



Data Privacy Protection in Europe, Germany and Switzerland

The GDPR has recently come into force. However, the issue of data protection is not yet resolved. In the international context with respect to third party countries like, e.g. Switzerland, the topic is more relevant than ever. Currently Switzerland is working to modernize their Federal Act on Data Protection, in particular, to provide penal provisions against natural persons. Our Newsflash reflects the main effects of the GDPR in the international context and highlights the envisaged new regulations in Switzerland for globally acting companies.

I. Extraterritorial Effect of the GDPR

On May 25, 2018 the General Data Protection Regulation (GDPR) came into force. In the EU member states this regulation represents directly applicable law. The aim is to achieve an equivalent standard of protection of the rights and freedoms of natural persons in the processing of personal data in all member states. In addition, the GDPR has effects on third-party countries, e.g. Switzerland. This so-called extraterritorial effect occurs in the following cases:

- A Swiss company processes personal data within the EU
- A data processing company is deployed in the EU
- A Swiss company processes personal data by order of a European company
- Data of a person living in the EU are processed in Switzerland. This occurs, for example, in the case online shipments to persons having EU residence, as well as in personal web tracking

The new regulations being in force since May 25, 2018 are thus of international importance.

II. Alterations in Germany

Together with the GDPR, the revised Federal Data Protection Act (BDSG) came into force, also directly relating to the international data exchange. According to § 1 Section 6 BDSG, the handling of personal data according to the requirements of the GDPR is also to be recognized within the following countries:

- The member states of the EEA, including Iceland, Norway and Liechtenstein
- Switzerland

This implies that from the German point of view the current standard of data protection in these countries is considered to be appropriate. Therefore, with respect to the bilateral relationship between Germany and these countries, companies need not implement additional data protection measures. However, it is worth noting that no decision has yet been taken by the EU itself as to the relationship with third-party countries such as Switzerland.



III. Alterations in Switzerland

Concurrently with the entry into force of the GDPR, Switzerland is revising their data protection regulations on both the local and federal levels. The revision of the Federal Act on Data Protection (FADP) covers various sectors:

- Regulations relating to the Schengen Agreement: in this sector Switzerland should amend the law in order to meet the Schengen requirements
- Regulations relating to the processing of data between private persons
- Penal provisions are to be implemented in the FADP regulating sanctions against, e.g. violations with respect to due diligence. The envisaged penal provisions are to be directed against the responsible natural persons and will provide penal fees up to 250.000 Swiss Francs.

For Switzerland as a center for business, an appropriate data protection standard is of high importance. The equivalency decision of the EU Commission is a precondition for exchanging personal data between EU member states and third-party countries like Switzerland without the need for implementing further protective measures in addition to the existing regulations provided by law. These could be e.g.:

- The inter partes agreement of the EU standard contract stipulations
- Binding Corporate Rules

The related extra effort and expense for companies in Switzerland and other third-party countries should not be underestimated. Until now the EU Commission has deemed the Swiss data protection standard to be appropriate. Accordingly, the above-mentioned German regulation (§ 1 Section 6 BDSG) is coherent. However, with the enforcement of the GDPR, a new assessment will be necessary.

A draft revision of the FADP has been available since September 2017, which has raised much controversy and generated significant interest. Presently, a gradual, step-wise revision is to be expected. From the entrepreneurial point and in view of the above-mentioned alterations, a final resolution within in a narrow frame of time is definitely desired.

VI. Actions to be taken by companies

In short, the bilateral situation for companies with respect to Germany and Switzerland is as follows:

- Until the revisions in Switzerland are finalized and the new assessment of the Swiss data protection standard by the EU Commission is made, their adequacy can be assumed on the basis of §1 Section 6 FADP.
 - ⇒ no additional protection measures required
- On final revision in Switzerland a new assessment should be considered.
 - ⇒ contracts should be reconsidered
 - ⇒ measures to be taken in line with the national Swiss law should be clarified
- On assessment of the EU Commission possible additional protection measures must be taken with respect to business relations with Switzerland.



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Any questions regarding data protection in general?

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