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Federal Act on Data Protection (FADP)

of 19 June 1992 (Status as of 1 March 2019)

The Federal Assembly of the Swiss Confederation,

based on Articles 95, 122 and 173 paragraph 2 of the Federal Constitution^{1,2}
and having regard to the Federal Council Dispatch dated 23 March 1988³,
decrees:

Section 1 Aim, Scope and Definitions

Art. 1 Aim

This Act aims to protect the privacy and the fundamental rights of persons when their data is processed.

Art. 2 Scope

¹ This Act applies to the processing of data pertaining to natural persons and legal persons by:

- a. private persons;
- b. federal bodies.

² It does not apply to:

- a. personal data that is processed by a natural person exclusively for personal use and which is not disclosed to outsiders;
- b. deliberations of the Federal Assembly and in parliamentary committees;

AS **1993** 1945

¹ SR **101**

² Amended by No 3 of the FA of 19 March 2010 on the Implementation of Framework Decision 2008/977/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, in force since 1 Dec. 2010 (AS **2010** 3387 3418; BBl **2009** 6749).

³ BBl **1988** II 413

- c. pending civil proceedings, criminal proceedings, international mutual assistance proceedings and proceedings under constitutional or under administrative law, with the exception of administrative proceedings of first instance;
- d. public registers based on private law;
- e. personal data processed by the International Committee of the Red Cross.

Art. 3 Definitions

The following definitions apply:

- a. *personal data (data)*: all information relating to an identified or identifiable person;
- b. *data subjects*: natural or legal persons whose data is processed;
- c. *sensitive personal data*: data on:
 1. religious, ideological, political or trade union-related views or activities,
 2. health, the intimate sphere or the racial origin,
 3. social security measures,
 4. administrative or criminal proceedings and sanctions;
- d. *personality profile*: a collection of data that permits an assessment of essential characteristics of the personality of a natural person;
- e. *processing*: any operation with personal data, irrespective of the means applied and the procedure, and in particular the collection, storage, use, revision, disclosure, archiving or destruction of data;
- f. *disclosure*: making personal data accessible, for example by permitting access, transmission or publication;
- g. *data file*: any set of personal data that is structured in such a way that the data is accessible by data subject;
- h. *federal bodies*: federal authorities and services as well as persons who are entrusted with federal public tasks;
- i.⁴ *controller of the data file*: private persons or federal bodies that decide on the purpose and content of a data file;
- j.⁵ *formal enactment*:
 1. federal acts,
 2. decrees of international organisations that are binding on Switzerland and international treaties containing legal rules that are approved by the Federal Assembly;

⁴ Amended by No I of the FA of 24 March 2006, in force since 1 Jan. 2008 (AS 2007 4983; BBl 2003 2101).

⁵ Amended by No I of the FA of 24 March 2006, in force since 1 Jan. 2008 (AS 2007 4983; BBl 2003 2101).

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Section 2 General Data Protection Provisions

Art. 4 Principles

¹ Personal data may only be processed lawfully.⁷

² Its processing must be carried out in good faith and must be proportionate.

³ Personal data may only be processed for the purpose indicated at the time of collection, that is evident from the circumstances, or that is provided for by law.

⁴ The collection of personal data and in particular the purpose of its processing must be evident to the data subject.⁸

⁵ If the consent of the data subject is required for the processing of personal data, such consent is valid only if given voluntarily on the provision of adequate information. Additionally, consent must be given expressly in the case of processing of sensitive personal data or personality profiles.⁹

Art. 5 Correctness of the data

¹ Anyone who processes personal data must make certain that it is correct. He must take all reasonable measures to ensure that data that is incorrect or incomplete in view of the purpose of its collection is either corrected or destroyed.¹⁰

² Any data subject may request that incorrect data be corrected.

Art. 6¹¹ Cross-border disclosure

¹ Personal data may not be disclosed abroad if the privacy of the data subjects would be seriously endangered thereby, in particular due to the absence of legislation that guarantees adequate protection.

² In the absence of legislation that guarantees adequate protection, personal data may be disclosed abroad only if:

⁶ Repealed by No I of the FA of 24 March 2006, with effect from 1 Jan. 2008 (AS 2007 4983; BBI 2003 2101).

⁷ Amended by No I of the FA of 24 March 2006, in force since 1 Jan. 2008 (AS 2007 4983; BBI 2003 2101).

⁸ Inserted by No I of the FA of 24 March 2006, in force since 1 Jan. 2008 (AS 2007 4983; BBI 2003 2101).

⁹ Inserted by No I of the FA of 24 March 2006, in force since 1 Jan. 2008 (AS 2007 4983; BBI 2003 2101).

¹⁰ Second sentence inserted by No I of the FA of 24 March 2006, in force since 1 Jan. 2008 (AS 2007 4983; BBI 2003 2101).

¹¹ Amended by No I of the FA of 24 March 2006, in force since 1 Jan. 2008 (AS 2007 4983; BBI 2003 2101).

- a. sufficient safeguards, in particular contractual clauses, ensure an adequate level of protection abroad;
- b. the data subject has consented in the specific case;
- c. the processing is directly connected with the conclusion or the performance of a contract and the personal data is that of a contractual party;
- d. disclosure is essential in the specific case in order either to safeguard an overriding public interest or for the establishment, exercise or enforcement of legal claims before the courts;
- e. disclosure is required in the specific case in order to protect the life or the physical integrity of the data subject;
- f. the data subject has made the data generally accessible and has not expressly prohibited its processing;
- g. disclosure is made within the same legal person or company or between legal persons or companies that are under the same management, provided those involved are subject to data protection rules that ensure an adequate level of protection.

³ The Federal Data Protection and Information Commissioner (the Commissioner, Art. 26) must be informed of the safeguards under paragraph 2 letter a and the data protection rules under paragraph 2 letter g. The Federal Council regulates the details of this duty to provide information.

Art. 7 Data security

¹ Personal data must be protected against unauthorised processing through adequate technical and organisational measures.

² The Federal Council issues detailed provisions on the minimum standards for data security.

Art. 7a¹²

Art. 8 Right to information

¹ Any person may request information from the controller of a data file as to whether data concerning them is being processed.

² The controller of a data file must notify the data subject:¹³

¹² Inserted by No I of the FA of 24 March 2006 (AS 2007 4983; BBl 2003 2101). Repealed by No 3 of the FA of 19 March 2010 on the Implementation of Framework Decision 2008/977/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, with effect from 1 Dec. 2010 (AS 2010 3387 3418; BBl 2009 6749).

¹³ Amended by No I of the FA of 24 March 2006, in force since 1 Jan. 2008 (AS 2007 4983; BBl 2003 2101).

- a.¹⁴ of all available data concerning the subject in the data file, including the available information on the source of the data;
- b. the purpose of and if applicable the legal basis for the processing as well as the categories of the personal data processed, the other parties involved with the file and the data recipient.

³ The controller of a data file may arrange for data on the health of the data subject to be communicated by a doctor designated by the subject.

⁴ If the controller of a data file has personal data processed by a third party, the controller remains under an obligation to provide information. The third party is under an obligation to provide information if he does not disclose the identity of the controller or if the controller is not domiciled in Switzerland.

⁵ The information must normally be provided in writing, in the form of a printout or a photocopy, and is free of charge. The Federal Council regulates exceptions.

⁶ No one may waive the right to information in advance.

Art. 9¹⁵ Limitation of the duty to provide information

¹ The controller of a data file may refuse, restrict or defer the provision of information where:

- a. a formal enactment so provides;
- b. this is required to protect the overriding interests of third parties.

² A federal body may further refuse, restrict or defer the provision of information where:

- a. this is required to protect overriding public interests, and in particular the internal or external security of the Confederation;
- b. the information would jeopardise the outcome of a criminal investigation or any other investigation proceedings.

³ As soon as the reason for refusing, restricting or deferring the provision of information ceases to apply, the federal body must provide the information unless this is impossible or only possible with disproportionate inconvenience or expense.

⁴ The private controller of a data file may further refuse, restrict or defer the provision of information where his own overriding interests so require and he does not disclose the personal data to third parties.

⁵ The controller of a data file must indicate the reason why he has refused, restricted or deferred access to information.

¹⁴ Amended by No I of the FA of 24 March 2006, in force since 1 Jan. 2008 (AS **2007** 4983; BBl **2003** 2101).

¹⁵ Amended by No 3 of the FA of 19 March 2010 on the Implementation of Framework Decision 2008/977/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, in force since 1 Dec. 2010 (AS **2010** 3387 3418; BBl **2009** 6749).