

Risk: Removal of data protection equivalence for Switzerland

Data protection laws are being modernized worldwide and adapted to advances in technology and services. In the European Union (EU), the General Data Protection Regulation (GDPR) has been applicable since May 25th, 2018. The revision of the Swiss Data Protection Act (Draft-DPA) is currently in the deviation settlement process between the two chambers of the Swiss parliament. An entry into force is not expected before 2021.

If relevant data is transferred from an EU member state to a third country (including Switzerland), it must be ensured that an adequate level of data protection is guaranteed in the third country. An appropriate level of protection can be confirmed by guarantees and/or permits from the relevant supervisory authorities. However, the easiest way to cooperate is, if the EU Commission has adopted an adequacy decision for the third country and thus an appropriate level of data protection is confirmed.

Switzerland received this confirmation of adequacy for the protection of personal data from the EU for the first time about 20 years ago (2000/518 / EC). The adequacy has so far repeatedly been confirmed by the EU as part of the ongoing reviews. However, the last adequacy review was based on the situation before the GDPR has become the data protection standard for the EU and the EEA. Probably in the first half of 2020, the EU will again decide on the equivalence of the Swiss data protection level within the interval agreed at the time.

In 2019, the responsible committee of the Swiss National council (Staatspolitische Kommission Nationalrat, SPK-N) precautionary commissioned the federal administration to assess the proposals for the Swiss data protection law to be revised, with regard to the renewability of the adequacy decision by the EU. This assessment has been available since August 2019 and it has made it transparent that various current considerations for the design of Swiss data protection regulations are classified as "problematic" for a positive adequacy decision by the EU.

The details of this assessment are available on the website of the Swiss parliament (Bundesversammlung: [17.059 – Dataprotectionlaw](#)). In addition to other questions, also the following issue is being assessed: Is an envisaged drafting of the law "unproblematic with regard to the upcoming renewal of the adequacy decision by the EU"? The test objects commented with "No" should therefore be classified as "problematic".

For Swiss financial service providers as well as providers of services related to financial services provided out of Switzerland (e.g. BPO, SaaS, Open Banking), the question arises, as to what a loss of formal equivalence would mean and how affected service providers and service users can prepare for this situation.

We recommend that our customers check their services for data protection aspects and that they analyse the necessary requirements, so that the necessary measures can be defined and carried out in case of a loss of the equivalence.

A negative adequacy decision by the EU does not automatically prohibit the possibility of providing data protection relevant services from Switzerland for natural persons into the EU (including Swiss citizens with EU residence). However, the administrative requirements increase considerably and it certainly makes sense to identify these requirements as soon as possible with a view to the business model (services, customers, systems, etc.) and to take reasonable precautions.

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