

International Administrative Assistance between Regulators – SFAC Confirms FINMA Practice

In a decision of 24 April 2025 (B-1427/2025), the Swiss Federal Administrative Court (“SFAC”), was confronted with the question of whether the Swiss Financial Market Supervisory Authority FINMA (“FINMA”) partook in a fishing expedition by transmitting information to the German Federal Financial Supervisory Authority (“BaFin”).

BaFin contacted FINMA to request international administrative assistance, based on suspicions that a German citizen had failed to submit the required voting rights notifications under German law.

While the investor had submitted certain notifications, he had not disclosed that more than 50% of the shares had been transferred to accounts he held at three banks - despite his individual shareholding remaining below the 3% threshold that would trigger a reporting obligation. At that point, it remained unclear how many shares had been transferred to whom, or whether some were still held in accounts directly or indirectly linked to the complainant.

FINMA granted BaFin access to the lists of the investor's transactions at three banks, **covering a period of approximately nine months**, and issued a decision, which was notified to the investor. The investor appealed FINMA's decision, **arguing that there were insufficient grounds for suspicion**. In particular, he claimed that the surveillance period did not correspond to the timeframe of the allegedly problematic transactions and was, substantively, unrelated to the alleged offenses. He further argued that **the duration of the surveillance was disproportionate**, as it significantly exceeded the period during which the share transfers had actually occurred.

The SFAC found that BaFin had initially communicated **sufficient grounds for suspicions** to FINMA and that the requested information was adequate to establish how many shares were transferred and to whom. Additionally, **none of the information provided by BaFin was blatantly false or contradictory**. Finally, the SFAC considered that the purpose of the communication was not only to verify whether the investor had breached market conduct law, but also to check whether other persons were involved in such breaches, hence, why the nine-month **surveillance period was deemed appropriate**.

Based on the aforementioned, the SFAC ruled that FINMA's transfer of information to BaFin did not breach Swiss law and dismissed the appeal.

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Generally speaking, FINMA may transmit information that is not publicly accessible to foreign financial market supervisory authorities, provided that:

- (i) this information is used exclusively for the **enforcement of financial market law** or is passed on to other authorities, courts or bodies for this purpose (principle of speciality); and
- (ii) the requesting authorities are **bound by official or professional secrecy**, subject to the provisions on the **publicity of proceedings** and the **provision of information to the public** on such proceedings (principle of confidentiality). In doing so, FINMA shall consider the principle of proportionality (see below) and act swiftly.

Information that FINMA transmits to foreign authorities on its own initiative or on request must therefore serve one of the following purposes:

- **verification of compliance** with the conditions of the license;
- **ongoing monitoring of activities** at branch or group level;
- **implementation of financial market legislation**;
- verification of the **need to withdraw the license**; or
- **monitoring the proper functioning of the financial market and its systemic risks**.

According to the case law of the Federal Supreme Court and the SFAC, international administrative and legal assistance must meet the **principle of proportionality**. This means only factual information relevant to the specific investigation should be shared. It is thus necessary for the request for administrative assistance to demonstrate **a sufficient initial suspicion of a breach of financial market supervisory law**. If the requested documents lack a clear connection to the alleged offense or are clearly unsuitable to support the foreign investigation, assistance may be denied. In such cases, the request

is considered overly broad or a «**fishing expedition**», **which is not permissible**. It is sufficient if at this stage there are only clues or abstract indications of a possible violation of financial market regulations and the information requested is not completely unrelated to the suspected irregularities.

In a similar fashion, the transmission of information concerning **persons who are manifestly uninvolved in the matter being investigated is not permitted**. Nevertheless, in connection with the transmission of data relating to bank accounts, the mere possibility that an account is the subject of a breach of financial market regulations is generally sufficient to exclude the status of the holders as “uninvolved third parties”, even if they did not participate in the breach. This also applies to the beneficial owners of the account and its authorized signatories.

Furthermore, specific written evidence does not have to be submitted, as it is sufficient that the requesting authority’s description of the facts is comprehensible and does not contain any obvious errors, gaps or contradictions.

The requesting authority may present facts with some gaps or contradictions, as points that have so far remained unclear are to be clarified precisely on the basis of the receipt of the requested information and documents.

Clients of the supervised persons whose data is to be transmitted **must be informed in advance**. In this case, the Administrative Procedure Act applies. Clients may therefore lodge an appeal with the SFAC against a decision by FINMA regarding the transmission of their data, provided they have party status.

FINMA may exceptionally refrain from informing the clients concerned before transmitting the information **if the purpose of the administrative assistance and the effective fulfilment of the requesting authority’s tasks would be compromised** by prior notification. In such cases, the clients concerned shall be informed afterwards.

Should you require any further information on this subject, please do not hesitate to contact the authors or your usual contact person at Borel & Barbey. Our specialists will be pleased to assist you.

