

New Data Protection Law to enter into force

On the 1st of September 2023, a new set of data protection rules will become effective in Switzerland: the new Data Protection Act (nDPA), the new Data Protection Ordinance (nDPO) and the new Ordinance on Data Protection Certifications.

The new provisions will increase transparency and strengthen the rights of the data subjects and ensure continued compatibility of the Swiss data protection rules with the GDPR (the EU General Data Protection Regulations), which is regarded as “the” reference in data protection laws.

The most significant changes:

- **End of a Swiss anomaly:** the nDPA no longer provides for protection of the data of legal persons. As from the 1st of September, only living natural persons will see their personal data protected.
- **Extraterritoriality:** the nDPA applies to “circumstances that have an effect in Switzerland, even if they occur abroad”. Data controllers located outside Switzerland but processing personal data of individuals in Switzerland will, under certain circumstances, need to appoint a local representative.
- **Enhanced information duties:** controllers will need to make available to data subjects an extended list of information about the collection, processing and recipients of the processed personal data.
- **Mandatory registers of processing activities:** the nDPA imposes on data controllers to keep a list of all data processing activities. It replaces the former obligation to declare processing activities to the Federal Data Protection and Information Commissioner (**FDPIC**). There are a few exceptions to this obligation, however it is strongly recommended to keep such register in order to properly fulfil the enhanced information duties and the new right to portability.
- **New right to portability:** data subjects will have the right to receive their own personal data in a commonly used electronic format.
- **Data Protection Impact Assessment:** prior to the processing of certain personal data, a data protection impact assessment will be required, specifically if the planned processing may involve a high risk to the protection of fundamental rights of the data subjects. This would occur in the event of profiling or if certain new technologies are to be used (artificial intelligence).
- **Notification of data security breaches:** controllers will have to notify the FDPIC of certain serious data breaches “as soon as possible”.

- **Fines:** the nDPA contains personal criminal liability provisions. Individuals (not the organisation) who intentionally breach the new Swiss Federal Data Protection regulations will face fines of up to CHF 250,000 (for instance in case of breach of obligations to provide information to data subjects, violation of the conditions for transferring personal data abroad or failure to comply with the conditions of data processing or with the minimum data security requirements).

Timeframe

The new provisions and regulations will enter into force on the 1st of September 2023. There will be no grace period.

Conclusions

Organisations or persons subject to the nDPA should:

- Review their privacy policies and related documents to ensure compliance with the extended information obligations;
- Verify existing policies and procedures or create processes related to data protection impact assessments, to address requests from data subjects (right of information and portability) and to promptly comply with the notification obligation of personal data breaches;
- Create or update data processing inventories;
- Evaluate if they should appoint a representative in Switzerland.

There are variations between GDPR and the nDPA, therefore, even organisations already complying with GDPR and companies involved in the processing of particularly sensitive data need to check whether they need to modify their current processes or policies and procedures to comply with the increased documentation obligations.

Please do not hesitate to contact us should you have queries or need assistance:

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