Data. Protection. Adding Value.

Data Protection Laws - Switzerland

Legislation

The revised Swiss Federal Act on Data Protection ("**FADP**") has been set in force in September 2023 by the Swiss Government. This Act updated the previous version and brought a closer alignment with the principles and requirements as set out in the European Union and its Regulation, the GDPR. The FADP governs the processing of personal data by both **private persons** and **federal bodies**. Its primary objective is to protect the personality and fundamental rights of individuals when their personal data is being processed.

Scope: This Act applies to all matters that have an **effect in Switzerland**. Therefore, data processing even if taking place abroad and being performed by a non-Swiss company can fall under the scope of the FADP.

Exemptions: The FADP does not apply to personal data that is processed by:

- a natural person exclusively for personal use; and
- institutional beneficiaries which enjoy immunity in Switzerland.

Risk Level: High

Supervisory Authority

Supervisory Authority: The Federal Data Protection and Information Commissioner ("**FDPIC**") is the independent Swiss authority responsible for overseeing data protection and freedom of information legislation. It consists of the head of the FDPIC (the commissioner) and the staff of the permanent secretariat.
The FDPIC ensures that both private persons and federal bodies comply with the FADP, conducts investigations where a violation thereof may be occurring, assists the federal and cantonal authorities in the prosecution and enforcement, and advices and informs on data protection matters.

Registration: Only federal bodies are under the obligation to register their Data Protection Officer (DPO) and Records of Processing Activities (RoPA) with the FDPIC.

Approval: For the Cross-Border Transfer of personal data to a country without an adequate level of data protection, appropriate protection must be guaranteed, which can be done by obtaining the approval of the FDPIC for the respective provisions or contract.

Data Protection Principles

When processing the personal data of Data Subjects the following principles must be adhered to guarantee its legality:

- Lawfulness
- Proportionality
- Transparency
- Purpose Limitation
- Data Minimization
- Storage Limitation
- Data Security and Confidentiality
- Accountability
- Data Quality and Accuracy
- Privacy by Design and Default

Criminal Provisions

A number of violations can result in **fines of up to CHF 250,000** against the **individual person responsible**, which **intentionally** perform one of these actions:

- Breach of obligation to provide access and information or to cooperate;
- Violation of duties of diligence;
- Breach of professional confidentiality;
- Disregard of decisions; or
- Violations committed within undertakings.

If a fine does not exceed CHF 50,000 and the necessary investigative measures would be disproportionate in comparison with the penalty incurred, the prosecution of the individual persons may be abandoned and instead the undertaking may be sentenced to the payment of the fine.

Data Processing

In Switzerland, **private persons** can generally process personal data legally without the need for an additional legal foundation, provided that they **adhere to all the principles of data protection**.

Conversely, **federal bodies** are permitted to process personal data solely when they have a **statutory basis or consent** to do so, have obtained authorization from the Federal Council, or need to safeguard an individual's life or physical well-being.

Only where explicitly foreseen by the FADP, **consent** must be given:

- processing of **sensitive personal data**;
- high-risk profiling by a private person; or
- profiling by a federal body.

Information Obligation

The Controller of the processing informs the Data Subjects about the collection of their personal data. This duty also applies when the personal data is not collected from the Data Subject but from a third party. Privacy Notices can be provided to the Data Subjects to accomplish this.

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Data Subject Rights

The following Data Subject rights are provided under the FADP:

- **Right to access:** Obtain information about the personal data stored, the purposes of the processing and more.
- **Right to rectification:** Request the correction of false data.
- **Right to deletion/be forgotten:** Request deletion in certain instances (e.g., where data is no longer necessary).
- **Right to restriction:** Request restriction of processing to certain purposes.
- **Right to object:** Object to the processing in certain instances.
- **Right to withdraw consent:** Consent once given can be withdrawn at any time.
- **Right to portability:** Obtain certain data in a structured format.
- **Rights in regard to automated individual decision:** Request for review by a natural person and the opportunity to state own position.

Security & Data Breaches

The security of the personal data must be appropriately addressed through the implementation of adequate **Technical and Organizational Measures (TOM)** addressing the risk.

In case of **Data Security Breaches** that result in a high risk to the personality or the fundamental rights of Data Subjects, the **FDPIC** must be notified **as soon as possible**. This notification must entail at least the nature of Data Security Breach, its consequences and the measures taken or foreseen to mitigate.

Furthermore, it is necessary to inform the **Data Subject** if necessary for the protection of the Data Subject or if the FDPIC so requests.

Other Business Obligations

Data Protection Officer: The appointment of a DPO for private persons is voluntary, whereas for federal bodies it is mandatory. Appointing a DPO offers specific benefits.

Risk Assessments: The performance of a Data Protection Impact Assessments (DPIA) is mandatory if the intended data processing may lead to a high risk for the Data Subject's personality or fundamental rights.

Record Keeping: The keeping of a RoPA is mandatory if the private person has 250 and more members of staff, or if the processing entails more than a low risk of violations of the personality of the Data Subjects. It is mandatory for federal bodies under all circumstances.

Trainings: To ensure continuous adherence to the Data Protection Principles and to maintain sufficient understanding among the workforce, it is advised to conduct frequent training sessions.

Service Providers & Cross-Border Transfers

Service Provider Arrangements: Where personal data shall be processed by another party (Processor) on behalf of the initial private person or federal body (Controller), a **Data Processing Agreement** must be completed, guaranteeing the data protection with this Processor. If the initial Controller together with the new party determine the purposes and means of the processing together, a **Joint Controller Agreement** is required.

Cross-Border Data Transfers: Where personal data shall be transferred to a third party outside of Switzerland, an adequate level of data protection must be guaranteed. This can either be provided if based on the **decision of the Federal Council** the third country itself possesses an adequate data protection legislation.

Should this not be the case, further contractual provisions and frameworks **approved by the FDPIC**, such as the EU Standard Contractual Clauses complemented with the Swiss Annex, need to be concluded.

International Setting

Switzerland, despite not being part of the European Union and thus not directly subject to the GDPR, remains significantly impacted by its neighboring nations. Consequently, it is crucial to stay informed about European advancements that could influence the management of personal data protection. Additionally, the discussions concerning the Swiss-U.S. Data Privacy Framework have progressed significantly and should be taken into account for upcoming data transfers to the United States.

Let's connect to discuss how we can help:

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