

FINMA and foreign supervisors

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A financial centre whose institutions operate worldwide depends on cooperation between supervisors. The Financial Market Supervision Act allows FINMA to transmit non-public information to foreign financial market supervisors on certain conditions. The information may be used only for the direct supervision of financial market participants by a receiving authority that is bound by official or professional secrecy. It may pass the information on to other authorities, such as criminal prosecutors, only with FINMA's consent, a requirement known as the long-arm principle.¹

When the information concerns individual clients of a financial institution, FINMA applies a special procedure. The clients are informed and can challenge the transmission before the Federal Administrative Court, unless informing them would defeat the purpose of the request. This client procedure reflects the importance that Switzerland has attached to the protection of client data. It has been simplified in several respects since the international criticism of Swiss administrative assistance in the years after 2008.²

Supervised institutions in Switzerland may also, within limits, transmit non-public information directly to foreign authorities. Such transmission must not circumvent the rules on administrative and judicial assistance. Information on individual clients remains subject to the rules on administrative assistance. Without such a statutory basis, the transmission of information to a foreign authority could constitute a prohibited act for a foreign state under Article 271 of the Swiss Criminal Code, a provision that played a central role in the conflicts of Swiss banks with the American authorities.³ Foreign supervisors may also conduct on-site inspections at the Swiss branches and subsidiaries of institutions they supervise, provided that they inform FINMA in advance and respect the conditions of the Act.

For the largest Swiss institution, cooperation takes the form of supervisory colleges and crisis management groups, in which FINMA meets the supervisors and resolution authorities of the other countries where UBS has significant operations. FINMA also takes part, alongside the National Bank, in the Basel Committee on Banking Supervision and the Financial Stability Board. It is a member of the International Organization of Securities Commissions and of the International Association of Insurance Supervisors.⁴ Since several of these bodies have their secretariats at the Bank for International Settlements, the Swiss supervisors work on international standards a short train ride from their own offices. This proximity gives Switzerland a voice in the formulation of the standards that it later implements, a voice that is larger than the size of the country would suggest.

1 Notes

1. On administrative assistance by FINMA to foreign financial market supervisors (Art. 42 FINMASA), including the principles of speciality, confidentiality and the long-arm principle, see SR 956.1 and the standard commentaries. To be verified. ↩
2. On the client procedure in administrative assistance (Art. 42a FINMASA), including the notification of clients, the exceptions and the appeal to the Federal Administrative Court, see SR 956.1. To be verified. ↩
3. On the direct transmission of information by supervised institutions to foreign authorities (Art. 42c FINMASA) and the relationship to Art. 271 Swiss Criminal Code (prohibited acts for a foreign state), see SR 956.1, SR 311.0 and the standard commentaries. To be verified. ↩
4. On FINMA's participation in supervisory colleges and crisis management groups for UBS and its membership in the Basel Committee on Banking Supervision, the Financial Stability Board, IOSCO and the IAIS, see the publications of FINMA. To be verified. ↩

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