NEXT GENERATION INTERNET

The FINMA Sandbox Exception

Christian Grothoff

Rethinking Money Symposium

FINMA Licenses

"An activity pursuant to Art. 1b Banking Act may only be carried out after FINMA has granted a license."

- Full banking license (10M capital, major paperwork)
- FinTech license (1M capital, no loans)
- **Sandbox exception**

https://www.finma.ch/en/documentation/dossier/dossier-fintech/entwicklungen-im-bereich-fintech/

The BankV Art. 6

1. Gewerbsmässig im Sinne des BankG handelt, wer:
    a. dauernd mehr als 20 Publikumseinlagen oder sammelverwahrte kryptobasierte Vermögenswerte entgegennimmt; oder
    b. sich öffentlich zur Entgegennahme von Publikumseinlagen oder sammelverwahrten kryptobasierten Vermögenswerten empfiehlt (...)
2. Nicht gewerbsmässig im Sinne des BankG handelt, wer dauernd mehr als 20 Publikumseinlagen oder sammelverwahrte kryptobasierte Vermögenswerte entgegennimmt (...), wenn er:
    a. Publikumseinlagen oder sammelverwahrte kryptobasierte Vermögenswerte von gesamthaft höchstens 1M CHF entgegennimmt;
    b. kein Zinsdifferenzgeschäft betreibt; und
    c. die Einlegerinnen und Einleger, bevor sie die Einlage tätigen, schriftlich oder in einer anderen Form, die den Nachweis durch Text ermöglicht, darüber informiert, dass: (1) er von der FINMA nicht beaufsichtigt wird, und (2) die Einlage nicht von der Einlagensicherung erfasst wird.

The GwG Art. 2

Finanzintermediäre sind:

3 Finanzintermediäre sind auch Personen, die berufsmässig fremde Vermögenswerte annehmen oder aufbewahren oder helfen, sie anzulegen oder zu übertragen; insbesondere Personen, die:

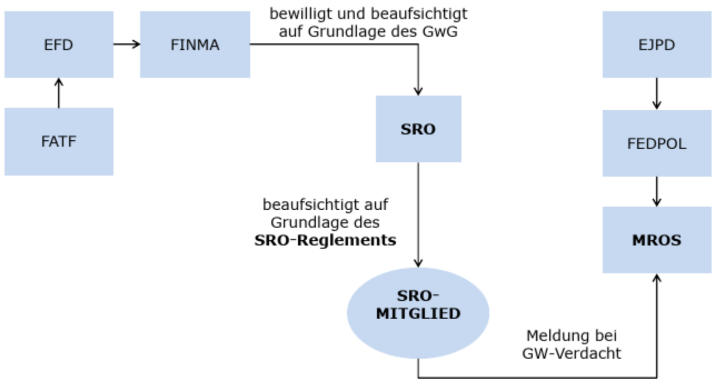
b. **Dienstleistungen für den Zahlungsverkehr** erbringen, namentlich für Dritte elektronische Überweisungen vornehmen oder **Zahlungsmittel** wie Kreditkarten und Reiseschecks **ausgeben oder verwalten**;

c. für eigene oder fremde Rechnung mit Banknoten und Münzen, Geldmarktinstrumenten, Devisen, Edelmetallen, Rohwaren und Effekten (Wertpapiere und Wertrechte) sowie deren Derivaten handeln;

The GwG Art. 14

1. Finanzintermediäre nach Artikel 2 Absatz 3 müssen sich einer Selbstregulierungsorganisation anschliessen.

Supervision via SROs (example: VQF)



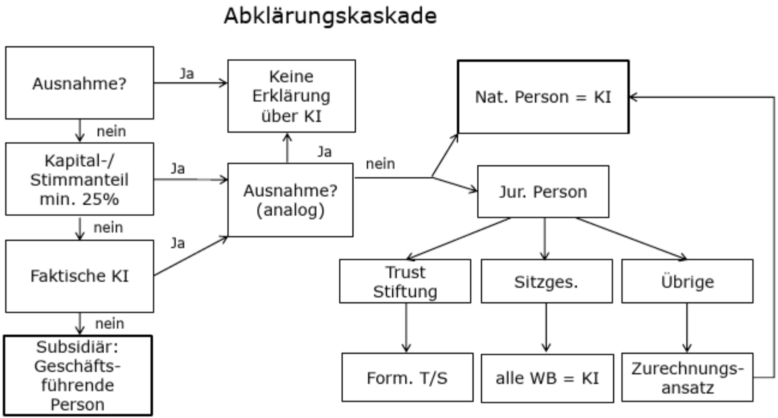
(from VQF training materials)

Compliance processes

- Customer identification (know-your-customer (KYC) and know-your-business (KYB)), including risk classification
- Transaction monitoring, plausibilization and reporting of suspicious activities
- Enforcement of financial sanctions

Know-Your-Customer

Identification process of the economic beneficiary



(from VQF training materials)

Who is a customer?

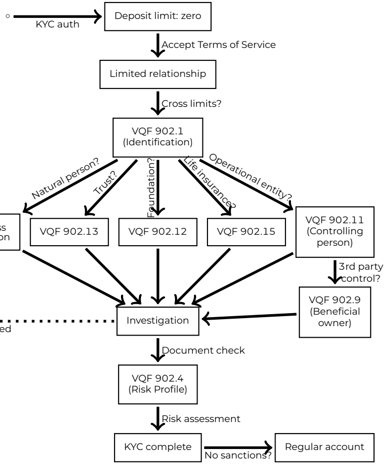
A high-level approach is to restrict the business model to minimize customer identification. For example, do not accept:

- Customers from outside of Switzerland
- Customers without Swiss bank accounts, phone numbers or addresses
- Customers to withdraw significant amounts
- Customers to receive significant P2P transfers
- Large transactions

What are “large” transactions?

Operation	Amount	Period
Withdraw	$\leq$ 2.500 CHF	per month
Withdraw	$\leq$ 15.000 CHF	per year
P2P receive	$\leq$ 2.500 CHF	per month
P2P receive	$\leq$ 15.000 CHF	per year
Deposit	$\leq$ 2.500 CHF	per month
Deposit	$\leq$ 15.000 CHF	per year
Transact	$\leq$ 1.000 CHF	per transaction

VQF KYB process



Information to be collected

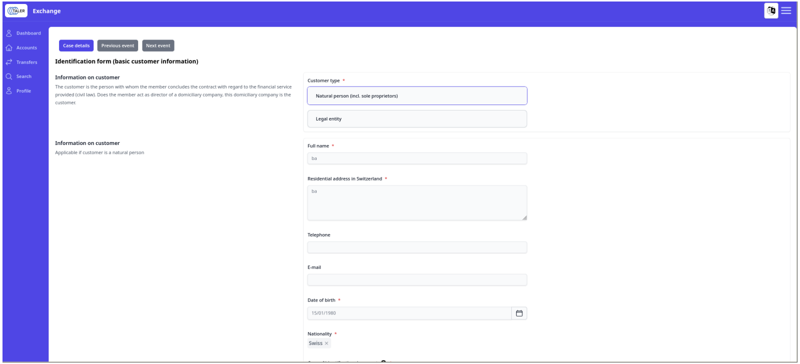
- Business register excerpt;
- Contact person identity;
- List of beneficial owners with names and IDs;
- Proof of ownership / authorization to act on behalf of the business

Based on this, you need to make a risk-assessment of each customer:

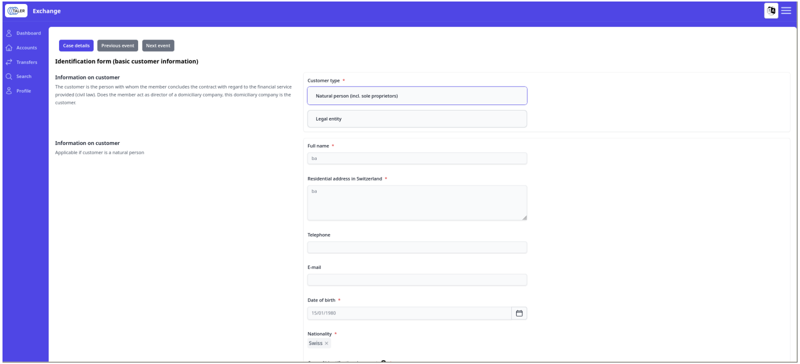
- Establish if customer is a PEP
- Establish additional risk factors (business domain, country risk, etc.)

There is no official list of PEPs, only rules for establishing if someone is a PEP! $\Rightarrow$ Consult https://opensanctions.org/datasets/peps/

Digital records: OK!

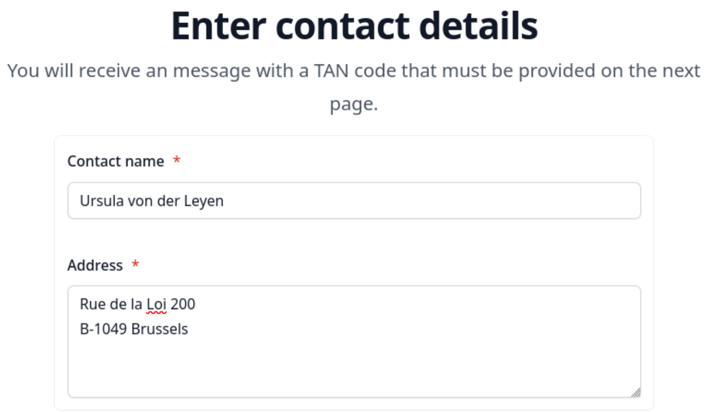


Digital records: OK!



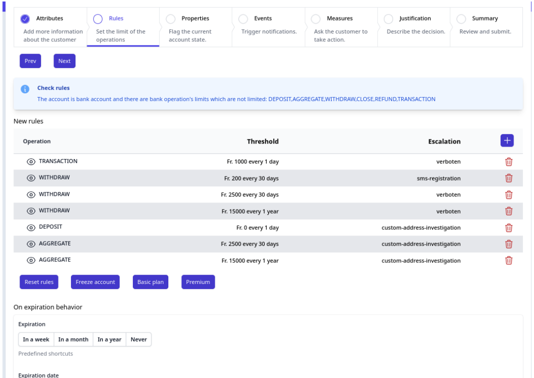
But: you still must have either seen the originals or received certified copies on paper!

Address validation: required!



Transaction monitoring

- You **must** monitor for “suspicious” transactions
- There is no legal definition of what is “suspicious”
- You **must** write your own risk-based rules!



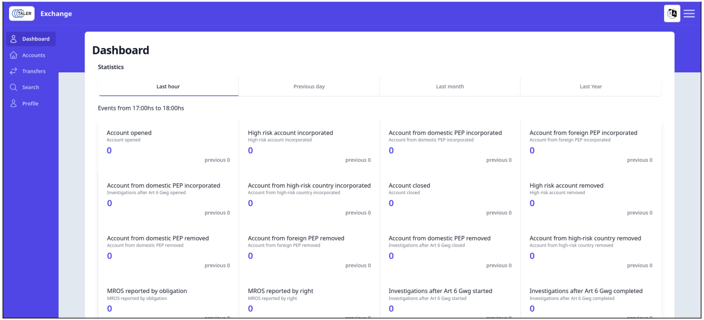
Sanction list enforcement

- There is an official sanctions list you can download
- The list is machine readable, but contains sometimes only approximate information

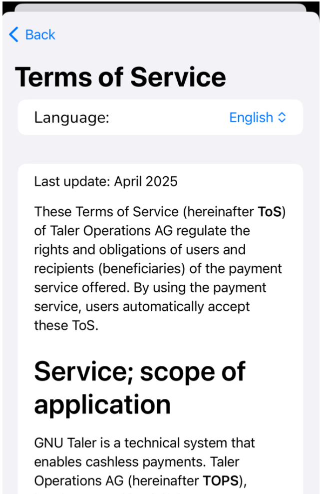
$\Rightarrow$ Manual checks required in some cases

VQF requirements

- GwG trained staff
- Independent audits (GwG + finances)
- Statistical reports



Onboarding: Terms of Service



Hosting

- In Switzerland

Compliance cost

- VQF membership + training: $\approx$ 2000 CHF/year
- GwG paperwork: $\approx$ 4000 CHF/year
- External audit: $\approx$ 5000 CHF/year

Note that these are minimal costs for a tiny operation, they increase with customer and transaction volume!

Final Remarks

- This is not legal advice.
- I am not a laywer.

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