

# Legal News

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## Revision of the Federal Act on Data Protection: National Council adopts the controversial bill with amendments

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On 24 and 25 September 2019, the National Council as first chamber debated and adopted the proposal of the completely revised Federal Act on Data Protection in its overall vote. The council adopted most of the amendments to the draft law of the Federal Council that were suggested by the Political Institution Committee of the National Council in August 2019.

In order to effectively implement the new data protection legislation, companies should evaluate the amendments to the draft law of the Federal Council. These amendments include, in particular, the following:

- ▶ **Territorial scope:** The revised Federal Act on Data Protection shall be applicable to circumstances that have an effect in Switzerland, even if they originate in another country (e.g. companies abroad offering services in Switzerland).
- ▶ **Definition of sensitive personal data:** Data on trade union-related views or activities shall not be mentioned explicitly in the definition of sensitive personal data anymore, as this is covered by the listed term political views or activities. Furthermore, genetic data shall only be considered as sensitive personal data if it serves to uniquely identify a person.
- ▶ **Data protection counsellor:** The data protection counsellor's responsibilities have been further specified. He/she shall be responsible for trainings and counselling of the company and shall be the first point of contact for data subjects and authorities. the qualified electronic signature (advanced electronic signature which is additionally based on a qualified certificate).
- ▶ **Data of deceased persons:** The specific provisions regarding the processing of data related to deceased persons shall be removed.
- ▶ **Profiling:** The definition of profiling has been aligned with the definition set out in EU law. Additionally, the duty to perform a data protection impact assessment due to profiling and the requirement of an explicit consent in case of profiling shall be removed.
- ▶ **Rights of the data subject:** To further align the draft law with the EU General Data Protection Regulation (GDPR), the right to data portability shall be included, meaning that data subjects shall have the right to obtain or have

transferred their personal data that they disclosed to a controller in electronic form and free of charge. In addition, the right of access by the data subject as well as the list of mandatory information to be provided to the data subject shall be reduced, and the list of exemptions shall be extended.

- ▶ **Records of processing activities:** Companies with less than 250 employees shall be exempt from the duty to maintain a record of processing activities, if their data processing bears only low risks for the data subjects. The number of employees has been increased compared to the draft law of the Federal Council which originally proposed to set the limit at 50 employees.
- ▶ **Designation of a representative in Switzerland:** Controllers with legal seat or domicile abroad shall be obliged to designate a representative in Switzerland if they process personal data of data subjects in Switzerland and if the data processing fulfills certain additional requirements (similar to the requirements of the GDPR).
- ▶ **Transition periods:** The transition periods shall be reduced regarding various aspects. Amongst others, the revised information duties shall apply as soon as the law enters into force,

and not only two years thereafter. The reduction of the transition periods is meant to provide more clarity for data processing companies and to enhance the conditions for the preservation of the European Commission's adequacy decision.

At the moment it remains unclear if the draft law proposed by the National Council would fulfill the requirements of the EU regarding adequacy of the Swiss data protection level. The Council of States as second chamber is expected to introduce further amendments to the draft law.

The Council of States is expected to debate the bill during the upcoming winter session or only in the subsequent spring session 2020. The bill will be discussed in the Political Institution Committee of the Council of States in advance. During the debate in the National Council, it emerged that a procedure for the resolution of differences will most likely be needed. Therefore, the final version of the draft law will probably be adopted only at the end of the summer session 2020.

We will continue to keep you informed about further progress in the revision procedure. Our specialists will be happy to advise you regarding possible impacts the amended draft law might have on your company.

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