

Comparing two compliance laws in Europe: the GDPR and the FADP

Working within a Eurocentric life insurance company, the GDPR governs personal data processing across all EU member states. However, Switzerland, a key player in the European financial and insurance sectors, operates under its own data protection regulation, the Federal Act on Data Protection (FADP). Given the interconnected nature of European and Swiss financial organisations, understanding the main discrepancies between GDPR and FADP is essential. This comparison examines how these regulations influence data processing across the Schengen Area. The Swiss Federal Act on Data Protection (FADP) came into effect in September 2023. Although it takes inspiration from the EU's General Data Protection Regulation (GDPR), which was effective in May 2018, there are notable differences in their provisions (Irwin, 2021).

While GDPR applies to businesses that hold personal data of EU/EEA residents, the FADP applies to data controllers and processors who can be private persons (individuals and companies) as well as federal bodies that process personal data of Swiss residents. The implementation of data privacy by design and by default for businesses (Hansen, 2016), stipulated by article 25 of the GDPR is also specified as necessary in the FADP.

One of the main differences is that GDPR is always required, for any organisation, while the FADP is not required, as long as it does not harm individual privacy. This is reflected in the mandatory presence in European organisations of a Data Protection Officer (DPO) that ensures the company strictly follows the GDPR. In Switzerland, however, it is only a recommendation. In addition, the GDPR specifies that a data breach notification must be sent within 72 hours after the incident, in Switzerland this notification must be sent as soon as possible, without a precise deadline.

In terms of financial penalties, the European Union seems to have more power to act against data privacy breaches: Each EU member state has a Data Protection Agency that can impose a fine of up to 20 million euros for severe data protection violations. In Switzerland, the fine can reach a maximum of 250,000 CHF.

Finally, regarding data portability and data export, the European Commission determines its adequacy; even though in Switzerland it is the Federal Council that determines the adequacy, it is stipulated that the EU standard contractual clauses or other binding corporate rules can be applied.

This comparison shows evidence of how the European Union influences its partners in terms of data privacy and data protection. Indeed, the FADP, although with a less strict regulatory content than the GDPR (Rosenauer, n.d.) has been drafted and adapted after the publication of the European regulation. By aligning the revised FADP with its European counterpart, Switzerland has been working to facilitate business and data communication with its major economic partner (HeyData, 2023).

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