

FINMA's Christmas circular

FINMA opens the discussion on online client identification through the Internet and declares its support of FinTech.

FINMA's initiative is a great Christmas present for the finance industry. It is definitely positive, long-awaited by the professional community and has been widely supported by the press. *L'Agefi*, *Bilan*, *Le Temps* and *Finnews* initiated the public discussion of this topic a year ago.

The point of the question is: should it be allowed for Swiss financial institutions, including banks, to accept, instead of certified copies of clients' identity documents (ID), uncertified copies (simple copies), as it is done in most of the competing jurisdictions such as the USA and European Union?

Essentially, all the participants of the process - FINMA, Swiss Bankers Association and of course the banks, are unanimous: simple copies have the right to life in Switzerland, and should have value as evidence of identity, which is not yet the case under the current Swiss legislation. This is the very reason why FINMA's initiative is in fact revolutionary.

But when it comes to procedures and ways of using such copies, discord is reigning: everybody has their own opinion on details, and it is well known that the true meaning hides in the details. It depends precisely on the details, whether FINMA's regulatory initiative is going to be useful to the industry or not. The way I see it, FINMA's project requires only a few improvements in order to become truly successful. Not for the sake of criticism, but simply in order to make a feasible contribution to the debate, I will touch upon a few key aspects.

Unfortunately, FINMA has set too short a deadline (18 January 2016) for the public discussion of its initiative: most of the allocated time falls on Christmas and New Year holiday periods. I think it would be good to extend this deadline, so people can express their opinions and an actual discussion can take place.

Now let us discuss the really important details. Here is the first of them. FINMA suggests allowing the use of simple copies of ID in cases when the first transfer on the account opened by the client is executed from another account of this same client in another Swiss bank. This first transfer is used as a confirmation of the client's identity. It is not a secret that Swiss banks' services are export-oriented. In fact, limiting this first transfer exclusively to Swiss banks would considerably reduce the usefulness of this initiative by limiting to the Swiss market.

In competing foreign jurisdictions, this kind of regulation is not limited to only transfers from banks of the same jurisdiction. Moreover, this regulation works very well and has been tested very well in Europe. I can bring up the example of the practice of Dukascopy Bank's European subsidiary, which has been opening hundreds of accounts each month under this procedure for several years, and never had any problems with the identification of clients under the corresponding procedure. This is why, in order not to devalue FINMA's initiative, I suggest extending the norm of this first transfer to foreign banks as well. Of course, with the statement that these banks must be subject to adequate anti-money laundering regulations, as it is the practice abroad.

It would make sense to remind that at the present day, we allow potential clients to have copies of their ID certified (as true copy of the original) by a foreign bank for identification purposes. As it certifies our potential clients' ID, the foreign bank takes virtually no risk. However, we rely on it... Then why should we not rely on its first transfer? Especially if we take into account that this bank bears a fully tangible regulatory responsibility for wrong client identification as it proceeds with the transfer. And this responsibility is much stricter than in case of a wrong ID certification for our potential client.

The next detail in FINMA's suggestion that attracted my attention is the initiative that requires the financial institution to perform the verification of ID authenticity with the help of technical means in the process of client identification. The keyword here is "technical means". I would like readers to understand the important difference between the current "authentication" and the new one proposed by FINMA. So far it was enough to get a confirmation that the ID copy was a true copy of the original (current certification), while now the FINMA wants the institution to verify the authenticity of the original ID (detection of forged ID) based on the copy, which is a new requirement.

I think that the banking community has been reluctant to introduce such a norm. Indeed, such a procedure would be disproportionate and counter-productive, as it would ultimately lead to the transformation of compliance departments and front offices of banks into a semblance of border checkpoints. That would involve a huge number of employees and as a consequence, can probably create an interesting new market for software producers, but unfortunately not for the banking industry.

I am afraid that no foreign authority of a major financial center requires this kind of technological procedure, neither in case of identification "in person", nor in case of identification through the Internet. It seems to me that the attempts to catch up with the foreign competitors without taking their experience and practice into account might lead to a new serious disadvantage for Swiss institutions. Furthermore, requiring the banks to proceed with the authentication of IDs with the help of technical means makes the circular technologically non-neutral, contrary to what FINMA pretends. As a logical consequence, FINMA will ask financial institutions to do new controls based on newly available technology instead of moving towards more swiftness and competitiveness. This is not the expectation of the industry.

These are all the comments I can make on possible improvements of the circular proposed by FINMA. Even though there are only two, I hope that my suggestions will be taken into account and will positively influence the competitiveness of the Swiss banking system. I thank FINMA for its initiative and wish FINMA and the entire Swiss banking industry a very successful New Year 2016!

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