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EU AI Act Compliance Evidence Templates

EXPLANATORY NOTICE AND TEMPLATE**Applicability and Role Assessment under the revised Swiss Federal Act on Data Protection (nFADP / revDSG), in force since 1 September 2023**

Template reference	ECS-CH-SCOPE
Language	English (master). German, French and Italian versions to follow.
Version	1.0
Issued	July 2026
Instrument	Federal Act on Data Protection of 25 September 2020 (FADP / DSG, SR 235.1) and the Data Protection Ordinance (DPO / DSV, SR 235.11)
Addressee	Any private person or federal body determining the purpose and means of processing personal data with a connection to Switzerland
Position in the pack	Entry document. Completed before the other records; its determinations identify which are required
Companion templates	ECS-CH-ROPA — register of processing activities; ECS-CH-DPIA — data protection impact assessment; ECS-CH-INFO — information duty, data subject rights and breach response; ECS-CH-DPA — processor agreement; ECS-CH-REP — Swiss representative appointment

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1. Background and purpose

- (1) The revised Federal Act on Data Protection (the ‘nFADP’, also cited as the revDSG in German and nLPD in French) entered into force on 1 September 2023, together with the revised Data Protection Ordinance. It replaced the 1992 Act and modernised Swiss data protection law, in part to maintain the recognition of Switzerland as a country providing an adequate level of protection for the purposes of transfers from the European Union.
- (2) The nFADP resembles Regulation (EU) 2016/679 (the ‘GDPR’) in structure and in many concepts, and an organisation already compliant with the GDPR has a substantial head start. But the two are not identical, and the differences fall precisely where compliance documentation lives. This Assessment, and the pack it introduces, are built on the nFADP as it stands, not on the GDPR with Swiss labels.
- (3) The principal differences an organisation should hold in mind from the outset are these. The nFADP protects the personal data of natural persons only; unlike the former Act, it no longer protects legal persons. It does not operate a closed list of legal bases for processing in the manner of Article 6 GDPR: processing by private persons is, in principle, permissible, and the question is instead whether a justification is required to lift an unlawfulness that arises — for example from a breach of the data protection principles, from processing against the data subject’s express will, or from disclosure of sensitive data. The terminology differs: the nFADP speaks of the ‘controller’ and the ‘processor’ but defines them in its own terms, and uses ‘personal data requiring special protection’ rather than ‘special categories’. Breach notification is owed to the Federal Data Protection and Information Commissioner (the ‘FDPIC’) as soon as possible, not within a fixed 72-hour period. And enforcement runs on a distinctive model in which the FDPIC investigates and issues rulings, while sanctions take the form of fines imposed on responsible natural persons, not on the undertaking.
- (4) This Assessment establishes whether the nFADP applies to the organisation and its processing, in which role, whether the organisation is a private person or a federal body for the purposes of the Act, and whether the extraterritorial reach of the Act brings a foreign organisation within it and requires the appointment of a representative in Switzerland. It is the entry document of the pack and identifies which of the remaining records are required.

RELEVANT LEGAL TEXT

Article 2 FADP — Scope of application (extract).

This Act applies to the processing of personal data pertaining to natural persons by private persons and federal bodies. It does not apply to personal data processed by a natural person exclusively for personal use, nor to the deliberations of the Federal Assembly and in parliamentary committees, among other exceptions set out in the Act.

Article 3 FADP — Territorial scope.

This Act applies to circumstances that have an effect in Switzerland, even if they are initiated abroad.

Article 5 FADP — Definitions (extracts).

‘personal data’ means any information relating to an identified or identifiable natural person; ‘sensitive personal data’ means data relating to religious, ideological, political or trade union related views or activities, health, the private sphere or affiliation to a race or ethnicity, genetic data, biometric data that uniquely identifies a natural person, data on administrative or criminal proceedings and sanctions, and data on social assistance measures; ‘controller’ means a private person or federal body that alone or jointly with others determines the purpose and means of processing; ‘processor’ means a private person or federal body that processes personal data on behalf of the controller.

Article 14 FADP — Representative.

Controllers with their registered office or place of residence abroad shall designate a representative in Switzerland where they process personal data of persons in Switzerland and the processing meets the conditions set out in the Act (large scale, regular, and involving a high risk to the personality of the data subjects).

2. How to use this Assessment

- (5) The Assessment proceeds through six determinations, completed in order. Each can end or narrow the exercise, and each requires reasoning rather than a bare answer.
- Determination A — does the processing fall within the material scope of the Act, and is any exemption engaged?
 - Determination B — does the processing have an effect in Switzerland, bringing it within the territorial scope?
 - Determination C — is the organisation a private person or a federal body?
 - Determination D — is the organisation a controller or a processor, and in relation to what?
 - Determination E — must the organisation designate a representative in Switzerland, and a data protection advisor?
 - Determination F — which records in the pack follow?

3. The six determinations

3.1. Determination A — material scope

- (6) The Act applies to the processing of personal data pertaining to natural persons. Two consequences of the revision matter here. Data of legal persons is no longer protected, so processing that concerns only companies and not identifiable individuals falls outside the Act. And the exemption for personal use is confined to processing by a natural person exclusively for personal purposes with no disclosure to outsiders; it does not assist an organisation.
- (7) The category of sensitive personal data is defined in Swiss terms and differs at the edges from the GDPR's special categories — it expressly includes data on administrative or criminal proceedings and sanctions, and data on social assistance measures. Where the organisation processes any category of sensitive data, that should be identified here, because it affects the justification analysis, the information duty, and the threshold for a data protection impact assessment.

3.2. Determination B — territorial scope

- (8) Article 3 provides that the Act applies to circumstances that have an effect in Switzerland even if initiated abroad. The reach is therefore effects-based and wider than establishment: an organisation with no presence in Switzerland may be within the Act where its processing has an effect on persons in Switzerland, for example by offering goods or services to them or monitoring their behaviour.
- (9) A foreign organisation should assess this deliberately rather than assuming that absence of a Swiss establishment places it outside the Act. Where the territorial scope is engaged, Determination E addresses whether a representative in Switzerland must be appointed.

3.3. Determination C — private person or federal body

- (10) The Act treats private persons and federal bodies differently in several respects, including the availability of justifications for processing, the rules on the register of processing activities, and the applicable supervisory arrangements. Most commercial organisations are private persons. Cantonal and communal bodies are generally subject to cantonal data protection law rather than the federal Act, which is a frequent source of confusion and should be resolved here where the organisation is a public-sector entity.

3.4. Determination D — controller or processor

- (11) A controller determines the purpose and means of the processing; a processor processes on the controller's behalf. The distinction governs which obligations attach: the register, the information duty, the handling of data subject rights and the breach notification duty fall principally on the controller,

while the processor's obligations run to processing only as instructed, to data security, and to the conditions on sub-processing.

- (12) An organisation is frequently a controller for some processing and a processor for other processing, and the determination is made per processing activity rather than for the organisation as a whole. Processing carried out on behalf of a controller requires a basis consistent with Article 9, addressed in ECS-CH-DPA.

3.5. Determination E — representative and data protection advisor

- (13) A controller with its registered office or residence abroad must designate a representative in Switzerland where it processes the data of persons in Switzerland, the processing is on a large scale and carried out regularly, and it presents a high risk to the personality of the data subjects. The representative maintains a copy of the register of the processing activities concerned and serves as a point of contact for data subjects and for the FDPIC. This obligation is the Swiss counterpart to the representative requirement familiar from the GDPR, and appointing the representative is documented in ECS-CH-REP.
- (14) Separately, the appointment of a data protection advisor is voluntary for private controllers but carries advantages, including in relation to the consultation of the FDPIC on a data protection impact assessment; federal bodies are required to appoint one. Whether an advisor has been or will be appointed should be recorded here.

3.6. Determination F — records required

- (15) The Assessment concludes by identifying which records in the pack the organisation must complete: the register of processing activities (ECS-CH-ROPA), subject to the exemption for smaller undertakings; a data protection impact assessment where the threshold in Article 22 is met (ECS-CH-DPIA); the information, rights and breach-response record (ECS-CH-INFO); a processor agreement where processing is carried out on the organisation's behalf or the organisation acts as a processor (ECS-CH-DPA); and the representative appointment where Determination E requires it (ECS-CH-REP).

4. Transfers abroad

- (16) The Act permits the disclosure of personal data abroad where the Federal Council has determined that the destination state ensures adequate protection, or, in the absence of such a determination, where appropriate safeguards are in place — such as standard contractual clauses recognised or approved by the FDPIC, binding corporate rules, or a specific derogation. The list of states with adequate protection is set out in the Ordinance and is maintained by the Federal Council, and it does not always coincide with the European Union's list of adequate countries.
- (17) Where the organisation transfers personal data outside Switzerland, the destinations and the safeguards relied upon should be recorded, since the register of processing activities requires this information and the information duty requires the state to which data is disclosed to be communicated to the data subject.

5. Enforcement and sanctions

- (18) Supervision is exercised by the FDPIC, who may open an investigation, whether on a complaint or ex officio, and may issue rulings ordering the adaptation, suspension or cessation of processing. The Swiss enforcement model differs materially from the GDPR in the location of sanctions: fines of up to CHF 250 000 are imposed by the cantonal criminal authorities on the responsible natural person — typically a director or officer — for defined breaches, including breaches of the information and access duties, breaches of the minimum requirements for data security, and breaches of duties relating to disclosure abroad and to processing by processors. The consequence is that the individuals responsible for

compliance bear personal exposure, which tends to raise the profile of these obligations within an organisation rather than lower it.

6. Review

- (19) The Assessment is repeated on a change in the organisation's processing that alters its role, on the commencement of processing with an effect in Switzerland, on a change in the categories of data processed, on a change bearing on the representative or advisor position, and in any event at intervals of no more than twelve months.

Annex

Template for the Applicability and Role Assessment under the revised Federal Act on Data Protection (nFADP)

Version of the Assessment	<i>Version identifier, with references to previous versions where applicable.</i>
Last update	<i>DD/MM/YYYY</i>
Prepared by	<i>Name, role and function responsible for the accuracy of this Assessment.</i>
Classification	<i>Internal / disclosable to authorities / disclosable to customers.</i>

1. Organisation

Organisation name and seat	<i>Legal name, registered office or place of residence, and legal form.</i>
Established in Switzerland?	<i>Yes / no. Where no, complete Determination B and Determination E with care.</i>
Nature of the organisation	<i>Private person / federal body / cantonal or communal body. Where a public-sector entity, confirm whether federal or cantonal law applies.</i>
Size	<i>Number of employees, and whether the organisation qualifies for the exemption from the register duty for undertakings with fewer than 250 employees whose processing carries only a limited risk.</i>
Date of assessment	<i>DD/MM/YYYY.</i>
Legal text verified at	<i>Date on which the applicable provisions were verified against the current text of the FADP and the DPO.</i>

2. Determination A — material scope

Personal data of natural persons?	<i>Confirm the processing concerns identifiable natural persons. Where it concerns only legal persons, the Act does not apply — record and stop.</i>
Sensitive personal data?	<i>Identify any category of sensitive personal data processed, using the Swiss definition, including data on proceedings and sanctions and on social assistance measures.</i>
Exemptions	<i>Whether any exemption in the Act applies. The personal-use exemption does not assist an organisation.</i>
Conclusion	<i>The Act does / does not apply to this processing on material grounds.</i>

3. Determination B — territorial scope

Effect in Switzerland	<i>How the processing has an effect in Switzerland — offering goods or services to persons in Switzerland, monitoring their behaviour, or otherwise.</i>
Conclusion	<i>The processing is / is not within the territorial scope of the Act.</i>

4. Determination C — private person or federal body

Status	<i>Private person / federal body / cantonal or communal body.</i>
Where public-sector	<i>Confirm whether federal or cantonal data protection law governs, and the basis.</i>

5. Determination D — controller or processor

Determine per processing activity. An organisation is frequently a controller for some processing and a processor for other processing.

Processing activity	Purpose and means determined by	Controller / processor	Counterparty

6. Determination E — representative and advisor

Representative required?	<i>Where the organisation is established abroad: does it process data of persons in Switzerland, on a large scale, regularly, and with a high risk to the personality of the data subjects? All conditions must be met.</i>
Representative appointed	<i>Where required, identify the representative. Cross-refer to ECS-CH-REP.</i>
Data protection advisor	<i>Whether a data protection advisor has been or will be appointed, and — for a private controller — whether the advantages of doing so, including in relation to FDPIC consultation on a DPIA, have been considered.</i>

7. Transfers abroad

Complete one row per destination outside Switzerland.

Destination state	Data categories	Adequate protection?	Safeguard relied upon

8. Outcome and records required

Summary of position	<i>In one short paragraph: whether the Act applies, in which role, and with what territorial basis.</i>
Records required	<i>Which of ECS-CH-ROPA, ECS-CH-DPIA, ECS-CH-INFO, ECS-CH-DPA and ECS-CH-REP are required.</i>
Owner and target dates	<i>Who is responsible for each consequential action and by when.</i>

9. Review

Next scheduled review	<i>DD/MM/YYYY, no more than twelve months from the date of assessment.</i>
Trigger events registered	<i>The changes that would require re-assessment before that date.</i>

10. Version history and declaration

Version	Date	Nature of the change or review	Approved by

Declaration

The determinations recorded above are made in good faith and, to the best of the knowledge of the person signing, are accurate and complete as at the date of signature. Where a determination could not be made on the information available, the gap and the reason for it have been recorded in the relevant field.

Name	
Role	
Date	
Signature	