

Swiss Data Protection Federal Data Protection Act

SWISS REPRESENTATIVE IN ACCORDANCE WITH THE FEDERAL DATA PROTECTION ACT (FDPA)

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Background

On 1 September 2023 the new Federal Data Protection Act (FDPA) came into force in Switzerland. The FDPA is based in large parts on the EU GDPR. Art. 27 GDPR requires an EU representative if companies are based outside the EU but processing personal data of European data subject. There is a similar provision in the new FDPA → the Swiss Representative (Swiss Rep).

Who must appoint a Swiss Rep?

Art. 14 FDPA states the requirements for the mandatory designation of a Swiss Rep. Private data controllers must designate a Swiss Rep if the data controller's registered office or place of residence is outside Switzerland and the data controller processes personal data from people who are in Switzerland.

Besides, the data processing must meet one of the following requirements:

- The processing is related to the offer of goods and services or the observation of the behaviour of persons in Switzerland;
- This is an extensive processing;
- This is a regular processing; or
- Processing entails a high risk for the personality of the persons concerned.

In addition, the Federal Data Protection and Information Commissioner (FDPIC) – the Swiss authority – may also order, as an administrative measure within the meaning of Art. 51 FDPA, that a company domiciled or resident abroad designate a Swiss Rep.

Who does not have to appoint a Swiss Rep?

The following parties do not have to appoint a Swiss Rep:

- Authorities
- Public bodies
- Data processors.

Besides, if one of the exceptions applies, the controller does not have to designate a Swiss Rep:

- Data processing is not extensive;
- Data processing is only done occasionally; or
- Data processing does not end in a high risk for the data subjects affected.

Requirements Swiss Rep

Natural persons or companies with a registered office in Switzerland can be appointed. Although there are no requirements defined in the law, it is recommended that the Swiss Rep meets the following requirements:

- Knowledge of the Swiss data protection laws and the GDPR;
- Knowledge of corresponding laws in Switzerland;
- Basic knowledge of information security;
- Experience with data protection in practice; and
- Experience in dealing with supervisory authorities and data subjects.

Tasks of the Swiss Rep

The tasks are defined in Art. 15 FDPA:

- Point of contact for data subjects and the FDPIC – the Swiss Rep can make legally effective declarations and receive such declarations by proxy;
- Swiss supervisory authorities can oblige the Swiss Rep to provide all relevant information necessary to clarify data protection facts; and
- Maintenance of the register of processing activities according to Art. 12 FDPA. It is not prescribed whether this task must be ensured by the Swiss Rep. However, this can be contractually transferred to the Swiss Rep.

About us

Data Business Services GmbH & Co. KG (DBS) is a specialist in data protection consulting and data protection case management.

DBS is specialized in Representative Services, such as EU Rep, UK Rep and Swiss Rep.

The goal of DBS is to support its clients to comply with the European and Swiss privacy laws and to provide best practice.

Our advantages:

- **Efficiency and assured availability:** We work on requests efficiently and within a short period of time (availability on 7 days a week).
- **Cost effective:** Swiss Rep is charged with a monthly flat fee, so there are no hidden and additional costs.
- **Insurance coverage:** Since all Swiss Representatives at DBS are privacy lawyers, the service comes along with a default liability of 1 Million Euros.

Contact

Would you like to learn more about the Swiss Representative and our services or do you have any questions?

Please feel free to contact us. We are happy to schedule a call with you.

Robert Niedermeier, CIPP/E, CIPT, CIPM, FIP, Managing Director

E-Mail: niedermeier@db5.io

Phone: +49 171 2440099

Severine Petersen, DPO, CISO, Operations

E-Mail: petersen@db5.io

Our office in Switzerland:

Data Business Services GmbH & Co. KG Switzerland
Badenerstrasse 549
City West
Zurich, CH-8048

Disclaimer

This material is provided for your convenience and does not constitute legal advice or create an attorney-client relationship. This is a general overview that will hopefully help your business understand the Swiss Representative requirements. It offers a level of minimum requirement and best practise.

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