

Identity management in e-commerce and business law

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Identity management – e-commerce and business Law

E-Commerce
(e.g., online sales contract)

Public registers
(e.g., companies register/land
register)

„Private“ registers and
transfer of shares

Involved Actors

-> **businesses, consumers, public authorities**

How to build trust?

-> **Information requirements** (e.g., § 4 ECG, Directive 2000/31/EC)

-> **Electronic signatures**

– -> **Implications of technological development
(esp. blockchain)**

Electronic signatures

eIDAS Regulation

= electronic Identification, Authentication and trust Services

Regulation (EU) N°910/2014 on electronic identification and trust services for electronic transactions in the internal market

↓
„eTS“

↘
„eID“

Aim: “Building trust in the online environment is key to economic and social development [...]” (recital 1 eIDAS)

This Regulation seeks to enhance trust in electronic transactions in the internal market by providing a common foundation for secure electronic interaction between citizens, businesses and public authorities, thereby increasing the effectiveness of public and private online services, electronic business and electronic commerce in the Union (recital 2 eIDAS).

Technological neutrality

-> The legal effects of the regulation are achievable by any technical means provided that the requirements of this Regulation are met (recital 27)

Directly applicable in the member states

-> Implementing and accompanying measures are enacted by the member states (Signatur- und Vertrauensdienstegesetz (SVG) BGBl I 2016/50)

-> Implementing regulations by the Commission – e.g., Art 8(3), 9(5), 12(7), (8), 17(8) etc

Electronic identification (Chapter II eIDAS)

= “the process of using person identification data in electronic form uniquely representing either a natural or legal person, or a natural person representing a legal person” – Art 3(1) eIDAS

- **Mutual recognition principle – Art 6 eIDAS**
 - > E-ID used in a member state to access a service provided by a public sector body online
- **Notification procedure – Art 7, 9 eIDAS**
 - > List published by the Commission
- **Assurance level – Art 8 eIDAS**
 - > low, substantial and high level

Trust services – Art 3(16) eIDAS

- the creation, verification, and validation of electronic signatures, electronic seals or electronic time stamps, electronic registered delivery services and certificates related to those services, or
- the creation, verification and validation of certificates for website authentication; [...]

-> provided by trust service providers – Art 3(19) eIDAS

Electronic signature

= data in electronic form which is attached to or logically associated with other data in electronic form and which is used by the signatory to sign – Art 3(10) eIDAS

Types of electronic signatures

„Simple“ electronic signature – Art 3(10) eIDAS

+ requirements of Art 26 eIDAS

- Uniquely linked to the signatory
- Control of signatory
- Authentication and integrity

Advanced electronic signature – Art 3(11) eIDAS

- + created by a qualified signature creation device (Art 29, Annex II eIDAS)
- + based on a qualified certificate (Art 28, Annex I eIDAS, § 8 SVG)

Qualified electronic signature – Art 3(12)

Special types of electronic signatures

Public signatures („Amtssignatur“)

-> Advanced electronic signature (§ 19 E-GovG)

Professional signatures („Berufssignatur“)

-> *E.g.*, Notaries public and attorneys at law

↳ In addition: certification signature („Beurkundungssignatur“)

-> Qualified electronic signatures (§ 13 NO, § 21 RAO)

Qualified electronic signature – legal effects

- Equivalent effect as a handwritten signature – Art 25(2) eIDAS, § 4(1) SVG (in principle)
 - > Can be used to conclude a contract „in writing“ (§ 886 ABGB), e.g., § 3(1)(1) WEG, § 29(1)(3) MRG, § 1346(2) ABGB (-> requires signature)
 - > Exception for testaments/wills; sureties by consumers/family and inheritance law
 - > instruction by notary/attorney required – § 4(2) SVG
- Equivalent evidential value as a paper-based document (§ 294 ZPO)
- Recognition of qualified electronic signatures from EU (§ 25(3) eIDAS)

Qualified electronic vs. handwritten signatures

| | Qualified electronic signatures | Handwritten signatures |
|------------------|--|------------------------|
| Authenticity | ✓ | ✓ |
| Integrity | ✓ | ? (cf. § 294 ZPO) |
| Warning function | ? | ✓ |
| Intermediary | ? (trust service provider as intermediary?) | - |

Business Law

Companies register

Public register

-> Austria: Firmenbuch, Germany: Handelsregister

-> Not regulated by eIDAS – recital 21, Art 2(3)

-> However: Directive 2017/1132 Art 14 et seq. („Company Law Directive“)

Provides information on bodies of the company (e.g., directors of the company), statute, financial statements...

-> In addition: sample signature – e.g., §§ 28, 53(2) UGB

Publicity principle („Publizitätsprinzip“)

-> Data contained in register is publicly available (also electronically)

-> Trust in the register is protected – see, e.g., § 15 UGB

Applications (§ 11 UGB) must be

- in writing and
- publicly certified by a court or a notary (§ 118 AußStrG, § 79 NO)
-> „öffentlich beglaubigte Form“

Electronic filing via the electronic justice system -> „Elektronischer Rechtsverkehr“

- > Obligatory for attorneys and notaries – § 89c GOG (using the „Anschriftcode“ – § 7(4) ERV)
- > Also accessible via transmitting organizations („Übermittlungsstellen“)
- > „Original“ documents are filed electronically via document archives of public bodies (e.g., notary chamber) – § 8a(3) ERV, § 91c GOG

Simplified registrations

No certification requirement (§ 11 UGB) for certain pieces of information (§ 11 FBG)

-> **business adress, website, listing at a stock exchange, members of the supervisory board, members of a LLC (GmbH) and their capital contribution etc**

Electronic filing of the registriations via the ERV or through an online form provided by the ministry of justice – § 8a(1a) ERV

-> **Direct filing using the citizen card („Bürgerkarte“)**

Formation of companies – GmbH I

General requirements for registration (schematic)

Minimum capital

- > At least EUR 35.000,-, half of which must be paid in cash – §§ 6, 10 GmbHG
- > Confirmation by a banking institution – § 10(3) GmbHG

Conclusion of the GmbH-
contract (statute)

- > Notarial act („Notariatsakt“) required – § 4(3) GmbHG; §§ 52 et seq. NO (physical presence of the parties)

Upon registration, the formation of the company is completed (-> legal person)

Formation of companies – GmbH II – Alternative procedures

Simplified formation – § 9a GmbHG

- > Available for GmbH with only one member who is also the director of the company with a restricted statement of formation
- > No notarial act or certification required; statement of formation must be made in electronic form using the citizen card; identity is confirmed by the banking institution
- > Documents are transmitted to the register court via the ERV

Electronic notarial act using electronic means of communication – § 4(3) GmbHG, § 69b NO

- > Identity is confirmed via an audiovisual real-time two-way communication
- > Notary signs with the certification signature

Identification of share holders

Bearer shares („Inhaberaktien“) – available for listed corporations (§ 10 AktG)

Registered shares („Namensaktien“) – other cases (§ 9 AktG)

Shareholders are registered in the shareholder register (§ 61 AktG) – „Aktienbuch“



General Meeting (HV) – participation by electronic means (Directive 2007/36/EC)

- ↳ Satellite meeting
- ↳ Remote participation
- ↳ Distant voting
(§ 102 AktG)



„enabling minimum standard“ -> „proportionate means of identification“

Transfer of shares

Stock corporations (AG): few restrictions

New holder of the registered shares is registered in the shareholder register upon „notice“ and „proof“ of acquisition (§ 62 AktG)

-> „Indossament“

Limited liability companies (GmbH)

Notarial act required (§ 76 GmbHG)

Electronic means of communication are not permitted (§ 69b NO *e cont*)

-> „Immobilization“ of GmbH-shares

Associations register

(Private) Associations = legal persons with a special, „non-commerical“ purpose („ideeller Zweck“ – § 1 VerG)

Registered in the associations register („Vereinsregister“)

-> Public register; *cf.* companies register!

-> Free online search possible – „Online-Einzelabfrage“; direct filing in case of § 19(6) VerG

Formation is relatively simple

-> Public certification not required (§ 11 VerG) – „in writing“

However: Reduced protection of public trust – § 17(8) VerG

Land register („Grundbuch“)

Public register

- > Information about rights in real estate (ownership, mortgages...)
- > Registration = requirement to acquire property rights (§ 431 ABGB)
- > Protection of public trust (§ 63 et seq. GBG)
- > Public online access (§ 6 GUG)

Applications for registrations must be in writing (§ 83 GBG) and (usually) publicly certified (§ 31 GBG)

- > Electronic filing possible via the ERV (-> cf. companies register; § 10 ERV)

Blockchain solutions

Blockchain – e-commerce and public registers

Authenticity

-> E-commerce vs. public registers

Publicity

Public access vs. legal effects vs. control prior to registration

Integrity

-> Comparable to established concepts?
(e.g., „Indossamentenkette“)

Efficiency

-> Intermediaries?
-> Functions of formal requirements

Thank you for your
attention!
