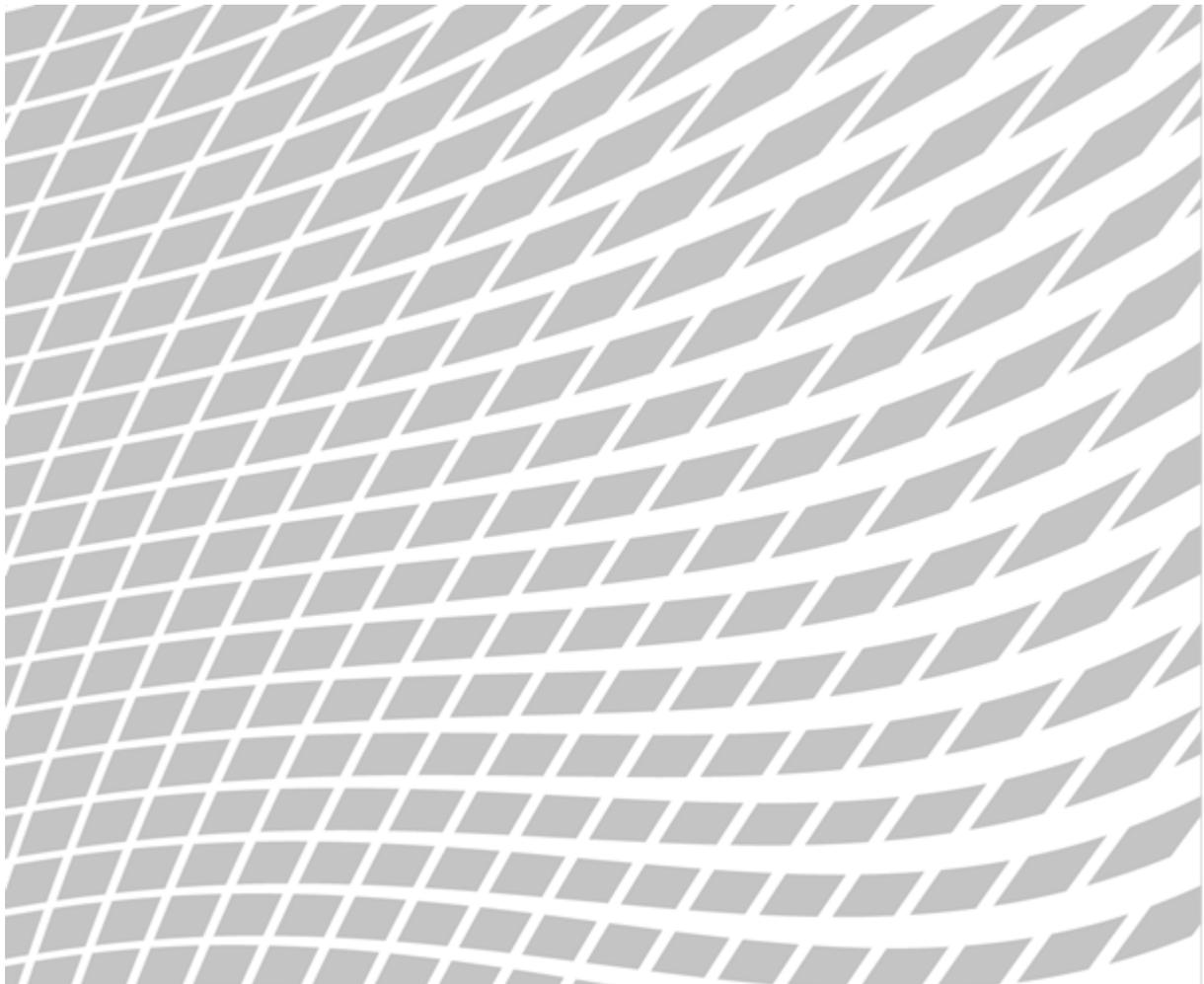


20 November 2015

Guidelines on mutual assistance provided to domestic prosecution authorities



1 FINMA normally cooperates with domestic prosecution authorities

FINMA provides mutual assistance to requesting prosecution authorities in line with the legal framework and coordinates its activities with them (see Art. 38 paras. 1 and 2 FINMASA). FINMA is obliged to cooperate with the prosecution authorities and can refuse only if there is good reason to do so (Art. 40 FINMASA and principle 4 below).

2 Mutual assistance aims to enable the requesting prosecution authority to carry out its duties and is limited to providing factual information

Mutual assistance provided by FINMA is limited to the facts. FINMA has no remit to provide expert opinions to other authorities and cannot be called as an expert in proceedings before other authorities. The information requested should enable the requesting prosecution authority to fulfil its duties. The reason for requesting information and the use to which it will be put must therefore be clear to FINMA. For domestic mutual assistance, it is irrelevant whether the receiving domestic prosecution authority may or may not pass on information for mutual or administrative assistance to a domestic or foreign authority.

3 FINMA can provide information in advance about the documents in its possession

FINMA can inform the requesting prosecution authority in advance (i.e. before submission of a written request) about the documents in its possession. This enables the requesting prosecution authority to distinguish between material and immaterial information and to identify the information it deems relevant.

4 Refusal to provide mutual assistance is justified in certain cases, as set out in Article 40 FINMASA

4.1 Public interest in fulfilling its statutory supervisory mandate has priority

Article 40 FINMASA allows FINMA to weigh up the public interests in fulfilling its statutory supervisory mandate against those of the requesting prosecution authority. These interests are specified in the grounds for refusal set out in letters a to c of Article 40. While the interests of the parties affected by mutual assistance or of third parties are not in themselves sufficient reason to refuse assistance, FINMA can take them into account when considering grounds for refusal.

4.2 FINMA assesses whether mutual assistance is partly possible

Before FINMA refuses a request for mutual assistance, it assesses whether it is possible to provide mutual assistance at least in part. In this case, partial assistance may involve only the partial withholding of information, redacting information, or providing mutual assistance at a later date (e.g. on

conclusion of FINMA enforcement proceedings).

4.3 Impingement upon supervisory activities as grounds for refusal applies to licensed institutions only

In accordance with Article 40 let. b FINMASA, impingement upon supervisory activities as grounds for refusing mutual assistance applies to licensed institutions only. Supervisory activities and/or supervisory relations may be jeopardised if an institution under FINMA supervision delivers relevant information which goes beyond the legal cooperation, information and reporting requirements (e.g. information protected by an attorney-client privilege) or makes a full risk assessment for the attention of FINMA. This reason for refusing mutual assistance does not apply to unauthorised persons or to general market supervision.

4.4 Reservations in other rules of procedure do not give cause to refuse assistance

The requesting authority must ensure that any procedural rights of the parties concerned are upheld. Restrictions linked to criminal proceedings and bans on handling evidence (e.g. self-incrimination under criminal law and/or the nemo tenetur principle, bans on the confiscation of evidence) are not in themselves sufficient reason to refuse assistance and are neither investigated nor invoked by FINMA. When obtaining information, FINMA gives due consideration to the ban on self-incrimination under criminal law.

4.5 FINMA is ready to enter into dialogue and explains any refusal to provide assistance

Before refusing to provide assistance, FINMA is always prepared to discuss the case with the requesting authority. FINMA then uses this opportunity to set out its reasons.

5 The information requested is normally delivered in full

If FINMA accepts a request and there are no grounds for refusal, the information relevant to the case in question is normally delivered in full. There are no specific requirements for determining the extent to which the information to be delivered is required by the requesting authority to carry out its duties.

6 Decisions regarding mutual assistance are taken autonomously by FINMA

The provision or refusal of mutual assistance does not take place in the form of a ruling (as defined in Article 5 APA). In the context of mutual assistance, the persons affected have no statutory procedural rights; FINMA can decide autonomously whether or not to provide mutual assistance.

7 The guidelines also apply to information and documentation provided by agents appointed by FINMA

Requests to disclose reports prepared by agents appointed by FINMA come under the rules set out in Articles 38 to 41 FINMASA as these reports form part of FINMA's supervisory and procedural files. Appointed agents are subject to the secrecy requirements set out in Article 14 para. 4 FINMASA. Consequently, they may not share information or documents with third parties unless they have been released by FINMA from those requirements.

8 FINMA gives specific instructions to requesting prosecution authorities only where necessary

When providing mutual assistance, only in justified cases does FINMA request the other authority to inform it about any further use to which the information provided will be put, or to seek FINMA's approval before granting access to documents it has received from FINMA. Where appropriate, FINMA highlights any confidentiality interests to the receiving prosecution authority. Furthermore, FINMA does not exert any influence on the subsequent use of information it has provided.

The receiving authority must take account of the fact that FINMA is not subject to the Federal Freedom of Information Act (FOIA, SR 152.3).