

Daniel Ronzani / Simon Schlauri

The New Swiss Data Protection Law







On September 1, 2023, the new Federal Act on Data Protection (FADP) and the new Data Protection Ordinance (DPO) will come into force. Three decades after its introduction, the Swiss data protection law has been revised to reflect technological developments (Internet, digitalization, Big Data, AI etc.) and the EU General Data Protection Regulation (GDPR). Data subjects will benefit from better protection, for instance through greater self-determination and transparency in the collection of personal data. Legal entities are no longer governed by the law. The new data protection law follows a risk-based approach. The revision is also intended to promote self-regulation by industry associations. Companies with 250 or more employees must now keep a comprehensive record of all processing activities. This edition of the TechLawNews summarizes the most significant aspects of the total revision.






Category of articles: TechLawNews by Ronzani Schlauri Attorneys


Region: Switzerland

Field of law: Data Protection

Citation: Daniel Ronzani / Simon Schlauri, The New Swiss Data Protection Law, in: Jusletter IT 20 July 2023

<p>What</p> <p>Data Protection Law: https://www.fedlex.admin.ch/eli/cc/2022/491/en</p> <p>Data Protection Ordinance: https://www.fedlex.admin.ch/eli/cc/2022/568/en</p> 	<p>When</p> <p>1. September 2023</p> 
<p>Why</p> <p>Total revision of the 1992 law to adapt it to the technological developments and digital transformation of society.</p> 	<p>Where</p> <p>Law applicable if the impact of processing occurs in Switzerland (even if initiated abroad).</p> <p>Foreign controllers may need to designate a local representative in Switzerland.</p> 
<p>Goal</p> <p>Strengthen rights of data subjects. Self-regulation by industry associations. Risk-based approach. Alignment with GDPR.</p> 	<p>Scope</p> <p>Protection of personal data of natural persons only. Legal entities out of scope. Genetic and biometric data qualify as sensitive data.</p> 

<p>Approach</p> <p>Technology neutral law. Controller to assess risks for data subject (risk-based approach).</p> 	<p>New Data Subject Rights</p> <p>Right to information extended. Right to disclosure of processed personal data in a common electronic format. Right to non-automated decision making.</p> 
<p>Privacy by Design</p> <p>Account for and document data protection already during planning stage of IT systems.</p> 	<p>Privacy by Default</p> <p>Implement data protection friendly defaults. Deviations only with consent of data subject.</p> 
<p>Export of Personal Data</p> <p>Inform data subjects of destination country and legal basis (in privacy policy). Case by case evaluation (DP impact assessment (DPIA)). Use EU/CH Standard Contractual Clauses.</p> 	<p>Non-Compliance</p> <p>Fines CHF 250'000.--.</p> 

Your Action	Ronzani Schläuri Attorneys
<p>Update privacy policy and data processing agreements.</p> <p>Record of processing activities (if > 250 employees).</p> <p>Perform DPIA (if high risk).</p> <p>Report breaches to FDPIC.</p> 	<p>Signaustasse 11 CH-8008 Zurich</p> <p>Dr. Daniel Ronzani, LL.M. 044 500 57 21, dr@rsa.law</p> <p>Prof. Dr. Simon Schläuri 044 500 57 22, ssch@rsa.law</p>