

# Federal Act on Data Protection Preliminary Draft

(Unofficial English translation done in January 2017; the official versions can be found here: [German, French, Italian](#))

**This text is a provisional version only. The definitive version, which will be published on [www.bundesrecht.admin.ch](http://www.bundesrecht.admin.ch), will be the only legally binding version.**

*Annex*

*Preliminary draft*

**Federal Act on Data Protection  
(Data Protection Act, FADP)**

of ...

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*The Federal Assembly of the Swiss Confederation,  
based on Articles 95 paragraph 1, 122 paragraph 1 and 173 paragraph 2 of the  
Federal Constitution<sup>1</sup>,  
and having regard to the Federal Council Message dated ...<sup>2</sup>,  
decrees:*

**Section 1 Purpose, Scope and Definitions**

**Art. 1 Purpose**

This Act aims to protect the privacy and the fundamental rights of natural persons whose data is processed.

**Art. 2 Scope**

<sup>1</sup>This Act applies to the processing of data pertaining to natural persons by:

- a. private persons;
- b. federal bodies.

<sup>2</sup>It does not apply to:

- a. personal data that is processed by a natural person exclusively for personal use;
- b. personal data that is processed by the Federal Chambers and parliamentary committees in connection with their deliberations;
- c. personal data that is processed by independent federal judicial authorities in connection with their judicial activities;
- d. personal data that is processed by institutional beneficiaries according to article 2 paragraph 1 of the Host State Act of 22 June 2007<sup>3</sup> which enjoy immunity in Switzerland, such as the International Committee of the Red Cross.

<sup>3</sup>This Act does not apply to personal data that is processed by the federal courts in connection with their judicial activities. For the processing of any other data, the federal courts are exempt from supervision by the Federal Data Protection and Information Commissioner (the Commissioner).

<sup>4</sup> The Federal Assembly and the Federal Council are exempt from supervision by the Commissioner.

**Art. 3 Definitions**

The following definitions apply:

- a. *personal data*: all information relating to an identified or identifiable person;
- b. *data subject*: natural person whose data is processed;

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<sup>1</sup> SR 101

<sup>2</sup> BBl xx

<sup>3</sup> SR 192.12

- c. sensitive personal data:
  - 1. data on religious, ideological, political or trade union-related views or activities,
  - 2. data on health, the intimate sphere or the racial or ethnical origin,
  - 3. genetic data,
  - 4. biometric data which clearly identifies a natural person,
  - 5. data on administrative or criminal proceedings and sanctions,
  - 6. data on social security measures;
- d. *processing*: any operation with personal data, irrespective of the means and the procedures applied, and in particular the collection, recording, storage, use, revision, disclosure, archiving, deletion or destruction of data;
- e. *disclosure*: transmitting or making personal data accessible;
- f. *profiling*: any evaluation of data or personal data in order to analyse significant personal characteristics or predict developments, in particular with respect to the data subject's performance at work, economic situation, health, intimate sphere or mobility;
- g. *federal body*: federal authority and service or person who is entrusted with federal public tasks;
- h. *controller*: federal body or private person that – alone or together with others – decides on the purpose, the means and the scope of the processing;
- i. *processor*: federal body or private person that processes personal data on behalf of the controller.

## Section 2 General Data Protection Provisions

### Art. 4 Principles

<sup>1</sup>Personal data must be processed lawfully.

<sup>2</sup>Processing must be carried out in good faith and must be proportionate.

<sup>3</sup>Personal data may only be collected for a specific purpose which is clearly evident to the data subject; personal data may only be processed in a way that is consistent with the purpose.

<sup>4</sup>Personal data may only be stored in a form which allows identifying the data subject as long as required by the purpose of processing.

<sup>5</sup>Anyone who processes personal data must verify whether the data is accurate and, where necessary, has been kept up to date. Inaccurate or incomplete personal data required for the processing must be corrected or completed. Otherwise the data is to be destroyed.

<sup>6</sup>If the consent of the data subject is required for the processing, such consent is valid only if given voluntarily and unambiguously after the provision of adequate information. Additionally, consent must be given expressly for the processing of sensitive personal data and for profiling.

### Art. 5 Cross-border disclosure

<sup>1</sup>Personal data may not be disclosed abroad if the privacy of the data subjects would be seriously endangered thereby.

<sup>2</sup>Personal data may be disclosed abroad if the Federal Council has determined that the legislation of the State concerned guarantees adequate protection.

<sup>3</sup>In the absence of such a decision by the Federal Council under paragraph 2, personal data may be disclosed abroad only if adequate protection is guaranteed by:

- a. an international treaty;
- b. specific safeguards, in particular through a contract, which were previously notified to the Commissioner;
- c. standardised safeguards, in particular through a contract:
  - 1. which were previously approved by the Commissioner, or
  - 2. which the Commissioner has issued or recognised;
- d. binding corporate rules on data protection which were previously approved:
  - 1. by the Commissioner, or
  - 2. by a foreign authority which is responsible for data protection and belongs to a State which guarantees adequate protection.

<sup>4</sup>If the Commissioner has objections to the specific safeguards under paragraph 3 letter b, he must inform the controller or the processor thereof within 30 days from receipt of the safeguards.

<sup>5</sup>The Commissioner informs the controller or the processor no later than six months from receipt of the complete respective documents whether the standardised safeguards under paragraph 3 letter c number 1 or the binding corporate rules on data protection under paragraph 3 letter d number 1 have been approved or not.

<sup>6</sup>The controller or the processor inform the Commissioner if they make use of the standardised safeguards under paragraph 3 letter c number 2. They notify the Commissioner of the binding corporate rules on data protection under paragraph 3 letter d number 2.

<sup>7</sup>The Federal Council establishes a list of States whose legislation guarantees adequate protection.

## **Art. 6** Disclosure abroad in exceptional cases

<sup>1</sup>By way of derogation from article 5 paragraphs 1 to 3 personal data may exceptionally be disclosed abroad if:

- a. the data subject has consented in the specific case;
- b. the processing is directly connected with the conclusion or the performance of a contract and the data is that of a contractual party;
- c. disclosure is indispensable in the specific case:
  1. in order to safeguard an overriding public interest, or
  2. for the establishment, exercise or enforcement of legal claims before a court or an administrative authority;
- d. disclosure is required in the specific case in order to protect the life or the physical integrity of the data subject or a third party and it is not possible to obtain the consent of the data subject within a reasonable period of time;
- e. the data subject has made the data generally accessible and has not expressly prohibited its processing;
- f. the data originates from a register provided for by law which is accessible to the public or to persons with a legitimate interest, provided that the legal conditions for the consultation are met in the specific case.

<sup>2</sup>The controller or the processor informs the Commissioner if it discloses personal data under paragraph 1 letters b, c and d.

## **Art. 7** Data processing by assignment

<sup>1</sup>The processing of personal data may be assigned by agreement or by law to a processor if:

- a. the data is processed only in a manner permitted for the controller itself; and
- b. no statutory or contractual duty of confidentiality is being violated by the assignment.

<sup>2</sup>The controller must ensure in particular that the processor is able to guarantee the data security and the rights of the data subject. The Federal Council specifies the further duties of the processor.

<sup>3</sup>The processor may only assign the processing to another processor with the prior written consent of the controller.

<sup>4</sup>It may invoke the same justifications as the controller.

## **Art. 8** Good practice recommendations

<sup>1</sup>The Commissioner elaborates good practice recommendations which will specify the data protection regulations. To this end, the Commissioner consults the stakeholders and takes into account the particularities of the respective scope of application and the protection of vulnerable persons.

<sup>2</sup>The controller and any interested parties may supplement the recommendations of the Commissioner or draw up their own good practice recommendations. They may submit their recommendations to the Commissioner for approval. If the recommendations are consistent with the data protection regulations, the Commissioner approves them.

<sup>3</sup>The Commissioner publishes the good practice recommendations prepared or approved by him.

## **Art. 9** Compliance with good practice recommendations

<sup>1</sup>If the controller complies with good practice recommendations, it complies with the data protection provisions which are specified by the good practices recommendations.

<sup>2</sup>The data protection regulations may also be complied with in another way than provided for in the good practice recommendations.

## **Art. 10** Certification

<sup>1</sup>The controller and the processor may submit their data processing operations for evaluation to a recognised independent certification organisation.

<sup>2</sup>The Federal Council issues provisions on the recognition of certification procedures and the introduction of a data protection quality label. In doing so, it shall take into account international law and internationally recognised technical norms.

## **Art. 11** Security of personal data

<sup>1</sup>The controller and the processor must ensure the security of personal data. Adequate technical and organisational measures must protect personal data against unauthorised processing or loss.

<sup>2</sup>The Federal Council shall issue provisions on the minimum requirements for data security.

## **Art. 12** Data of a deceased person

<sup>1</sup>The controller must grant access to the data of a deceased person free of charge, if a legitimate interest to the access exists and:

- a. the deceased person during his lifetime did not expressly prohibit such access; or
- b. no overriding interest of the deceased person or third parties prevents it.

<sup>2</sup>A legitimate interest is presumed for persons related in a direct line to the deceased person or who were married to or living in a registered partnership or in a de facto cohabitation with the deceased person at the time of death.

<sup>3</sup>No official secrecy or professional confidentiality obligation can be invoked.

<sup>4</sup>Each heir may request that the controller delete or destroy free of charge any data of the testator unless:

- a. the testator during his lifetime expressly prohibited such action; or
- b. overriding interests of the testator or third parties oppose a deletion or destruction.

<sup>5</sup>Specific provisions in other federal acts are reserved.

## **Section 3** Duties of the Controller and the Processor

### **Art. 13** Duty of information when collecting personal data

<sup>1</sup>The controller informs the data subject about the collection of personal data; such duty of information also applies when data is collected from third parties.

<sup>2</sup>Not later than at the time of collection the controller shall provide to the data subject all information which is required in order to enable the data subject to assert its rights according to this Act and to ensure transparent processing of data, in particular:

- a. the controller's identity and contact information;
- b. the processed personal data or the categories of the processed personal data;
- c. the purpose of processing.

<sup>3</sup>If personal data is disclosed to third parties, the controller shall furthermore inform the data subject about the recipients or the categories of recipients.

<sup>4</sup>If the processing of personal data is assigned to a processor, the controller shall provide the identity and contact information of the processor as well as the data or the categories of data that it processes.

<sup>5</sup>If personal data is not directly collected from the data subject, the data subject must be informed at the latest when recording of the data begins; if data is not recorded, the data subject must be informed at the time of first disclosure to third parties.

### **Art. 14** Exceptions to the duty of information and restrictions

<sup>1</sup>The duty of information according to Article 13 ceases to apply if the data subject already disposes of such information.

<sup>2</sup>If personal data is not collected from the data subject, the duty of information ceases to apply, if:

- a. the recording or the disclosure of data is expressly provided for by law; or

b. the provision of information is not possible or possible only with disproportionate efforts.

<sup>3</sup> The controller may restrict, defer or waive the provision of information, if:

- a. a formal law so provides; or
- b. this is required to protect the overriding interests of third parties.

<sup>4</sup> Furthermore, provision of information may be restricted, deferred or waived:

- a. if the controller is a private person and overriding interests of the controller so require and the controller does not disclose personal data to third parties;
- b. if the controller is a federal body and one of the following conditions apply:
  1. it is required to protect overriding public interests, in particular the internal and external security of the Confederation; or
  2. the provision of information would jeopardise the purpose of administrative or judicial inquiries, investigations or proceedings.

<sup>5</sup> As soon as the reason for waiving, restricting or deferring the provision of information ceases to apply, the controller must provide the information, unless this is impossible or only possible with disproportionate efforts.

**Art. 15** Duty of information and consultation in the case of an automated individual decision

<sup>1</sup> The controller informs the data subject about a decision taken solely on the basis of automated data processing and which produces legal effects concerning him or significantly affects the data subject.

<sup>2</sup> It shall give the data subject the opportunity to comment on the automated individual decision and on the processed personal data.

<sup>3</sup> The duty of information and consultation does not apply when an automated individual decision is provided for in a formal law.

**Art. 16** Data protection impact assessment

<sup>1</sup> If the intended data processing is expected to lead to an increased risk for the data subject's privacy or fundamental rights, the controller or the processor must conduct a data protection impact assessment in advance.

<sup>2</sup> The data protection impact assessment lays out the intended processing, the risks as regards the data subject's privacy or fundamental rights as well as the intended measures to mitigate the risk of a breach of the data subject's privacy or fundamental rights.

<sup>3</sup> The controller or the processor shall notify the Commissioner of the outcome of the data protection impact assessment and the intended measures.

<sup>4</sup> If the Commissioner objects to the intended measures, he shall notify the controller or the processor within three months from receipt of the required information.

**Art. 17** Notification of a breach of data protection

<sup>1</sup> The controller shall notify the Commissioner without delay of an unlawful processing of data or the loss of data, unless the breach of data protection is unlikely to result in a risk to the privacy or the fundamental rights of the data subject.

<sup>2</sup> The controller shall also inform the data subject if this is necessary for the protection of the data subject or the Commissioner requests so.

<sup>3</sup> For the reasons mentioned in Article 14 paragraphs 3 and 4 the controller may restrict, defer or waive the notification to the data subject.

<sup>4</sup> The processor shall notify the controller without delay of an unlawful processing of data.

**Art. 18** Data protection by design and by default

<sup>1</sup> The controller and the processor must take appropriate measures in order to mitigate the risk of breaches of privacy or fundamental rights and prevent such breaches from the time the data processing is planned.

<sup>2</sup> Furthermore, they must implement appropriate measures ensuring that, by default, only personal data which is necessary for each specific purpose of the processing is processed.

## **Art. 19** Further obligations

The controller and the processor are also obliged as follows:

- a. They must document their data processing;
- b. They must inform recipients of personal data of any correction, deletion or destruction of data, of breaches of data protection as well as of restrictions of the processing according to Article 25 paragraph 2 or Article 34 paragraph 2, unless this is impossible or only possible with disproportionate efforts.

## **Section 4** Rights of the Data Subject

### **Art. 20** Access right

<sup>1</sup>Any person may request information from the controller free of charge as to whether personal data concerning him is being processed.

<sup>2</sup>The data subject shall receive the information required in order to enable it to assert its rights under this Act and to ensure the transparent processing of data. In any case, the following information shall be provided to the data subject:

- a. identity and contact details of the controller;
- b. the data being processed;
- c. the purpose of the processing;
- d. the envisaged period of storage of the personal data or, if this is not possible, the criteria used to determine such period;
- e. the existence of an automated individual decision-making;
- f. any available information as to the source of the personal data;
- g. if applicable, the information according to Article 13 paragraphs 3 and 4.

<sup>3</sup>If a decision is taken based on the processing of data, in particular an automated individual decision, the data subject shall be informed on the result of the decision, the manner in which the decision was taken and its consequences.

<sup>4</sup>Personal data on health may be communicated to the data subject by a doctor designated by it.

<sup>5</sup>If the controller has personal data processed by a processor, the controller remains under the obligation to provide information. However, the processor must provide information if it does not disclose the identity of the controller or if the controller is not domiciled in Switzerland.

<sup>6</sup>No one may waive the right to information in advance.

### **Art. 21** Limitations to the access right

<sup>1</sup>The controller may refuse, restrict or defer provision of information under the conditions of Article 14 paragraphs 3 and 4.

<sup>2</sup>The controller must indicate the reason for such refusal, restriction or deferral. In the case of a federal body, it may refrain from giving reasons as long as the interests provided for in Article 14 paragraph 4 letter b might be at risk.

### **Art. 22** Limitations to the access right for journalists

<sup>1</sup>If personal data is used exclusively for publication in the edited section of a periodically published medium, the controller may refuse, restrict or defer provision of information for one of the following reasons:

- a. the data reveals information about the sources of the information;
- b. access to the drafts of publications would have to be given;
- c. the freedom of the public to form its opinion would be prejudiced.

<sup>2</sup>Journalists may also refuse, restrict or defer provision of information if the personal data is being used exclusively as their personal work instruments.

## Section 5 Special Provisions Concerning Processing of Data by Private Persons

### Art. 23 Breaches of privacy

<sup>1</sup>Anyone who processes personal data must not unlawfully breach the privacy of the data subjects in doing so.

<sup>2</sup>A breach of privacy exists in particular:

- a. if personal data is processed in contravention with the principles set forth in Articles 4-6 and 11;
- b. if personal data is processed against the data subject's express declaration of intent;
- c. if sensitive personal data is disclosed to third parties;
- d. by way of profiling without the express consent of the data subject.

<sup>3</sup>In general, there is no breach of privacy if the data subject has made the data generally accessible and has not expressly prohibited its processing.

### Art. 24 Justifications

<sup>1</sup>A breach of privacy is unlawful unless it is justified by the consent of the data subject, by an overriding private or public interest or by law.

<sup>2</sup>An overriding interest of the person processing personal data may exist, in particular if that person:

- a. processes personal data in direct connection with the conclusion or the performance of a contract and the personal data is that of a contractual party;
- b. is or intends to be in commercial competition with another person and for this purpose processes personal data without disclosing it to third parties;
- c. processes personal data in order to verify the data subject's creditworthiness, if:
  1. the processed data is not sensitive personal data,
  2. data is disclosed to third parties only if the data is required by such third parties for the conclusion or the performance of a contract with the data subject,
  3. the data subject is of age;
- d. processes personal data on a professional basis exclusively for publication in the edited section of a periodically published medium;
- e. processes personal data for purposes not relating to a specific person, in particular for the purposes of research, planning and statistics, as long as:
  1. the data is rendered anonymous as soon as the purpose of processing allows for it,
  2. sensitive personal data is disclosed to third parties in such a manner that the data subjects may not be identified,
  3. results are published in such a manner that the data subjects may not be identified;
- f. collects data on a person of public interest, provided the data relates to the public activities of that person.

### Art. 25 Legal claims

<sup>1</sup>Actions relating to the protection of privacy are governed by Articles 28, 28a and 28g – 28l of the Civil Code<sup>4</sup>. The plaintiff may in particular request that:

- a. data processing be prohibited;
- b. disclosure of personal data to third parties be prohibited;
- c. personal data be corrected, deleted or destroyed.

<sup>2</sup>If neither the accuracy nor the inaccuracy of the personal data can be demonstrated, the plaintiff may request for a note that indicates the objection to be added to the data. Additionally, the plaintiff may request that the processing of the disputed data be limited.

<sup>3</sup>Furthermore, the plaintiff may request the correction, the destruction or the prohibition of processing, in particular the prohibition of disclosure to third parties, the note indicating the objection of the litigious nature or the judgement be communicated to third parties or published.

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<sup>4</sup> SR 210

## Section 6 Special Provisions for Data Processing by Federal Bodies

### Art. 26 Responsible body and controls

<sup>1</sup>The federal body that processes or arranges for the processing of personal data is responsible for data protection.

<sup>2</sup>If federal bodies process personal data together with other federal bodies, with cantonal bodies or with private persons, the Federal Council regulates the control of and responsibility for data protection.

### Art. 27 Legal basis

<sup>1</sup>Federal bodies may process personal data if there is a statutory basis for doing so.

<sup>2</sup>For the processing of sensitive personal data, profiling or the issuance of an automated individual decision under Article 15 paragraph 1 the statutory basis must consist in a formal law. A statutory basis consisting in a substantive law is sufficient if the following requirements are fulfilled:

- a. The processing is essential for a task clearly defined in a formal law; and
- b. The processing does not involve any special risks affecting the privacy and the fundamental rights of the data subject.

<sup>3</sup>By way of derogation from paragraphs 1 and 2 federal bodies may process personal data exceptionally and in the specific case without a statutory basis if one of the following requirements is fulfilled:

- a. The Federal Council authorises processing provided that the rights of the data subject are not endangered;
- b. The data subject has given his consent to the processing or made his personal data generally accessible and has not expressly prohibited the processing;
- c. The processing is required in order to protect the life or the physical integrity of the data subject or a third party and it is not possible to obtain the consent of the data subject within a reasonable period of time.

### Art. 28 Automated data processing in pilot projects

<sup>1</sup>The Federal Council may, before a formal law enters into force, approve the automated processing of sensitive personal data or profiling if:

- a. the tasks based on which the processing is required are regulated in a formal law that has already entered into force;
- b. adequate measures are taken to prevent breaches of the fundamental rights of the data subject; and
- c. a test phase before entry into force is mandatory, in particular for technical reasons.

<sup>2</sup>It consults with the Commissioner in advance.

<sup>3</sup>The competent federal body shall provide the Federal Council with an evaluation report at the latest within two years after inception of the pilot project. The report contains a proposal on whether the processing should be continued or terminated.

<sup>4</sup>Automated data processing or profiling must be terminated in any event if within five years after inception of the pilot project no formal law has entered into force that contains the required legal basis.

### Art. 29 Disclosure of personal data

<sup>1</sup>Federal bodies may disclose personal data if a legal basis in accordance with Article 27 paragraphs 1 and 2 so provides.

<sup>2</sup>In derogation from paragraph 1, federal bodies may exceptionally disclose personal data in the specific case if one of the following requirements is fulfilled:

- a. disclosure of the data is indispensable to the controller or the recipient for the fulfilment of a statutory task;
- b. the data subject has consented to the disclosure;
- c. disclosure of the data is required in order to protect the life or the physical integrity of the data subject or a third party and it is not possible to obtain the consent of the data subject within a reasonable period of time;

- d. the data subject has made its data generally accessible and has not expressly prohibited disclosure;
- e. the recipient credibly demonstrates that the data subject is withholding consent or objects to disclosure in order to prevent the enforcement of legal claims or the safeguarding of other legitimate interests; the data subject must be given the opportunity to comment beforehand, unless this is impossible or can only be achieved with a disproportionate effort.

<sup>3</sup>Federal bodies may also disclose personal data in the context of official information disclosed to the general public, either ex officio or pursuant to the Freedom of Information Act of 17 December 2004,<sup>5</sup> if:

- a. the data concerned pertains to the fulfilment of a public duty; and
- b. there is an overriding public interest in its disclosure.

<sup>4</sup>Federal bodies may on request also disclose the name, first name, address and date of birth of a person if the requirements of paragraph 1 or 2 are not fulfilled.

<sup>5</sup>They may make personal data generally accessible by means of automated information and communication services if a legal basis provides for the publication of such data or if they disclose data on the basis of paragraph 3. If there is no longer a public interest in making such data generally accessible, the data concerned must be deleted from the automated information and communication service.

<sup>6</sup>They shall refuse or restrict disclosure, or make it subject to conditions if:

- a. essential public interests or clearly legitimate interests of a data subject so require or
- b. statutory duties of confidentiality or special data protection regulations so require.

#### **Art. 30** Objection to disclosure of personal data

<sup>1</sup>The data subject that credibly demonstrates a legitimate interest may object to the disclosure of certain personal data by the federal body concerned.

<sup>2</sup>The federal body shall refuse such request if one of the following requirements is fulfilled:

- a. there is a legal duty of disclosure;
- b. the fulfilment of its task would otherwise be endangered.

<sup>3</sup>Article 29 paragraph 3 is reserved.

#### **Art. 31** Offering of documents to the Federal Archives

<sup>1</sup>In accordance with the Archiving Act of 26 June 1998<sup>6</sup>, the federal bodies shall offer the Federal Archives all personal data that the federal bodies do not constantly require anymore

<sup>2</sup>The federal bodies shall destroy personal data designated by the Federal Archives as not being of archival value unless it:

- a. is rendered anonymous;
- b. must be preserved on evidentiary or security grounds or in order to safeguard the legitimate interests of the data subject.

#### **Art. 32** Data processing for research, planning and statistics

<sup>1</sup>Federal bodies may process personal data for purposes not related to specific persons, in particular for research, planning and statistics, if:

- a. the data is rendered anonymous, as soon as the purpose of the processing permits;
- b. the federal body discloses sensitive personal data to private persons in such a manner that the data subjects cannot be identified;
- c. the recipient only passes on the data with the consent of the federal body; and
- d. the results are published in such a manner that the data subjects may not be identified.

<sup>2</sup>Articles 4 paragraph 3, 27 paragraphs 1 and 2 and Article 29 paragraph 1 do not apply.

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<sup>5</sup> SR 152.3

<sup>6</sup> SR 152.1

**Art. 33** Private law activities of federal bodies

<sup>1</sup>If a federal body acts under private law, the provisions for data processing by private persons apply.

<sup>2</sup>Supervision is governed by the provisions on federal bodies.

**Art. 34** Claims and procedure

<sup>1</sup>Anyone with a legitimate interest may request the responsible federal body to:

- a. refrain from processing the personal data concerned unlawfully;
- b. eliminate the consequences of unlawful processing;
- c. ascertain the unlawfulness of the processing.

<sup>2</sup>If it is not possible to demonstrate the accuracy or the inaccuracy of personal data, the federal body must attach to the data a note that indicates the objection and restrict its processing.

<sup>3</sup>The applicant may in particular request that the federal body:

- a. correct, delete or destroy the personal data concerned;
- b. publish or communicate its decision to third parties, in particular on the correction, deletion or destruction, the objection to disclosure under Article 30 or the note that indicates the objection.

<sup>4</sup>The correction, deletion or destruction of personal data may not be requested with respect to the inventory of publicly accessible libraries, educational institutions, museums, archives or other public memory institutions. If the applicant can prove an overriding interest, he may however request that the institution restrict access to the disputed data.

<sup>5</sup>The procedure is governed by the Federal Act of 18 December 1968<sup>7</sup> on Administrative Procedure (Administrative Procedure Act). The exceptions contained in Articles 2 and 3 of the Administrative Procedure Act do not apply.

**Art. 35** Procedure in the event of the disclosure of official documents containing personal data

If proceedings relating to access to official documents within the meaning of the Freedom of Information Act<sup>8</sup> that contain personal data are pending, the data subject may in such proceedings claim the rights given to him under Article 34 for those of the documents that are the subject matter of the access proceedings.

**Art. 36** Register

<sup>1</sup>The responsible federal bodies shall notify the Commissioner of their data processing activities.

<sup>2</sup>The Commissioner shall keep a register on data processing activities. The register shall be public.

<sup>3</sup>Data processing activities must be notified prior to the commencement of such activities.

**Section 7** Federal Data Protection and Information Commissioner

**Art. 37** Appointment and status

<sup>1</sup>The Commissioner is appointed by the Federal Council for a term of office of four years. The appointment must be approved by the Federal Assembly.

<sup>2</sup>The employment relationship of the Commissioner is governed by the Federal Personnel Act of 24 March 2000 (BPG)<sup>9</sup>, unless this Act provides otherwise.

<sup>3</sup>The Commissioner fulfils his tasks independently without being subject to, or without obtaining, the instructions of any authority or third party. He is assigned to the Federal Chancellery for administrative purposes.

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<sup>7</sup> SR 172.021

<sup>8</sup> SR 152.3

<sup>9</sup> SR 172.220.1

<sup>4</sup>He has a permanent secretariat and his own budget. He hires his own staff.

<sup>5</sup>The Commissioner is not subject to the system of assessment under Article 4 paragraph 3 BPG.

**Art. 38** Reappointment and termination of the term of office

<sup>1</sup>The Commissioner may be reappointed twice.

<sup>2</sup>If the Federal Council does not reappoint the Commissioner at least six months prior to the term of his office, he shall tacitly be reappointed for another term.

<sup>3</sup>The Commissioner may request the Federal Council to be discharged from office at the end of any month subject to six months advance notice.

<sup>4</sup>The Federal Council may dismiss the Commissioner from office before the expiry of his term of office if he:

- a. wilfully or through gross negligence seriously violates official duties; or
- b. is permanently unable to fulfil his office.

**Art. 39** Secondary employment

<sup>1</sup>The Commissioner must not carry out any additional gainful activity. Furthermore, he must not hold an office of the Confederation or of a canton and must not be a member of the management, administration, supervisory body or auditors of a commercial enterprise.

<sup>2</sup>The Federal Council may permit the Commissioner to carry out a secondary employment under paragraph 1 provided this neither compromises the performance of the function nor independence and standing.

**Art. 40** Supervision

<sup>1</sup>The Commissioner supervises compliance with the data protection regulations of the Confederation.

<sup>2</sup>Federal administrative bodies which supervise private persons or organisations outside of the Federal Administration in accordance with another federal act invite the Commissioner to submit a statement before they issue a decision pertaining to data protection issues.

<sup>3</sup>If the Commissioner has initiated his own proceedings against the same party, the two authorities must coordinate their proceedings.

**Art. 41** Investigation

<sup>1</sup>The Commissioner may, ex officio or upon notification, initiate an investigation against a federal body or a private person if there are any indications that a data processing could violate the data protection regulations.

<sup>2</sup>The federal body or the private person will provide the Commissioner with the information required by the Commissioner and will make any and all documents necessary for the investigation available to the Commissioner. The right to refuse to provide information is governed by Articles 16 and 17 of the Administrative Procedure Act<sup>10</sup>.

<sup>3</sup>If the federal body or the private person does not comply with the duty to cooperate and if the Commissioner has tried in vain to obtain information and documents, the Commissioner may in the context of an investigation:

- a. inspect premises without prior notice;
- b. request access to all necessary data and information.

<sup>4</sup>Outside of investigation proceedings the Commissioner may verify whether private persons or federal bodies comply with the data protection regulations and advise them.

<sup>5</sup>If the data subject notified the Commissioner, the Commissioner will inform the data subject of his next steps in the matter and the results of the investigation, if any.

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<sup>10</sup> SR 172.021

## **Art. 42** Preliminary measures

<sup>1</sup>The Commissioner may order precautionary measures in order to maintain an existing situation, protect endangered legal interests or preserve evidence.

<sup>2</sup>For the enforcement of precautionary measures the Commissioner may call in other federal authorities as well as the cantonal and municipal police.

## **Art. 43** Administrative measures

<sup>1</sup>If data protection regulations have been violated, the Commissioner may order that the processing is adjusted, fully or partially suspended or terminated and that the data is fully or partially destroyed.

<sup>2</sup>Moreover, the Commissioner may defer or prohibit disclosure abroad if it violates the requirements under Articles 5 or 6 or specific provisions on the disclosure of personal data abroad in other Federal Acts.

## **Art. 44** Proceedings

<sup>1</sup>Investigation proceedings and decisions under Articles 42 and 43 are governed by the Administrative Procedure Act<sup>11</sup>.

<sup>2</sup>Only the federal body or the private person against whom the investigation was initiated shall be party to the proceedings.

<sup>3</sup>Appeals against precautionary measures under Article 42 shall have no suspensive effect.

<sup>4</sup>The Commissioner may file an appeal against appeal decisions issued by the Federal Administrative Court.

## **Art. 45** Duty to report

If the Commissioner, while exercising his duties, becomes aware of any criminal offences which are prosecuted ex officio, he shall inform the criminal prosecution authorities thereof.

## **Art. 46** Administrative assistance between Swiss authorities

<sup>1</sup>Federal and cantonal authorities provide the Commissioner with the information and personal data required for the enforcement of this Act.

<sup>2</sup>The Commissioner discloses to the following authorities the information and personal data required for the performance of their statutory duties:

- a. the cantonal authorities responsible for data protection;
- b. the competent criminal prosecution authorities if a criminal offence under Article 45 is reported;
- c. the federal authorities as well as the cantonal and municipal police for the enforcement of the measures under Articles 41 paragraph 3, 42 and 43.

## **Art. 47** Administrative assistance between Swiss and foreign authorities

<sup>1</sup>The Commissioner may request from foreign authorities responsible for data protection the disclosure of the information and personal data required for the performance of his statutory duties. To this end, the Commissioner may in particular make available the following information:

- a. the identity of the controller, the processor or other third parties involved;
- b. categories of data subjects;
- c. the identity of data subjects if:
  1. the data subjects have consented thereto, or
  2. the notification of the identity of the data subjects is indispensable in order to fulfil the statutory duties of the Commissioner or the foreign authority;
- d. processed personal data or categories of processed personal data;

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<sup>11</sup> SR 172.021

- e. the purpose of data processing;
- f. recipients or categories of recipients;
- g. technical and organisational measures.

<sup>2</sup>The Commissioner may grant administrative assistance to the foreign authority and provide it with the information under paragraph 1 if the following requirements are fulfilled:

- a. it undertakes not to use the information and personal data made available to it for any other purposes than the ones stated in the request for administrative assistance;
- b. it undertakes to follow similar requests for administrative assistance submitted by Switzerland;
- c. it undertakes to observe official and professional secrecy;
- d. it undertakes to transmit the received information and personal data to any third parties only with the explicit consent of the Commissioner;
- e. it undertakes to adhere to the Commissioner's conditions and restrictions of use.

#### **Art. 48** Information

<sup>1</sup>The Commissioner reports back to the Federal Assembly periodically and as needed. He simultaneously submits the report to the Federal Council. The periodic reports are published.

<sup>2</sup>In cases of general interest, he informs the public of his findings and his decisions.

#### **Art. 49** Additional tasks

The Commissioner has in particular the following additional tasks:

- a. he informs and advises the federal and cantonal bodies as well as private persons on matters of data protection.
- b. he cooperates with domestic and foreign data protection authorities.
- c. he raises public awareness, and in particular that of vulnerable private persons, regarding data protection.
- d. he provides persons at their request with information on how they can exercise their rights.
- e. he provides an opinion on draft federal legislation and on federal measures concerning the processing of data.
- f. he carries out the tasks assigned to him under the Freedom of Information Act<sup>12</sup>.

## **Section 8 Criminal Provisions**

#### **Art. 50** Breach of obligations to provide information, to notify or to cooperate.

<sup>1</sup>On complaint, private persons are liable to a fine of up to 500,000 Swiss Francs if they:

- a. breach their obligations under Articles 13, 15 und 20 by wilfully providing false or incomplete information;
- b. wilfully fail:
  - 1. to inform the data subject pursuant to Articles 13 paragraph 1 and 5, 15 and 17 paragraph 2; or
  - 2. to provide the data subject with the information required under Article 13 paragraph 2, 3 and 4.
- c. wilfully do not communicate to the Commissioner the results of the data protection impact assessment (Article 16 paragraph 3).

<sup>2</sup>Private persons are liable to a fine of up to 500,000 Swiss Francs if they wilfully:

- a. fail to inform the Commissioner in accordance with Article 5 paragraph 3 letter b and paragraph 6;
- b. fail to submit for approval to the Commissioner the standardised safeguards or the binding corporate rules on data protection (Article 5 paragraph 3 letter c section 1 and letter d section 1);
- c. provide false information to the Commissioner during an investigation or refuse to cooperate (Article 41 paragraph 2);

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<sup>12</sup> SR 152.3

- d. fail to notify the Commissioner of data protection breaches pursuant to Article 17 paragraph 1;
- e. fail to comply with a decision issued by the Commissioner.

<sup>3</sup>On complaint, private persons are liable to a fine of up to 500,000 Swiss Francs if they wilfully:

- a. fail to inform the recipients to whom personal data was transmitted pursuant to Article 19 letter b;
- b. fail to inform the controller of an unlawful processing of data pursuant to Article 17 paragraph 4.

<sup>4</sup>Anyone who acts negligently shall be liable to a fine not exceeding 250,000 Swiss Francs.

**Art. 51** Violation of duties of diligence

<sup>1</sup>On complaint, private persons are liable to a fine of up to 500,000 Swiss Francs if they wilfully:

- a. transmit personal data abroad in violation of Article 5 paragraphs 1 and 2 and without the conditions set forth in Article 6 being met;
- b. delegate the data processing to a processor without the conditions set forth in Article 7 paragraphs 1 and 2 being met;
- c. fail to take the necessary measures to protect data against unauthorised processing and loss (Art. 11);
- d. fail to perform a data protection impact assessment (Art. 16);
- e. fail to take the measures set forth in Article 18;
- f. fail to document their data processing as required by Article 19 letter a.

<sup>2</sup>Anyone who acts negligently shall be liable to a fine not exceeding 250,000 Swiss Francs.

**Art. 52** Breach of professional confidentiality

<sup>1</sup>On complaint, a person shall be liable to a custodial sentence of up to three years or a monetary penalty if he wilfully discloses secret personal data:

- a. of which he has gained knowledge in the course of his professional activities which require knowledge of such data;
- b. that he processed himself for commercial purposes.

<sup>2</sup>The same penalties apply to anyone who wilfully discloses secret personal data that has come to his knowledge in the course of his activities for a person bound by a confidentiality obligation or in the course of training with such a person.

<sup>3</sup>The disclosure of secret personal data remains punishable after termination of such professional activities or training.

**Art. 53** Contraventions committed within undertakings

If the fine does not exceed 100,000 Swiss Francs and it appears that the investigation into punishable persons under Article 6 of the Federal Act on Administrative Criminal Law of 22 March 1974<sup>13</sup> requires criminal investigation measures which would be disproportionate to a potential sentence, the authority may decide not to prosecute these persons and instead sentence the undertaking to the payment of the fine.

**Art. 54** Applicable law and procedure

The cantons are responsible for the prosecution and judgment of criminal acts.

**Art. 55** Statute of limitation for the criminal prosecution of contraventions

For contraventions, the right to criminally prosecute is subject to a limitation period of five years from the date of the act.

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<sup>13</sup> SR 313.0

## **Section 9 Conclusion of International Treaties**

### **Art. 56**

The Federal Council may conclude international treaties concerning:

- a. the international cooperation between data protection authorities;
- b. the mutual recognition of an adequate level of protection for the disclosure of personal data abroad.

## **Section 10 Final Provisions**

### **Art. 57** Implementation by the cantons

<sup>1</sup>Unless they are subject to cantonal data protection regulations that ensure an adequate level of data protection, Articles 1-22, 26, 27, 29-32, 34 paragraphs 1-3 and 36 of this Act apply to the processing of personal data by cantonal bodies when implementing federal law.

<sup>2</sup>The cantons shall appoint a body that supervises compliance with data protection regulations. Articles 41-43, 48 and 49 apply by analogy.

### **Art. 58** Repeal and amendments of other legislation

The repeal and the amendments of other legislation are governed in the Annex.

### **Art. 59** Transitional provisions

Within two years from the entry into force of this Act, the controller and the processor must be able to:

- a. perform a data protection impact assessment of the processing pursuant to Article 16;
- b. adopt the measures set forth in Articles 18 and 19 letter a for data processing activities which are already ongoing at the time of the entry into force of this Act.

### **Art. 60** Referendum and entry into force

<sup>1</sup>This Act is subject to an optional referendum.

<sup>2</sup>The Federal Council determines the date on which this Act enters into force.

## Repeals and amendments of other Acts

*[Translators' note: as specified below, this document does not contain translations of all repeals and amendments of other Acts. Furthermore, please note that additional repeals and amendments are set forth in a separate preliminary Federal Act on the revision of the Data Protection Act and the modification of other Federal Acts (see draft amendments of further legislation in German, French and Italian language [\[DE/FR/IT\]](#)).*

I

The Federal Act of 19 June 1992<sup>14</sup> on Data Protection will be repealed.

II

The Acts hereinafter will be amended as follows:

### **1. Swiss Citizenship Act of 29 September 1952<sup>15</sup>**

*[not translated]*

### **2. Foreign Nationals Act of 16 December 2005<sup>16</sup>**

*[not translated]*<sup>17</sup>

### **3. Asylum Act of 26 June 1998<sup>18</sup>**

*[not translated]*<sup>19 20 21</sup>

### **4. Federal Act of 20 June 2003 on the Information System for Foreign Nationals and Asylum Matters<sup>22</sup>**

*[not translated]*<sup>23</sup>

### **5. Freedom of Information Act of 17 December 2004<sup>24</sup>**

*Article 7 paragraphs 2 and 3*

<sup>2</sup>The right of access to official documents shall be limited, deferred or refused if such access may prejudice the privacy of third parties.

<sup>3</sup>In derogation from paragraph 2 the authority may exceptionally grant access to official documents if there is a prevailing public interest to the access.

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14 SR 235.1  
15 SR 141.0  
16 SR 142.20  
17 SR ...  
18 SR 142.31  
19 SR ...  
20 SR ...  
21 SR ...  
22 SR 142.51  
23 SR ...  
24 SR 152.3

*Article 11 paragraph 1*

<sup>1</sup>If the authority considers granting access to documents which contain personal data of third parties or to apply Article 7 paragraph 3, it shall consult the third party concerned and give it the opportunity to submit comments within ten days.

*Article 12 paragraph 3*

<sup>3</sup>The authority shall suspend access to official documents which contain personal data or access according to Article 7 paragraph 3 until the legal situation has been clarified.

*Article 15 paragraph 2 letter c (new)*

<sup>2</sup>Furthermore, the authority shall render a decision if, contrary to the recommendation, it:  
c. intends to grant access to an official document according to Article 7 paragraph 3.

**6. Administrative Procedure Act of 20 December 1968<sup>25</sup>**

*[not translated]*

**7. Government and Administration Organisation Act of 21 March 1997<sup>26,26</sup>**

*[not translated]*

**8. Federal Personnel Act of 24 March 2000<sup>27</sup>**

*[not translated]*<sup>28</sup>

**9. Swiss Civil Code<sup>29</sup>**

*Article 45a paragraph 3 number 3 and paragraph 4*

<sup>3</sup>Within the limits of the law and in co-operation with the cantons, the Federal Council regulates:  
3. the organisational and technical measures necessary to ensure data protection and data security as well as the supervision of compliance with the data security regulations.

<sup>4</sup>The Federal Council may fully or partially deviate from Article 34 paragraphs 1-3 of the Federal Act on Data Protection of ...<sup>30</sup> when regulating the rights of data subjects if the purpose of the central database so requires.

**10. Federal Act of 24 March 2000 on the Processing of Personal Data in the Federal Department of Foreign Affairs<sup>31</sup>**

*[not translated]*

**11. Civil Procedure Code<sup>32</sup>**

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<sup>25</sup> SR 172.021

<sup>26</sup> SR 172.010

<sup>27</sup> SR 172.220.1

<sup>28</sup> SR ...

<sup>29</sup> SR 210

<sup>30</sup> SR ...

<sup>31</sup> SR 235.2

<sup>32</sup> SR 272

*Article 20 letter d*

The court at the domicile or registered office of either of the parties has jurisdiction to decide on:

- d. actions and requests based on the Federal Act on Data Protection of ...<sup>33</sup>,

*Article 99 paragraph 3 letter d*

<sup>3</sup>No security need be provided:

- d. in proceedings concerning a dispute under the Federal Act on Data Protection of...<sup>34</sup>.

*Article 113 paragraph 2 letter g*

<sup>2</sup>No court costs are charged in disputes:

- g. relating to the Federal Act on Data Protection of ...<sup>35</sup>.

*Article 114 letter f*

In litigation proceedings, no court costs are charged in disputes:

- f. relating to the Federal Act on Data Protection of ...<sup>36</sup>.

*Article 243 paragraph 2 letter d*

<sup>2</sup>They apply regardless of the amount in dispute to:

- d. disputes concerning the right of access to personal data provided by the Federal Act on Data Protection of...<sup>37</sup>;

**12. Federal Act of 18 December 1987 on Private International Law<sup>38</sup>**

*Article 130 paragraph 3*

Legal actions for the enforcement of the right to information and access in connection with the processing of personal data may be submitted to courts mentioned in Article 129 or to Swiss courts at the place where the respective processing takes place.

**13. Swiss Criminal Code<sup>39</sup>**

*Article 179<sup>novies</sup>*

Any person who without authorisation obtains personal data which is not freely accessible is liable on complaint to a custodial sentence not exceeding three years or to a monetary penalty.

*Insert before the title of Section 4*

*Article 179<sup>decies</sup>*

Misuse of identity for the purpose of obtaining an unlawful advantage

Any person who makes use of the identity of a third person without that person's consent and in order to harm that person or to obtain an unlawful advantage for himself or for another is liable on complaint to a custodial sentence not exceeding one year or to a monetary penalty.

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33 SR ...  
34 SR ...  
35 SR ...  
36 SR ...  
37 SR ...  
38 SR 291  
39 SR 311.0

**14. Federal Act of 22 March 1974 on Administrative Criminal Law<sup>40</sup>**

*[not translated]*

**15. Military Criminal Procedure of 23 March 1979<sup>41</sup>**

*[not translated]*

**16. Federal Act of 13 June 2008 on Federal Police Information Systems<sup>42</sup>**

*[not translated]*

**17. Federal Act of 4 October 1991<sup>43</sup> on the Federal Polytechnic Schools<sup>43</sup>**

*[not translated]*

**18. Sports Promotion Act of 17 June 2011<sup>44</sup>**

*[not translated]*

**19. Federal Act of 17 June 2011 on the Federal Information Systems in the Area of Sports<sup>45</sup>**

*[not translated]*

**20. Federal Statistics Law of 9 October 1992<sup>46</sup>**

*[not translated]*

**21. Federal Act of 18 June 2010 on the Business Identification Number<sup>47</sup>**

*[not translated]*

**22. Federal Act on the National Library of 18 December 1992<sup>48</sup>**

*[not translated]*

**23. Animal Protection Act of 16 December 2005<sup>49</sup>**

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40 SR 313.0

41 SR 322.1

42 SR 361

43 SR 414.110

44 SR 415.0

45 SR 415.1

46 SR 431.01

47 SR 431.03

48 SR 432.21

49 SR 455

*[not translated]*

**24. Military Act of 3 February 1995<sup>50</sup>**

*[not translated]*<sup>51</sup>

**25. Federal Act of 3 October 2008 on the Military Information Systems<sup>52</sup>**

*[not translated]*

**26. War Material Act of 13 December 1996<sup>53</sup>**

*[not translated]*

**27. Arms Act of 20 June 1997<sup>54</sup>**

*[not translated]*<sup>55</sup>

**28. Act on the Protection of the Population and Civil protection of 4 October 2002<sup>56</sup>**

*[not translated]*<sup>57</sup>

**29. Financial Budget Act of 7 October 2005<sup>58</sup>**

*[not translated]*

**30. Federal Auditing Act of 28 June 1967<sup>59</sup>**

*[not translated]*

**31. Customs Act of 18 March 2005<sup>60</sup>**

*[not translated]*

**32. Value Added Tax Act of 12 June 2009<sup>61</sup>**

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50 SR 510.10  
51 SR 510.91  
52 SR 510.91  
53 SR 514.51  
54 SR 514.54  
55 SR ...  
56 SR 520.10  
57 SR ...  
58 SR 611.0  
59 SR 614.0  
60 SR 631.0  
61 SR 614.20

*[not translated]*

**33. Nuclear Energy Act of 21 March 2003<sup>62</sup>**

*[not translated]*

**34. Road Traffic Act of 19 December 1958<sup>63</sup>**

*[not translated]*

**35. Aviation Act of 21 December 1948<sup>64</sup>**

*[not translated]*

**36. Postal Act of 17 December 2010<sup>65</sup>**

*[not translated]*

**37. Telecommunications Act of 30 April 1997<sup>66</sup>**

*[not translated]*

**38. Narcotics Act of 3 October 1951<sup>67</sup>**

*[not translated]*

**39. Employment Service Act of 6 October 1989<sup>68</sup>**

*[not translated]*<sup>69</sup>

**40. Federal Act of 20 December 1946 on the Old Age and Survivors' Insurance<sup>70</sup>**

*[not translated]*

**41. Federal Occupational Retirement, Survivors' and Disability Pensions Act of 25 June 1982<sup>71</sup>**

*[not translated]*

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<sup>62</sup> SR 732.1  
<sup>63</sup> SR 741.01  
<sup>64</sup> SR 748.0  
<sup>65</sup> SR 783.0  
<sup>66</sup> SR 784.10  
<sup>67</sup> SR 812.121  
<sup>68</sup> SR 823.11  
<sup>69</sup> SR 837.0  
<sup>70</sup> SR 831.10  
<sup>71</sup> SR 831.40

**42. Health Insurance Act of 18 March 1994<sup>72</sup>**

*[not translated]*<sup>73</sup>

**43. Accident Insurance Act of 20 March 1981<sup>74</sup>**

*[not translated]*

**44. Military Insurance Act of 19 June 1992<sup>75</sup>**

*[not translated]*

**45. Unemployment Insurance Act of 25 June 1982<sup>76</sup>**

*[not translated]*<sup>77</sup>

**46. Animal Diseases Act of 1 July 1966<sup>78</sup>**

*[not translated]*

**47. Hunting Act of 20. June 1986<sup>79</sup>**

*[not translated]*

**48. Money Laundering Act of 10 October 1997<sup>80</sup>**

*[not translated]*

**49. Financial Markets Supervision Act of 22 June 2007<sup>81</sup>**

*[not translated]*

**50. Act on International Development Cooperation and Humanitarian Aid of 19 March 1976<sup>82</sup>**

*[not translated]*

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72 SR 832.10  
73 SR 832.12  
74 SR 832.20  
75 SR 833.1  
76 SR 837.0  
77 SR 823.11  
78 SR 916.40  
79 SR 955.0  
80 SR 955.0  
81 SR 956.1  
82 SR 974.0

**51. Act on Cooperation With the States of Eastern Europe of 24 March 2006<sup>83</sup>**  
*[not translated]*

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<sup>83</sup> SR 974.1

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