Global Data and Cyber Handbook - Switzerland

Artificial Intelligence, Profiling and Automated Decision Making

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# Are there any restrictions or requirements related to creating profiles of data subjects or utilizing automated decision-making for decisions related to data subjects, including with respect to artificial intelligence?

*Last review date: 11 December 2024*

Yes.

The restrictions or requirements are as follows:

☒  right to information / transparency requirement

☒  right to request human review of the automated decision making

☒  other

The controller shall inform the data subject about any decision that is based exclusively on automated processing and that has a legal consequence for or a considerable adverse effect on the data subject (automated individual decision).

It shall on request allow the data subject to express their point of view. The data subject may request that the automated individual decision be reviewed by a natural person.

If the automated individual decision is issued by a federal body, it must designate the decision accordingly.

# If such restrictions or requirements exist, are they subject to any exceptions?

*Last review date: 11 December 2024*

Yes

The above does not apply if either:

the automated individual decision is directly connected with the conclusion or the processing of a contract between the controller and the data subject and the data subject's request is granted; or

the data subject has explicitly consented to the decision being automated.

# Has the data privacy regulator issued guidance on data privacy and artificial intelligence, automated decision-making or profiling?

*Last review date: 11 December 2024*

Yes

[Current data protection legislation is directly applicable to AI (admin.ch)](https://www.edoeb.admin.ch/edoeb/en/home/kurzmeldungen/2023/20231109_ki_dsg.html) (9 November 2023)

The Federal Data Protection and Information Commissioner made it clear that the Federal Act on Data Protection is technology neutral and as such is applicable to AI.

# Has the data privacy regulator taken enforcement action in relation to artificial intelligence, including automated decision-making or profiling?

*Last review date: 24 December 2024*

No enforcement activity to date

# Do other (non-personal data or cybersecurity) laws or regulations impose restrictions on use of artificial intelligence, automated decision-making or profiling?

*Last review date: 11 December 2024*

No, nothing in force or in progress

No federal AI Act is in force or planned in the near future, although it is being discussed and a proposal on whether Switzerland intends to put in place an AI Act is expected end of 2024. However, we deem it more likely that specific provisions in various laws relating to AI will be introduced (such as the provision on automated decision taking that is already in the FADP). It might be possible that certain laws – apart from the FADP - already contain a regulation on AI. We are, however, not aware of any such regulation.

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