

# The Impact of (New) Data Protection Rules on Swiss NPOs

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## 1. New Data Protection Regulations in General

With the European Union's new General Data Protection Regulation (GDPR) coming into force in 2018, a new dawn for data protection has arrived. The strict GDPR rules and the hefty fines for non-compliant companies have raised awareness for the importance and challenges related to the proper handling of data.

In the wake of the GDPR, Switzerland, a non-EU member, has also revised its data protection regulations to ensure continued free movement of data between Switzerland and the EU. As the Swiss economy is tightly intertwined with the economies of its EU neighbours, this is of paramount interest for Swiss companies.

The revised Swiss Federal Act on Data Protection (DPA) will finally enter into effect on 1 September 2023. This revision will align Swiss law with the GDPR, thereby also making Swiss data protection laws much stricter. The new provisions improve the processing of personal data and grant additional rights to the persons concerned. Among other things, the obligation to provide information will be extended to every data collection in future and the keeping of a data processing register will be mandatory, subject to certain exceptions. Furthermore, a privacy impact assessment will have to be carried out if the data collected is considered to be high risk data.

The revised DPA also introduces fines of up to CHF 250'000 and/or personal liability for those responsible within the organization.

## 2. Impact of Data Protection Regulations on Swiss NPOs

Swiss non-profit organizations (NPOs) are directly affected by these substantial legislative changes, as they are subject to data protection laws.

Nonetheless, Swiss NPOs often do not seem to be sufficiently aware of the GDPR and the now upcoming changes also on a national level and their impacts on them. We see in particular two reasons for this: (1) there is a certain misconception that data protection rules are primarily aimed at for-profit (tech) companies using collected data as part of their business model, and (2) smaller NPOs without professional management lack the knowledge and resources to assess their own data collection procedures.

However, whether an organization is operating non-profit or for-profit is irrelevant for questions regarding data protection standards. Neither the GDPR nor the revised DPA privilege NPOs due to their non-commercial purpose. Accordingly, NPOs not complying with data protection laws are subject to fines and their board members and employees may be held personally liable – just like any other organization breaching data protection rules.

As data processors of donors, beneficiaries and employees, NPOs must fully comply with the data protection obligations. In many cases, NPOs even process particularly sensitive personal data such as data on religious or political activities, health or social welfare. In addition, genetic and biometric data are now also considered particularly sensitive personal data under the revised DPA. The processing of such data is subject to stricter requirements. Among other things, the explicit consent of the person concerned must be obtained.

Additionally, donors increasingly require NPOs to be data protection compliant. Therefore, NPOs that show data protection awareness by implementing technical and organizational measures to ensure compliance with data protection rules have more credibility and thus a competitive advantage in the fundraising sector. Data protection compliance is hence not only a (cumbersome) challenge, but also an opportunity – something which many NPOs are currently overlooking.

NPOs are therefore well advised to take a closer look at the new data protection regulations and implement appropriate data protection measures.

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