



# Circular 2017/6

## "Direct transmission"

### Ex-post evaluation

19 July 2019

## Invitation to provide feedback

Article 42c FINMASA entered into force on 1 January 2016. The provision states that supervised parties may transmit non-public information directly to foreign authorities and entities acting on their behalf, provided the conditions relating to administrative assistance / rights of clients and third parties are met. If information of substantial importance is to be transmitted, supervised parties must notify FINMA in advance. FINMA is also authorised to reserve administrative assistance channels as an alternative to direct transmission. The aim of the new provision was to facilitate the transmission of information abroad for supervised parties.

Previously, the absence of this legal framework meant that supervised parties risked prosecution when fulfilling their foreign reporting and information obligations in accordance with Art. 271 SCC (unlawful activities on behalf of a foreign state). In introducing this regulation, the legislator took into account the demonstrable need for international companies to be able to work together with foreign authorities, as well as the requirements and protective regulations for administrative assistance.

Art 42c FINMASA leaves scope for interpretation. To minimise uncertainty when applying the provision, FINMA implemented the relevant Circular ("FINMA Circular 2017/6 Direct transmission") as of 1 January 2017 after holding a consultation. Specifically, the Circular provides more detailed information on terms that are open to interpretation and sets out the processes for reporting to FINMA. In combination with the statutory article, it helps ensure a legally compliant and predictable situation when transmitting information. In addition, the Circular provides clarification on the requirements and processes relating to reporting obligations to FINMA.

In fact, it appears that information is increasingly being transmitted under Art. 42c FINMASA without the involvement of FINMA. In the first year following the entry into force of the Circular, supervised parties disclosed 169 instances of information of substantial importance being transmitted (Art. 42c para. 3 FINMASA), while during the second year, this number had fallen to 87. In this respect, FINMA declared to supervised parties on 28 occasions during these two years that they are not required to notify FINMA in future when similar information is to be transmitted. In addition, FINMA reserved administrative assistance channels on eight occasions in 2017, but only three in 2018.

Now that the Circular has been in force for more than two years and practical experience has been gained, FINMA is reviewing the Circular. The aim of this ex-post evaluation is to obtain feedback from stakeholders on the necessity, appropriateness and effectiveness of the Circular and, in particular, to receive suggestions for substantiated, specific needs to correct or amend it. The evaluation does not cover the substantive and formal requirements imposed by the legislator. Accordingly, stakeholders are invited to contribute their experiences and criticisms on the Circular "Direct transmission".

## Information on the ex-post evaluation

Subject of evaluation:	Circular 2017/6 "Direct transmission"
Invitation to provide feedback:	Interested parties are invited to provide any feedback they may have on the Circular "Direct transmission". Any points of criticism should preferably be accompanied by practical examples and/or suggestions for wording.
Submission deadline:	<b>13 September 2019</b>
Address for feedback:	Swiss Financial Market Supervisory Authority FINMA Katharina Rüstmann Laupenstrasse 27 CH-3003 Bern <a href="mailto:katharina.ruestmann@finma.ch">katharina.ruestmann@finma.ch</a>
Form of feedback:	Please always submit feedback electronically (please also include a Word version as well as a PDF version).
Publication of feedback:	Unless notified otherwise, FINMA assumes that the relevant people and companies agree to their feedback being published. Quantitative information and practical examples that are not to be published must be designated accordingly.
Contact details for enquiries:	Dr. iur. Katharina Rüstmann Tel. +41 31 327 95 30 <a href="mailto:katharina.ruestmann@finma.ch">katharina.ruestmann@finma.ch</a>
Media contact:	Vinzenz Mathys, Media Spokesperson Tel. +41 31 327 19 77 <a href="mailto:vinzenz.mathys@finma.ch">vinzenz.mathys@finma.ch</a>