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Summary of selected topics from the 24th annual report

Data protection

The Federal Data Protection and Information Commissioner (FDPIC) closely monitored the negotiations held between the State Secretariat for Economic Affairs (SECO) and the US relating to the introduction of a new legal framework for the transfer of personal data to the latter. In comparison to the previous Safe Harbor agreement, the so-called **Privacy Shield** brings about improvements in terms of data protection for affected individuals in Switzerland. These include, in particular, a greater level of transparency and closer involvement of US authorities in the implementation of the Shield. The actual effectiveness of this legal framework still needs to be proven and will be subjected to annual evaluations in which the FDPIC will also be involved (section 1.8.1).

On 21 December 2016, the Federal Council submitted the preliminary draft for the revision of the **Federal Act on Data Protection** for consultation. This revision will aim to adjust our legislation in line with new technologies as well as improve data protection and enhance the attractiveness of Switzerland in the digital age. In particular, the revision should allow Switzerland to move into line with the new European standards and maintain an appropriate level of data protection. For the FDPIC, it is important that the revision be completed quickly (section 1.2.1).

During the year under review, the FDPIC advised the Legal Affairs Committees of the National Council and Council of States on the **introduction of the AHV insurance number** for the commercial register and land register. He criticised the Federal Council's plan to systematically permit the use of the AHV number outside the area of social insurance (section 1.1.1).

In the reporting year, the FDPIC reviewed the handling of data in the **job applications process at the federal administration**. With just a few exceptions, his findings revealed that the personal data of job applicants is handled in accordance with the relevant data protection legislation both in the e-recruiting system and on paper (section 1.7.1). The FDPIC also performed fact-finding measures at the Federal Statistical Office (FSO) in order to review the destruction and deletion of data collected as part of the **population census** (section 1.1.2).

During the year under review, the FDPIC stated his position on the ordinances to the Federal Act on the **Surveillance of Mail and Telecommunication Traffic**. In particular, he commented on the right to information, the recording of such traffic and antenna search data (section 1.4.2). As part of official consultations and working groups, the FDPIC stated his position on the implementation of the Federal Council's "**Digital Switzerland**" strategy and in doing so outlined the data protection requirements. He expressed its commitment to ensuring that breaches of privacy are prevented in advance. To this end, suitable protective measures must already be incorporated at a project's planning stage (section 1.2.2).

During the consultation on the extension of the **automatic exchange of information** (AEOI) on financial accounts to additional states, the FDPIC demanded that the relevant information on accounthold-



ers only be transferred if an appropriate level of data protection is guaranteed in the recipient states (section 1.9.1).

The draft **Federal Act on Recognised Electronic Means of Identification** (eID Act) contains an appropriate provision on data protection. Nevertheless, the FDPIC has spoken out against the planned use of the AHV insurance number as a unique personal identifier (section 1.4.1). He also stated his position on the **national address register**. His comments were essentially taken into account. He will continue to monitor the project closely (section 1.1.4).

As part of the Federal Office for Public Health's **BAGSAN** project, key measures aimed at protecting the anonymity of insured persons have been taken on the FDPIC's advice. The project clearly shows that the risk of reidentification has to be continually monitored during big data projects (section 1.5.2). The implementation provisions for the Federal Act on the **Electronic Patient Record** set out, at ordinance level, numerous requirements that are relevant for data protection and data security. The technical and organisational certification requirements are of central importance. The entry into force of this act will entail a number of new tasks for the FDPIC (section 1.5.1).

Since 1 January 2014, all health insurers have been required to have a **certified data collection point** (DCP) for the receipt of invoices of the type "Diagnosis Related Groups" (DRG). The checks on data collection points performed by the FDPIC during the year under review show that the implementation of the DCPs is working well. Deficiencies were identified in a few individual cases (section 1.6.2).

In the area of **international cooperation**, the past year saw the acceptance of the European Union's new Data Protection Regulation. The Council of Europe's Data Protection Convention was also concluded at the level of governmental experts (Convention 108). The FDPIC made a significant contribution to the Council of Europe's work on this convention. Other salient features of the year included the cooperation with the European Union as part of the Schengen Agreement, and participation at the European and International Conferences of Data Protection and Privacy Commissioners and in the French-Speaking Association of Personal Data Protection Authorities (section 1.10.1).

As a large number of **fitness apps** and so-called **wearables**, i.e. sensors in fitness wristbands or smartwatches that we wear on our bodies, do not offer sufficient data protection, the FDPIC has highlighted in detail the issue of this new technology in the form of explanations on his website (section 1.6.4).

The FDPIC used this year's Data Protection Day as an opportunity to draw attention to the risks of **video surveillance**. Private individuals are also increasingly deploying video surveillance systems to maintain security and order on their land or at their own companies. To ensure that operations comply with the relevant data protection legislation, certain principles have to be taken into account (section 3.2).

Principle of freedom of information

According to the figures provided to the FDPIC by the federal authorities, a total of 551 **access requests** were submitted to the latter in 2016. This is around 50 requests fewer than in the prior year. In 303 cases (55%), the authorities granted full access, while partial access was awarded in 105 cases (19%). Some 87 requests (16%) to inspect information were completely declined. The FDPIC notes that the number of requests has levelled out at 550–600 per year after sharp increases were recorded in 2013 (469 requests) and 2014 (575 requests).



In 2016, a total of 149 **requests for arbitration** were submitted to the FDPIC, i.e. 52% more than in the previous year (2015: 98). Unlike in 2015, it was not media professionals (23 requests) who were the most frequent applicants, but rather private individuals (99 requests) (section 2.2).

The procurement of goods and services by the federal administration is a topic that draws particular public interest. The FDPIC therefore spoke out against the plan of the Federal Office for Buildings and Logistics (FOBL) to essentially exclude **procurement records** from the principle of public access. This plan would mean the access right enjoyed by the population and media no longer applied (section 2.3.2).

The Federal Council wants to exclude the Federal Office of Transport's audit and inspection reports on the safety of rail and waterway transport from the Freedom of Information Act. This is what it decided at its meeting of 16 November 2016 upon approving the draft **Organisation of Rail Infrastructure** (ORI) legislation. The FDPIC spoke out against this restriction of the principle of public access (section 2.3.1).

The full annual report can be accessed online (www.derbeauftragte.ch – Documentation – Annual reports) or ordered from the FOBL, Distribution of Publications, 3003 Berne: Art. no. 410.024. Order via Internet: <http://www.bundespublikationen.admin.ch/de/publikationen/artikelsuche.html>