

FINMA Circular 2017/6 "Direct transmission" – Ex-post evaluation and explanatory report

Key points

20 August 2020

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1. As already announced upon publication of Circular 2017/6 “Direct transmission”, FINMA reviewed this circular (ex-post evaluation) in summer 2019 so as to take into consideration practical experience gained in applying it as well as developments in the international environment. Interested parties were invited to share their experiences with the circular. The collaboration with FINMA received positive reviews in the feedback and the benefits and need for the circular were recognised. However, several points were also criticised.
2. Many suggestions already made during the consultation exercise were submitted again. This is particularly true regarding the demands made by the supervised institutions for the scope of application of Article 42c FINMASA to be limited to cases of Article 271 SCC, the uniform interpretation of materiality under Article 29 para. 2 and Article 42c para. 3 FINMASA as well as the distinction between Article 42c para. 1 and para. 2 FINMA depending on the type of information to be transmitted.
3. Those participating in the evaluation also suggest in particular that the list of foreign authorities capable of providing administrative assistance – which they consider to be too short – be added to. In addition, they are of the opinion that the catalogue of examples of notifiable transmissions of information should be shortened. FINMA will respond to the request for a more comprehensive list of authorities capable of providing administrative assistance and will add around 25 authorities to the list. At its own discretion FINMA will now consider financial market supervisory authorities with whom it has concluded an adequate bilateral cooperation agreement for administrative assistance. Margin no. 47 will be deleted in the catalogue of examples of notifiable circumstances.
4. The comments received have also shown that certain points in the circular have been misunderstood. FINMA will take this opportunity to further clarify the appropriate parts. In particular, the amending decree states that reports made under Article 42c para. 3 FINMASA serve FINMA’s need for information, but do not trigger an approval process in the strict sense (margin no. 74). It also states that in the case of direct transmissions under Article 42c para. 2 FINMASA the principle of confidentiality and use solely for the purpose of enforcing financial market law does not apply (margin no. 33). Finally, it is specified that in the case of reports concerning direct transmissions under Article 42c para. 2 FINMASA no further response from FINMA is to be expected (margin no. 72).

5. FINMA submits the amending decree to the circular with this ex-post evaluation and explanatory report for a hearing from 20 August 2020 to 15 October 2020.