



Employment & Labour – Switzerland

Revised Data Protection Rules for Cross Border HR Data Transfer

As per January 1, 2008, Switzerland has enacted various amendments to its Federal Data Protection Law Act of June 19, 1992 (FDPLA). One of the purposes of this legislative action was to bring Swiss data protection laws in certain aspects more in line with EU Data Protection Directive 95/46.

Amongst others, the FDPLA's provisions on cross border HR data transfers have been changed, which might require international companies with headquarters and/or subsidiaries in Switzerland to review their current data protection regimes.

Under the old FDPLA, cross border HR data transfers were only permitted if the country of the data importing company had equivalent data protection legislation. Without lowering the old data protection standards, the new law now speaks of foreign data protection laws securing adequate data protection.

Most European countries continue to meet this new standard.

Data export into the United States and other third countries with reportedly lower data protection standards remains legal if the data importing companies have declared their written accession e.g. to the Safe Harbour Privacy Framework as initially negotiated in 1999 between the European Commission and the United States Government.

As an alternative to joining the above Safe Harbour Privacy Framework, the new FDPLA enables international groups of companies to provide for cross border data transfers even with group companies which are not subject to adequate data protection laws.

In order to secure adequate data protection nonetheless, these group companies are required e.g. to conclude cross border data transfer agreements.

In cases where a cross border data transfer agreement approved by the Swiss Data Protection Agency is used, a previous notification of the Agency is no longer required.

An advance notification of the Swiss Data Protection Agency on cross border data transfer was necessary in the past, unless employees affected had knowledge of such data transfer (such knowledge not being equivalent to consent or even explicit consent as required under EU Data Protection Directive 95/46).

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Dr. Thomas Rihm

For further information please contact:
Dr. Thomas Rihm (t.rihm@thouvenin.com)