



Outsourcing of data processing to a foreign country

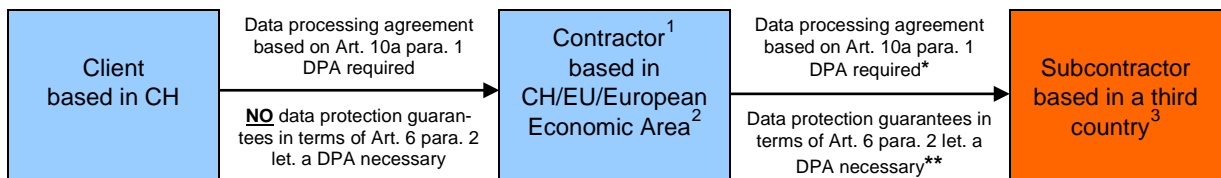
The interaction between Art. 10a DPA and Art. 6 para. 2 let. a DPA

(Last update: November 2010)

Preliminary remarks

The following explanatory notes relate exclusively to **data transfer** abroad in connection with the **outsourcing of data processing** abroad and to cases where the requirements of Art. 6 para. 2 DPA are satisfied by means of contractual guarantees (let. a). They do not relate to the passing on of data abroad to a third party that processes the personal data for its own purposes. Such cases do not constitute outsourcing.

Outsourcing scenarios



* In accordance with Art. 10a para. 1 DPA, the client and the contractor must enter into an agreement to regulate the way in which the data is processed and disclosed by the (sub-) contractor. The client as well as the contractor must ensure that third parties apply the same data protection standards as it would have to itself. This applies to any form of processing, from the collection of data to the passing on of the data to third parties (abroad).

** If the Client delegated the data processing directly to the subcontractor, it would have to enter into an agreement in accordance with Art. 6 para. 2 let. a DPA. And as the contractor may only process the data in the same way as the Client is permitted to process it, the contractor must also enter into an agreement in terms of Art. 6 para. 2 let. a DPA with the subcontractor.

The requirement to provide a contractual guarantee results directly from Art. 6 DPA, as this provision makes no distinction between whether the data transmission abroad comes from the client or the contractor.



* See remarks above.

*** As the Client has to enter into an agreement in terms of Art. 6 para. 2 let. a DPA with the contractor and as the contractor may only process the data in the same way as the Client is permitted to process it, the contractor must also enter into an agreement in terms of Art. 6 para. 2 let. a DPA with the subcontractor.

The requirement to provide a contractual guarantee results directly from Art. 6 DPA, as this provision makes no distinction between whether the data transmission abroad comes from the client or the contractor.

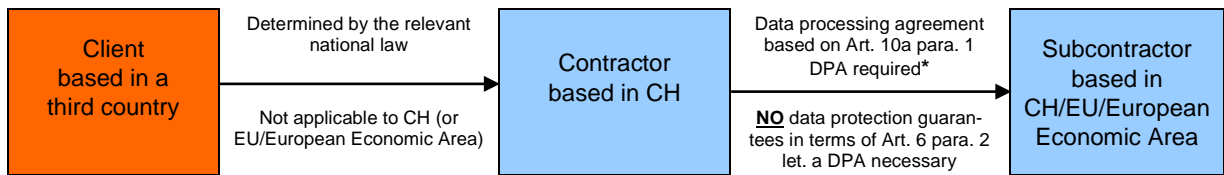
¹ The contractor must be a different legal entity from the Client.

² Including countries that have satisfactory data protection legislation recognised by the FDPIC, at least for natural persons; see list of countries provided by the FDPIC at: <http://www.edoeb.admin.ch/themen/00794/00827/index.html?lang=de>.

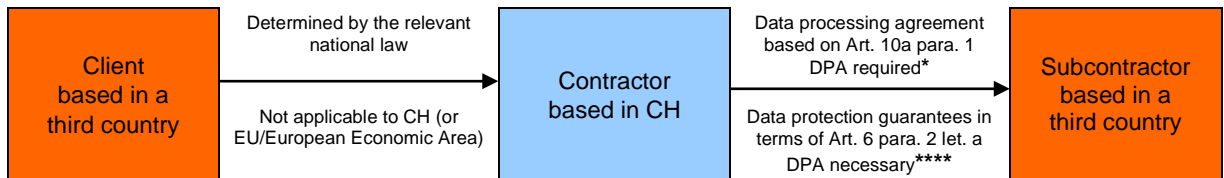
³ Countries that are not recognised by the FDPIC because their data protection legislation is inadequate.



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**** The requirement to provide a contractual guarantee results directly from Art. 6 DPA, as this provision makes no distinction between whether the data transmission abroad comes from the client or the contractor.

Remarks on the nature and content of an agreement in accordance with Art. 6 para. 2 let. a DPA

The FDPIC recognises the standard "Swiss Transborder Data Flow Agreement" or the standard EU contractual clauses on the transfer of personal data to data processors established in third countries dated 5 February 2010⁴ as adequate contractual data protection guarantees in terms of Art. 6 para. 2 let. a DPA.

If an ad hoc agreement is concluded for data transfer abroad, the contractual guarantees in accordance with Art. 6 para. 2 let. a DPA must as a minimum satisfy in material terms the requirements of the Convention of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data (SR 0.235.1; Council of Europe Convention STE 108) and the Additional Protocol of 8 November 2001 to the aforementioned Convention regarding supervisory authorities and transborder data flows (SR 0.235.11; Additional Protocol to the Council of Europe Convention STE 108).

⁴ Commission Decision of 5 February 2010 on standard contractual clauses for the transfer of personal data to processors established in third countries under Directive 95/46/EC of the European Parliament and of the Council (notified under document C(2010) 593); available at: http://ec.europa.eu/justice/policies/privacy/modelcontracts/index_en.htm