

Press release

Ex-post evaluation of the “Direct transmission” circular

Date:
19 July 2019

Embargo:

Contact:
Vinzenz Mathys, Media
Spokesperson
Tel. +41 (0)31 327 19 77
vinzenz.mathys@finma.ch

The Swiss Financial Market Supervisory Authority FINMA is reviewing the effectiveness and application of the “Direct transmission” circular. As part of this ex-post evaluation, stakeholders can provide their opinions by 13 September 2019.

In foreign markets, international companies are increasingly facing reporting and information obligations to the relevant local authorities. Until the end of 2015, such Swiss companies risked prosecution in Switzerland when directly transmitting information to foreign authorities as this could be deemed an unlawful activity on behalf of a foreign state under Article 271 SCC. These supervised parties also risked penalties, fines or even the loss of access to markets if they failed to comply with their reporting and information obligations to the relevant local authorities.

Change of regime for transmitting data to foreign authorities

By providing a legal framework for the direct transmission of non-public information to foreign authorities in certain cases (Art. 42c FINMASA), the Swiss legislator has alleviated this uncertainty. In doing so, it has taken into account the requirements for providing legitimate international administrative assistance so as to protect Swiss interests. The new regulation is principle-based and as such, leaves scope for interpretation. In light of this, by adopting Circular 2017/6 “Direct transmission” FINMA was aiming to increase legal certainty for supervised parties and thus facilitate the flow of information in a manner that respects the will of the legislature.

Scheduled review following publication of circular

As already announced upon [publication of Circular 2017/6 “Direct transmission”](#), FINMA is now reviewing this circular (ex-post evaluation) so as to take into consideration practical experience gained in applying it as well as developments in the international environment. Stakeholders are invited to share their experiences of the implementing provisions in the circular by 13 September 2019. FINMA will analyse the feedback received in a report and announce whether and in which way it will take such feedback into consideration.