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Administrative assistance

The amended Article 38 of the Swiss Securities Act, which came into force on February 1 2006, aids and accelerates administrative assistance for regulatory purposes.

The long-arm principle, under which the Swiss Federal Banking Commission was responsible for information transmitted to the requesting foreign state, has been dropped. The principle of double criminality was also repealed in the field of stock exchange and securities trading offences.

Under the amended provision, foreign authorities are entitled to forward received information to other authorities, courts or bodies without the approval of the Swiss Federal Banking Commission, provided the information is solely used for the enforcement of regulations on stock exchanges, securities trading and securities brokers. The transmission of the received information for other purposes still requires the approval of the Swiss Federal Banking Commission and must fulfil the prerequisites for legal assistance, in particular the condition of double criminality.

The revision has also loosened the principle of confidentiality. According to the revised provision, the foreign authority may disclose received information if the provisions on public proceedings and the information of the public require so in the foreign state.

Fishing expeditions by the requesting foreign authority are prevented by the express embodiment of the principle of appropriateness. The Swiss Federal Banking Commission may not transmit information on persons who obviously are not involved in the matter being investigated. The Swiss Federal Banking Commission cannot, however, examine the facts stated by the foreign state in the assistance request or analyse the transaction that gave rise to the assistance request.

By the revision, the administrative assistance of the Swiss Federal Banking Commission was brought in line with international standards, in particular Iosco and the EC Directive on Insider Dealing and Market Manipulation.

The revised administrative assistance appears to be efficient. This, however, remains to be seen in practice. The Swiss legislator is confident that the new law on administrative assistance rebuts the accusation that Switzerland makes market abuse possible.

Arlette Pfister