

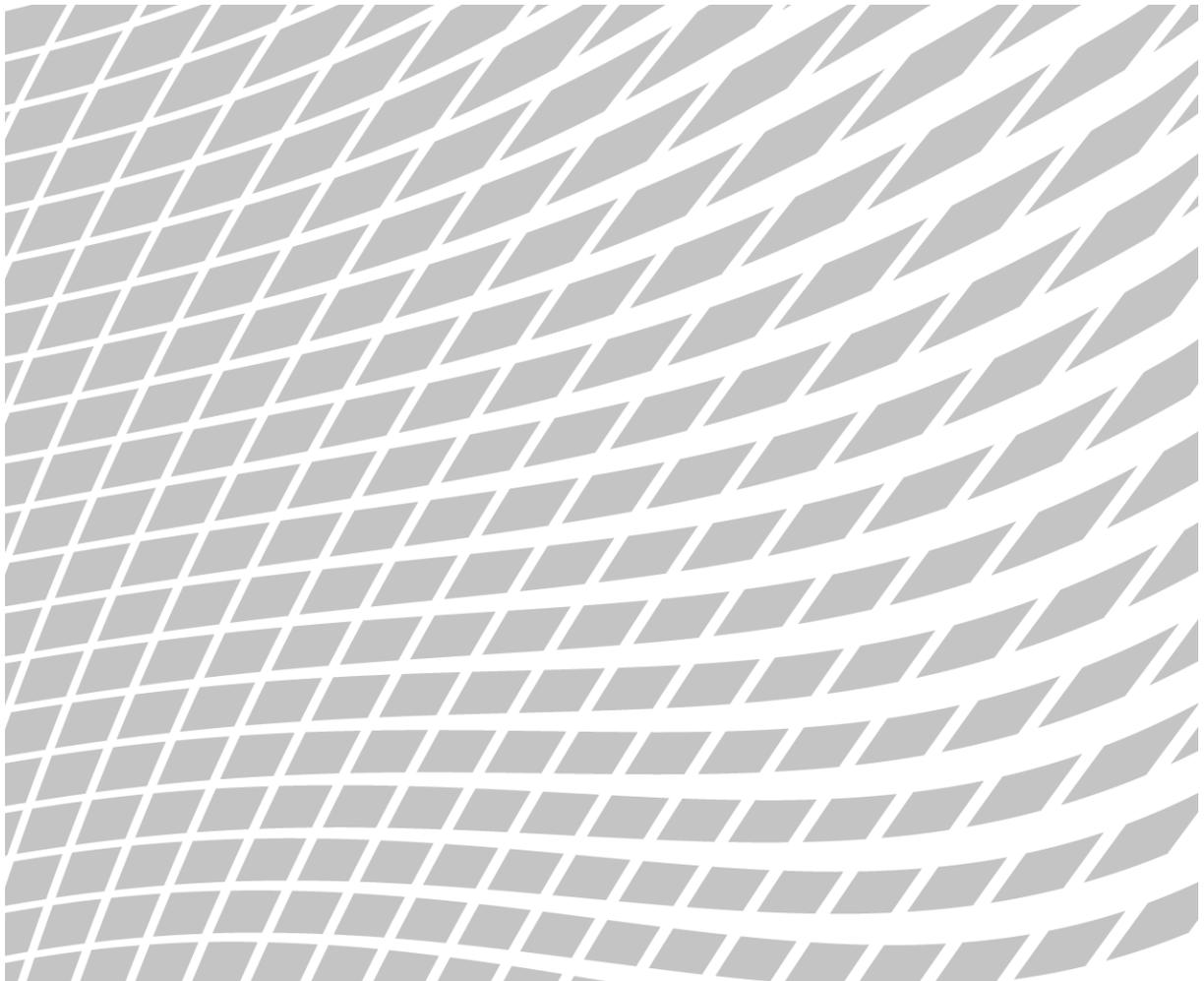
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## **Circular 2017/xx “Direct transmission”**

### Key points

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1. By creating Article 42c FINMASA, the legislator has allowed supervised institutions to transmit non-public information directly to foreign authorities and entities under certain conditions. The draft of FINMA Circular 2017/xx “Direct transmission” sets out the standards applicable to this new provision alongside those already laid down in the provisions on the exchange of information with foreign financial market supervisory authorities. It aims to assist financial institutions in autonomously applying Article 42c FINMASA and to ensure that the rules set out in this article are implemented in a uniform manner.
2. The circular facilitates the transmission of information to financial market supervisory authorities to whom FINMA has already provided international administrative assistance and/or where the courts have already ascertained that international administrative assistance can be provided to those authorities. In this context, the circular establishes the presumption that supervised institutions can rely on compliance with the principles of speciality and confidentiality when interacting with those authorities, unless the latter’s behaviour or a statement made by them in a particular situation raises doubt about their compliance with those principles.
3. In addition, the circular focuses in particular on differentiating the scope of Article 42c paras. 1 and 2 FINMASA. It limits the scope of Paragraph 2 by specifying the type of information to be transmitted. FINMA therefore understands that only information essential to the execution or approval of transactions may be transmitted in accordance with Paragraph 2.
4. Finally, the circular details the transmission of information of substantial importance and sets out the procedures expected in this regard. In accordance with Article 42c para. 3 FINMASA, the transmission of such information must be reported to FINMA beforehand. The circular lists some examples of information for transmission which a) must be reported to FINMA and b) does not require any prior reporting. Whether FINMA needs to be informed about the information to be transmitted depends largely on whether it bears on the fulfilment of its supervisory duties.