

## Swiss Supreme Court Clarifies Self-Incrimination Protection in FINMA Proceedings

*The Federal Supreme Court's decision (7B\_45/2022) of 21 July 2025 marks a significant shift in how financial regulatory investigations intersect with criminal law. The ruling establishes clearer boundaries for evidence collection by FINMA, requiring explicit warnings about self-incrimination rights before gathering information that could later support criminal charges.*

### The Turning Point

The dispute originated when A., acting for B. SA, sought FINMA guidance on fund management regulatory requirements in 2014. What began as a routine compliance inquiry transformed into a criminal investigation after FINMA demanded comprehensive questionnaires under threat of enforcement measures in case of non-cooperation, knowing that the behaviour in question could lead to criminal consequences. The completed forms subsequently became the foundation for criminal charges alleging unauthorised financial intermediary operations spanning 2012-2014, after FINMA reported the matter to the Federal Department of Finance (DFF) to initiate criminal proceedings.

Following a conviction at the Federal Criminal Court and partial appeal success, A. challenged the proceedings before the Supreme Court, focusing on alleged violations of constitutional self-incrimination protections.

### Constitutional Boundaries Redrawn

In its analysis, the Court fundamentally rebalanced the relationship between administrative cooperation duties and criminal law safeguards. While acknowledging FINMA's broad information-gathering mandate under the Financial Market Supervisory Authority Act (FINMASA), the Court established that constitutional protections supersede regulatory compliance obligations when criminal liability looms.

Building on this principle, the ruling establishes a requirement for proactive disclosure of self-incrimination rights during administrative investigations with potential criminal implications. Moreover, the Court extended these safeguards to corporate entities, acknowledging that legal persons are subject to equivalent self-incrimination risks under Swiss criminal law.

### Analytical Perspectives

#### Judicial Evolution

This outcome represents a marked departure from previous Supreme Court positions that typically permitted administrative evidence in criminal contexts unless obtained through explicit coercion. The new standard prioritises procedural integrity over investigative efficiency, preventing regulatory bodies from inadvertently bypassing criminal procedure safeguards.

The decision particularly strengthens protection for:

- Administrative investigations with latent criminal dimensions
- Comprehensive regulatory examinations and targeted reviews
- Corporate defendants facing institutional criminal liability

At the same time, it reflects acknowledgment that modern regulatory enforcement increasingly blurs the line between administrative supervision and criminal investigation, requiring stronger constitutional safeguards.

#### Forward-Looking Implications

The decision establishes several practical consequences:

- **For FINMA operations:** supervisory procedures must now incorporate warning protocols when investigations carry criminal potential, possibly constraining the scope of information but ensuring procedural legitimacy.
- **For regulated entities:** greater protection from inadvertent self-incrimination, though cooperation refusal rights may complicate regulatory relationships and potentially trigger more intensive supervisory scrutiny.

- **For criminal proceedings:** prosecutors must reassess evidence chains originating from FINMA investigations, particularly where warnings were absent, potentially affecting numerous pending cases.

The case also underscores an asymmetry in procedural rights: while parties cannot block the transmission of information from FINMA to criminal authorities under the mandatory cooperation framework, they retain the ultimate safeguard of challenging the admissibility of such evidence in criminal proceedings.

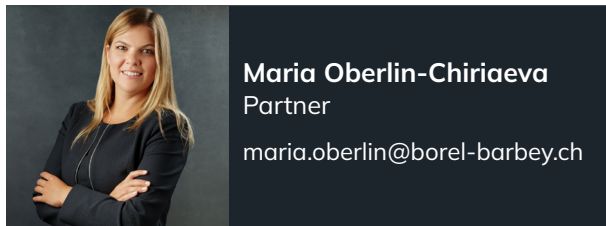
Consequently, legal counsel are likely to adopt strategies focused on early identification of potential

criminal exposure, enabling timely advice on cooperation limits and the invocation of constitutional protections before any risk of evidence contamination arises.

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The ruling signals a shift in Swiss regulatory practice, requiring supervisors to balance enforcement with rights protection and prompting individuals as well as entities under investigation to consider legal strategy early in the context of FINMA proceedings. It highlights that constitutional safeguards now shape both the process and conduct of such investigations.

Should you require any further information on this subject, please do not hesitate to contact the authors or your usual contact person at Borel & Barbey. Our specialists will be pleased to assist you.



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