



Online Identification Regulation (Online-Identifikationsverordnung – Online-IDV)

Full title

Regulation of the Financial Market Authority (FMA) on video-based online identification of customers (Online Identification Regulation – Online-IDV; Online-Identifikationsverordnung)

Original Version: Federal Law Gazette II No. 5/2017

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Preamble/Promulgation clause

On the basis of Article 6 para. 4 of the Financial Markets Anti-Money Laundering Act (FM-GwG - Finanzmarkt-Geldwäschegesetz), published in Federal Law Gazette I no. 118/2016, the following shall be determined by regulation with the consent of the Federal Minister of Finance:

Text

Part 1

General provisions

Subject matter

Article 1. (1) This Regulation determines the required security measures to be taken to mitigate the increased risk, which results from the determination and verification of the identity of a person, where they or the natural person representing them is not physically present, where instead a video-based electronic procedure (online identification) is used.

(2) The required security measures to be defined in this Regulation shall apply regard of additional due diligence obligations for the prevention of money laundering or terrorist financing pursuant to the FM-GwG.

(3) The obliged entities may set additional security measures to increase the level of security regardless of the security measures to be taken in accordance with this Regulation.

(4) The provisions of this Regulation shall apply regardless of the applicable requirements under data protection law in relation to online identification.

Definition of Terms

Article 2. For the purposes of this Regulation, the following definitions shall apply:

1. screenshot: a graphical representation generated and stored by means of electronic data processing, which reproduces the content shown on screen as a visual component of the online identification process at the point in time at which it is generated and of such a quality, that it corresponds to the respective standards for verification and documentation purposes;
2. official photo identification document: an official photo identification document within the meaning of Article 6 para. 2 no. 1 FM-GwG, which contains optical security features that are at least comparable to (holographic) elements that visually change when moved;
3. processor: a processor pursuant to Article 4 (8) of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 04.05.2016, p. 1, in the version of the corrigendum, OJ L 127, 23.05.2018, p. 2, upon whom the provisions with regard to third parties pursuant to Section 4 of the FM-GwG shall apply.



Part 2 Safeguards

Organisational safeguards

Article 3. (1) The obliged entity may only use employees for the online identification process, who have been adequately trained to be able to conduct online identification and who are of good personal reliability. The training for online identification shall address the legal framework, the technical requirements and the practical aspects of ensuring the verification.

(2) The obliged entity shall ensure that the applications used in the online identification process as well as the data that is transmitted does not lead to any conflict with other processes conducted by the obliged entity, that the possibility of any influence is excluded, and that the applications and data are protected against any unauthorised access.

(3) Employees of the obliged entity shall only be allowed to conduct the online identification process in a separate room equipped with an access control system.

Process-related safeguards

Article 4. (1) Where personal data are to be processed in accordance with the provisions in this Regulation, this shall take place on the basis of Article 6 para. 4 FM-GwG for the purposes of prevention of money laundering and terrorist financing (Article 21 para. 4 FM-GwG).

(2) The conversation or the part of the conversation that serves the purposes of online identification, shall in any case be recorded as a sound file in entirety; Article 12 para. 4 no. 2 DSG shall be applicable. Furthermore, screenshots shall also be generated, which in suitable lighting conditions graphically depict the following items from the online identification process:

1. in all cases the face of the potential customer or the natural person authorised to represent the potential customer,
2. the presenting of the front side of the official photo identification document, and
3. the presenting of the reverse side of the official photo identification document or the page containing data.

The screenshots shall in any case have to be of such a quality, that the potential customer or the natural person authorised to represent the potential customer and the data contained on the official photo identification document are clearly and fully recognisable.

(3) The potential customer of the natural person authorised to represent them shall also upon request:

1. move their head including showing their face, as well as separately
2. communicating the serial number of their official photo identification.

(4) The employee, who conducts the online identification process, shall ascertain that the official photo identification document is authentic by the following means:

1. visual verification of the presence of optical security features including (holographic) security features that visibly react to movement or comparable security features, which must be clearly recognisable when asked to tilt the official photo identification document horizontally and vertically,
2. verification of the correct numbering convention being used for the serial number,
3. checking that the laminating used to seal the official photo identification document is not damaged, or comparable features that show that the document has not been tampered with,
4. checking to be able to rule out the possibility that the photograph has only subsequently been attached to the official photo identification document,
5. Verification of the logical consistency



- a) of the features of the potential customer or the natural person authorised to represent the potential customer against the personal description and the photograph contained in the official photo identification document, as well as
- b) of the photograph, the issue date and the date of birth contained in the official photo identification document with one another, as well as
- c) of all other customer information which might already be available against the corresponding supplementary information contained on the official photo identification document.

(5) The potential customer or the natural person authorised to represent the potential customer shall enter a string of numbers valid specially for the purpose of online identification, that has been centrally generated and communicated to them by e-mail or SMS, without delay during the ongoing video transmission and return them to the employee electronically.

Compulsory termination of the online identification process

Article 5. (1) The online identification process shall be terminated except in the cases listed pursuant to para. 2, if

- 1. a suitable visual verification of the potential customer, or of the official photo identification document, or both, is not possible for the purposes of generating a screenshot,
- 2. any other inconsistencies exist,
- 3. any other uncertainties exist,

(2) Where the obliged entity has an obligation to determine and verify the identity of the customer or of the natural person authorised to represent them pursuant Article 5 no. 4 or no. 5 FM-GwG, then the online identification process shall be continued to the end and making a suspicious activity report pursuant to Article 6 FM-GwG to the Financial Intelligence Unit (Geldwäschemeldestelle) considered.

Conducting of the online identification process by processors

Article 6. (1) If an obliged entity makes use of a processor to conduct the online identification process, it shall have to ensure that the processor takes security measures that correspond both in terms of their scope as well as their quality with the requirements in this regulation. However, ultimate responsibility for meeting those requirements shall remain with the obliged entity, which relies on the processor. When concluding, implementing and terminating an agreement with a processor, due professionalism and diligence shall be exercised and a clear delineation of rights and obligations to be arranged in writing.

(2) Outsourcing and agency relationships as defined in Article 15 FM-GwG shall not be allowed to significantly compromise the quality of the internal control mechanism, nor the possibility for the FMA to check compliance with all requirements relating to the online identification process.

Part 3

Final provisions

References

Article 7. (1) Where references are made to provisions in the FM-GwG, the Financial Markets Anti-Money Laundering Act (FM-GwG - Finanzmarkt- Geldwäschegesetz) as published in Federal Law Gazette I No. 118/2016 shall apply in its version amended by Federal Act in Federal Law Gazette I No. 37/2018.

(2) Where references are made to provisions in the DSGVO, the Data Protection Act (DSG - Datenschutzgesetz), as published in Federal Law Gazette I no. 165/1999 shall apply in its version amended by Federal Act in Federal Law Gazette I no. 24/2018.

Personal-related designations

Article 8. Where the designations used in this Regulation refer to natural persons, the form used applies to both genders.

All English translation of the authentic German text is unofficial and serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (Bundesgesetzblatt; BGBl.). All translations have been prepared with great care, but linguistic compromises had to be made. The reader should also bear in mind that some provisions of these laws will remain unclear without certain background knowledge of the Austrian legal and political system. Please note that these laws may be amended in the future and check occasionally for updates.