l'expérience nécessaires dans les secteurs bancaire et financier. Il doit être composé de manière suffisamment diversifiée afin que, outre les principaux champs d'activité, tous les autres domaines centraux tels que la finance et la comptabilité ainsi que la gestion des risques soient représentés avec les compétences requises. » (ch. 16 Circulaire 2017/1 ).

- Disponibilité et connaissances : séances formation
- Rôle FINMA
- Garantie activité irréprochable
- Rôle président
- ch. 30 Circulaire 2017/1 : « Le président est à la tête de l'organe collectif et représente l'organe responsable de la haute direction tant à l'intérieur de l'entreprise que vis-à-vis de l'extérieur. Il marque de façon déterminante la stratégie, la communication et la culture de l'entreprise. »

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## V. Indépendance

- Ch. 18 ss de la Circulaire 2017/1:

« Un membre de l'organe responsable de la haute direction est réputé indépendant :

- s'il n'occupe pas d'autre fonction dans l'établissement et n'en a pas occupé au cours des deux dernières années ;
- s'il n'a pas occupé, au cours des deux dernières années, la fonction d'auditeur responsable de l'établissement au sein de la société d'audit ;
- s'il n'entretient avec l'établissement aucune relation d'affaires qui, par sa nature ou son ampleur, conduit à un conflit d'intérêts ;
- s'il ne détient pas de participation qualifiée (au sens de l'art. 3 al. 2 let. cbis LB et de l'art. 10 al. 2 let. d LBVM) dans l'établissement, ni ne représente un détenteur d'une telle participation ».

- Sujet important
- Art. 42c al. 1 et 3 LFINMA

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## VI. Conclusion

- Conseil et direction
- *Tone at the top*
- Culture entreprise
- Gestion risques
- Identification priorités
- Equilibre entre les lignes de défense

# **PANEL: THE ASPIRATION OF THE SUPERVISOR AND THE REALITY- AN EXPECTATION GAP? HAS CRIMINAL LAW A ROLE TO PLAY?**

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