

# Lawyers' Briefing on Switzerland's Federal Data Protection Law

April 28<sup>th</sup> 2009, Zurich, Switzerland

Tuesday, April 28<sup>th</sup>, 2009  
13.30h. – 17.30h.

Host: Homburger AG, Zurich

Presentations by:

- David Rosenthal, Counsel, Homburger [www.homburger.ch](http://www.homburger.ch) [DR] and
- Jacques Beglinger, Attorney-at-law, [www.beg.ch](http://www.beg.ch) [JB]

## Agenda

### 1. Sources of Swiss data law [JB]

- Overview and building blocks of Swiss data law (provisions on privacy, secrecy, records management, sovereignty, competition law, lawful interception, etc.)
- the relationship between the data protection act and other acts, their ordinances and other regulatory texts
- the relevance of case law and legal writing in general and in particular in data law
- the three basic pillars of enforcement of data law (civil, criminal and administrative actions)

### 2. Concepts in Swiss data protection law [DR]

- basic principles of Swiss data protection law
- legal role and competence of the data protection authority
- differences between Swiss law and European Union law, for example, responsibilities of processors, protection of data on legal persons, personality profiles, the concept of the “data owner” vs. the controller

### 3. The importance and development of soft law explaining the legal texts [JB]

- making the law workable for companies and how to become involved in developing the law (example: Swiss-United States Safe Harbor, in force from 16<sup>th</sup> February 2009); how to win the support of the Data Protection Commissioner with different levels of soft law; general and specific for a sector or a company
- the role of the Swiss Business Data Protection Association in attempts, consistent with Swiss business culture, to achieve a consensus with the Ministry of Justice and the Data Protection Commissioner resulting in their written decisions demonstrating practical ways to implement data protection law
- importance of corporate reputation and good governance

### 4. Scope for company good management initiatives [DR]

- The role of the internal data protection manager resulting in no need to register processing with the DP Commission; advantages and disadvantages of this option
- expectations regarding the quality mark
- the potentially expanded role for a data protection auditor

## 5. Issues

- tensions between data protection and anti money laundering rules (for example, the revised Financial Action Task Force on Money Laundering (FATF) Recommendations published on 19th January this year); and [JB]
- consent and other issues regarding clinical trials [DR]

## Break

## 6. International transfers of personal data outside the European Economic Area [DR]

- What questions do we have to ask?
- Model contracts
- United States Safe Harbor (EU, Swiss) Binding Corporate Rules; whether Switzerland's Binding Corporate Rules policy could enable it to join the European Union's mutual recognition club
- Outsourcing
- Sub-outsourcing
- Blocking statutes: Law preventing the transfer of personal data outside Switzerland
- The relationship between data protection law and banking secrecy law
- Application of Swiss law to operations outside Switzerland

## 7. Employment issues [JB]

- whistle-blowing and amendments to related labour law coming soon
- Employee monitoring
- Electronic personnel files / globally accessible human resources databases
- E-recruitment
- Lessons from the DP Commissioner v. Dun & Bradstreet case (January 2009)

## 8. How to prepare to comply with the law and avoid a fine or other enforcement action for breach of data protection law

- Appropriate level of management involvement in data protection issues [JB]
- Summary of similarities and differences between European Union and Swiss data protection law [DR]

## 9. Questions to the speakers on other issues

## 10. Discussion on questions to ask the DP Commissioner and his team

17.30. Close

19.30. Dinner (venue to be announced)

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