

Artificial Intelligence and Democratic Values

Switzerland

National AI Strategy

The Swiss government recently announced AI Guidelines for the Federal Government.⁹¹¹ The AI Guidelines are intended to ensure a coherent government policy for AI. The AI Guidelines emphasize putting people at the center; Framework conditions for the development and use of AI, Transparency, traceability and Explainability; Accountability; Safety; Active participation in shaping the governance of AI; and Involvement of all affected national and international actors. Specific AI guidelines will be formulated for education and science. Future AI work will be undertaken by the Federal Office of Communications OFCOM together with the federal agencies concerned.⁹¹²

The AI Guidelines follow from the Digital Switzerland Strategies. These strategies encompass the Swiss governments principles and key objectives for the digital transformation across all sectors.⁹¹³⁹¹⁴ Although these reports do not have the sole focus of AI, the federal government has taken further action to focus on AI. Following the Digital Switzerland Strategy 2018, the federal government identified several areas for further enquiry:

⁹¹¹ Der Bundesrat, *Leitlinien, “Künstliche Intelligenz” für den Bund* (Nov. 2020) [DT], https://www.sbfi.admin.ch/dam/sbfi/de/dokumente/2020/11/leitlinie_ki.pdf.download.pdf/Leitlinien%20Künstliche%20Intelligenz%20-%20DE.pdf

⁹¹² Der Bundesrat, *Leitlinien “Künstliche Intelligenz” für die Bundesverwaltung verabschiedet* (Nov. 25, 2020) [DT], <https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-81319.html>)

⁹¹³ Schweizerischer Eidgenossenschaft, *Digital Switzerland» Strategy*, September 2020, https://www.bakom.admin.ch/dam/bakom/en/dokumente/informationgesellschaft/strategie/strategie_digitale_schweiz.pdf.download.pdf/Strategie-DS-2020-EN.pdf

⁹¹⁴ Schweizerischer Eidgenossenschaft, *Digital Switzerland» Strategy*, September 2018, https://www.bakom.admin.ch/dam/bakom/en/dokumente/informationgesellschaft/strategie/Strategie_DS_Digital_2-EN-barrierenfrei.pdf.download.pdf/Strategie_DS_Digital_2-EN-barrierenfrei.pdf

⁹¹⁵ Schweizerischer Eidgenossenschaft, *Digital Switzerland» Strategy*, April 2016, https://www.bakom.admin.ch/dam/bakom/en/dokumente/bakom/digitale_schweiz_und_internet/Strategie%20Digitale%20Schweiz/Strategie/Strategie%20Digitale%20Schweiz.pdf.download.pdf/digital_switzerland_strategy_Brochure.pdf

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- International law and the use of AI in public opinion and decision making
- How the use of AI in the federal administration can be improved
- The Department of Education, Research and Innovation (SBFI) was given the task of preparing stakeholders for the digital transformation through their policy work.
- An Interdepartmental Working Group on Artificial Intelligence was established to pursue strategic objectives for the federal government.⁹¹⁶

These areas of further enquiry resulted in three reports prepared by the federal government with the following focuses:

- Artificial Intelligence in Cyber Security and Security Policy⁹¹⁷
- International Committees and Artificial Intelligence⁹¹⁸
- Artificial Intelligence, the Media and the Public⁹¹⁹

The report on “Artificial Intelligence in Cyber Security and Security Policy” gives an overview of how AI is influencing national security and how the military and government are dealing with this. It further lists considerations that need to be made in this regard. This includes how fundamental and human rights are affected, how legal and ethical

⁹¹⁶ Schweizerischer Eidgenossenschaft: Staatssekretariat für Bildung, Forschung und Innovation SBFI, Künstliche Intelligenz, <https://www.sbf.admin.ch/sbf/de/home/bfi-politik/bfi-2021-2024/transversale-themen/digitalisierung-bfi/kuenstliche-intelligenz.html>

⁹¹⁷ Schweizerischer Eidgenossenschaft: Eidgenössisches Department für Verteidigung, Bevölkerungsschutz und Sport, Künstliche Intelligenz in der Cybersicherheit und Sicherheitspolitik, https://www.sbf.admin.ch/dam/sbf/de/dokumente/2019/12/k-i_c-s.pdf.download.pdf/k-i_c-s_d.pdf

⁹¹⁸ Schweizerischer Eidgenossenschaft, International Gremien und Künstliche Intelligenz, August 2019, https://www.sbf.admin.ch/dam/sbf/de/dokumente/2019/12/i-g_k-i.pdf.download.pdf/i-g_ki_d.pdf

⁹¹⁹ Schweizerischer Eidgenossenschaft: Eidgenössisches Department für Umwelt, Verkehr, Energie und Kommunikation UVEK, Künstliche Intelligenz, Medien und Öffentlichkeit, August 2019, https://www.sbf.admin.ch/dam/sbf/de/dokumente/2019/12/i-g_k-i.pdf.download.pdf/i-g_ki_d.pdf

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considerations can be integrated and what new regulatory measures need to be implemented.⁹²⁰

The report on International Committees and Artificial Intelligence also gives an overview of different international organizations and their efforts in AI policy. It further goes on to give recommendations of concrete action in Swiss foreign policy. The report mentions the importance of the Swiss governments taking a position that upholds existing Swiss values like the respect of human rights, the rule of law, democracy and liberal values.⁹²¹

The report on Artificial Intelligence, the Media and the Public outlines the challenges associated with AI and mass media. It describes current regulations and areas that could be improved. The report mentions the importance of ensuring transparency, accountability and traceability/comprehensibility when AI is deployed in journalism, in the media or in social media.⁹²²

The 2019 Report of the Interdepartmental Working Group on Artificial Intelligence summarizes three reports by the federal government. The report attempts to give an overview of AI, the current legal situation and then considers AI in 17 different policy areas. The report emphasizes the need for transparency, fairness or non-discrimination, accountability and compliance with fundamental and human rights. The group points out that the more human or fundamental rights are involved in a topic, the more transparency and comprehensibility is required. They came to the conclusion that no fundamental change to the Swiss regulatory framework is necessary due to the fact that the legal principles of Swiss technology policy are formulated in a technology-neutral manner which allows them to be applied to AI systems. However, made several recommendations:

⁹²⁰ Schweizerischer Eidgenossenschaft: Eidgenössisches Department für Verteidigung, Bevölkerungsschutz und Sport, Künstliche Intelligenz in der Cybersicherheit und Sicherheitspolitik, 2019. https://www.sbf.admin.ch/dam/sbf/de/dokumente/2019/12/k-i_c-s.pdf.download.pdf/k-i_c-s_d.pdf

⁹²¹ Schweizerischer Eidgenossenschaft, International Gremien und Künstliche Intelligenz, August 2019, https://www.sbf.admin.ch/dam/sbf/de/dokumente/2019/12/i-g_k-i.pdf.download.pdf/i-g_ki_d.pdf

⁹²² Schweizerischer Eidgenossenschaft: Eidgenössisches Department für Umwelt, Verkehr, Energie und Kommunikation UVEK, Künstliche Intelligenz, Medien und Öffentlichkeit, August 2019, https://www.sbf.admin.ch/dam/sbf/de/dokumente/2019/12/k-i_m-o.pdf.download.pdf/k-i_m-o_d.pdf

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- AI should be monitored continuously as the report is only a snapshot of the current situation and respective legal action need to be taken when new developments are identified
- The Swiss government should engage in more international information and knowledge sharing on AI governance
- AI policy should be integrated into the “Digital Switzerland” Strategy
- Clarification of the 17 policy areas are necessary.⁹²³

These recommendations were then integrated in the Digital Switzerland Strategy 2020.⁹²⁴ The Strategy 2020 emphasizes: Putting people at the forefront, providing room for development, facilitating structural change, and networking the shaping of transformation processes.⁹²⁵ And the following key objectives:

- Enabling equal participation for all and strengthening solidarity
- Guaranteeing security, trust and transparency
- Continuing to strengthen people's digital empowerment and self-determination
- Ensuring value creation, growth and prosperity
- Reducing the environmental footprint and energy consumption

In comparison to the 2018-2020 Strategy, the 2020-2022 Strategy emphasizes “the aspects of data and environment.”⁹²⁶ Transparency, sustainable development and equal opportunities and participation have

⁹²³ Schweizerische Eidgenossenschaft: Interdepartementalen Arbeitsgruppe «Künstliche Intelligenz», Herausforderungen der künstlichen Intelligenz: Bericht der interdepartementalen Arbeitsgruppe «Künstliche Intelligenz» an den Bundesrat, https://www.sbf.admin.ch/dam/sbf/de/dokumente/2019/12/bericht_idag_ki.pdf.download.pdf/bericht_idag_ki_d.pdf

⁹²⁴ Schweizerische Eidgenossenschaft: Federal Office of Communications, Digital Switzerland, July 2020, <https://www.bakom.admin.ch/bakom/en/homepage/digital-switzerland-and-internet/strategie-digitale-schweiz.html>

⁹²⁵ Schweizerischer Eidgenossenschaft, Digital Switzerland Strategy, 2020, <https://www.digitaldialog.swiss/en/>

⁹²⁶ Schweizerischer Eidgenossenschaft: Federal Office of Communications OFCOM, Digital Switzerland, July 2020, <https://www.bakom.admin.ch/bakom/en/homepage/digital-switzerland-and-internet/strategie-digitale-schweiz.html>

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been key objectives encompassed in these reports since the first version was released in 2016.⁹²⁷⁹²⁸

Swiss Foreign Policy and AI

One of the thematic focus areas of the Swiss Foreign Policy Strategy 2020-2023 is “digitalization.” The Ministry writes, “The focus is on people’s needs. The rule of law and universal human rights – such as freedom of expression and information and the right to privacy – must also be guaranteed online. It is important to defend liberties such as press freedom.” Furthermore, the Ministry seeks to “position Geneva as the location for global digitalisation and technology debate” and to promote sustainable development using digital technologies, digital self-determination and cyber diplomacy.⁹²⁹

In 2018 an expert group on the future of data processing and data security published 51 recommendations for the federal government. The federal government and its ministries adopted 31 of them. These included:

- “The Confederation and the cantons adapt the powers and resources of the data protection authorities to enable them to perform their statutory tasks of sensitization, consultation and supervision comprehensively and effectively.
- “In cooperation with the cantons, the Confederation creates forms of cooperation between data protection supervisory authorities (e.g., competence center).”
- “In implementing the e-government strategy for Switzerland, the Confederation and the cantons will ensure that the "offline" population group is not socially excluded by digitization.”

⁹²⁷ Schweizerischer Eidgenossenschaft: Federal Office of Communications OFCOM, Digital Switzerland: Strategy, November 2018, <https://www.bakom.admin.ch/bakom/en/homepage/digital-switzerland-and-internet/strategie-digitale-schweiz/strategy.html>

⁹²⁸ Schweizerischer Eidgenossenschaft, Digital Switzerland» Strategy, September 2018, https://www.bakom.admin.ch/dam/bakom/en/dokumente/informationsgesellschaft/strategie/Strategie_DS_Digital_2-EN-barrierenfrei.pdf.download.pdf/Strategie_DS_Digital_2-EN-barrierenfrei.pdf

⁹²⁹ Schweizerische Eidgenossenschaft: Federal Department of Foreign Affairs FDFA, Foreign Policy Strategy 2020-2023, January 2020, https://www.eda.admin.ch/dam/eda/en/documents/publications/SchweizerischeAussenpolitik/Aussenpolitische-Strategie-2020-23_EN.pdf

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- “The Confederation, cantons and municipalities promote open and participatory systems and processes (...) in order to achieve social goals such as digital transformation, resilience and sustainability more quickly.”
- “The Confederation and the cantons ensure that students at upper secondary schools and all students develop the basic skills and competencies necessary for handling and shaping digital technologies and transformation.”
- “The Confederation and the cantons are committed to ensuring that the protection of fundamental values, human rights and human dignity is also secured in the digital age and that informational self-determination is promoted.”
- “The Confederation will ensure sufficient transparency, traceability, comprehensibility and accountability of digital processes and algorithms to create a trust-based digital economy and society.”

Many of these recommendations coincide with ongoing activities. For example, an association of the cantonal data protection authorities is in place, the federal government is working with the cantons and universities to integrate digital skills and knowledge into their respective curriculums and the revision of the Data Protection Act which was approved by the Swiss parliament in 2020.⁹³⁰ If it is not challenged in a referendum then it is set to come into force in 2021.⁹³¹ The revision improves transparency for citizens, gives the Swiss Federal Data Protection and Information Commissioner more competencies and resources and aligns Swiss data protection law with the European Data Protection Regulation.⁹³²

⁹³⁰ Schweizerischer Eidgenossenschaft: Eidgenössisches Department für Umwelt, Verkehr, Energie und Kommunikation UVEK, Bericht zu den Empfehlungen der Experten- gruppe zur Zukunft der Datenbearbeitung und Datensicherheit: Kenntnisnahme und weiteres Vorgehen, October 2019, https://www.bakom.admin.ch/dam/bakom/en/dokumente/informationgesellschaft/datenpolitik/empfehlungen_experten_gruppe.pdf.download.pdf/Bericht%20zu%20den%20Empfehlungen%20der%20Expertengruppe.pdf

⁹³¹ Swiss IT Magazine, Entwurf zur Totalrevision des Datenschutzgesetzes angenommen (Sept. 28, 2020), https://www.itmagazine.ch/artikel/73072/Entwurf_zur_Totalrevision_des_Datenschutzgesetzes_angenommen.html

⁹³² Schweizerischer Eidgenossenschaft: Eidgenössisches Justiz- und Polizeidepartment EJDP, Den Datenschutz verbessern und den Wirtschaftsstandort stärken (Sept. 2017), <https://www.bj.admin.ch/ejpd/de/home/aktuell/news/2017/2017-09-150.html>

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Independent AI oversight

The Federal Data Protection and Information Commissioner (FDPIC) is the “competent authority for data processing by federal bodies and private persons, including enterprises.” Furthermore, data processing by cantonal or communal authorities is supervised by cantonal and communal data protection commissioners.⁹³³ The revision of Swiss Data Protection Act ascribed more competencies and resources to the FDPIC which should allow for more comprehensive oversight over the regulation of the data protection laws.⁹³⁴

Further, in 2019 the Federal Council approved the proposal to establish a national human rights institution (NHRI). The NHRI is the result of a pilot project called the Swiss Centre of Expertise in Human Rights (SCHR). According to the Federal Council “The NHRI will be independent, include members from across society and receive an annual financial support from the Confederation.”⁹³⁵

Public Participation

Switzerland is a direct democracy which means that citizens have the right to decide on policy directly, either by referendums or citizen-initiated referendums.⁹³⁶⁹³⁷ Further, policy revisions or proposals of importance go through a consultation procedure with relevant stakeholders

⁹³³ Schweizerischer Eidgenossenschaft: Federal Data Protection and Information Commissioner, Data Protection – Switzerland, <https://www.edoeb.admin.ch/edoeb/en/home/the-fdpic/links/data-protection---switzerland.html>

⁹³⁴ Schweizerischer Eidgenossenschaft: Eidgenössisches Justiz- und Polizeidepartment EJDP, *Den Datenschutz verbessern und den Wirtschaftsstandort stärken* (Sept. 2017), <https://www.bj.admin.ch/ejpd/de/home/aktuell/news/2017/2017-09-150.html>

⁹³⁵ The Federal Council, National human rights institution to be established in Switzerland (Dec. 13, 2019), <https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-77508.html>

⁹³⁶ Schweizerischer Eidgenossenschaft: Bundeskanzlei, *Referenden*, <https://www.bk.admin.ch/bk/de/home/politische-rechte/referenden.html>

⁹³⁷ Schweizerischer Eidgenossenschaft: Bundeskanzlei, *Volksinitiativen*, <https://www.bk.admin.ch/bk/de/home/politische-rechte/volksinitiativen.html>

to include their opinions and needs and therefore to minimize the chance of a referendum.⁹³⁸

Further specifically in technology policy, the website for the “Digital Switzerland” Strategy (www.digitaldialog.swiss) provides a summary of the Strategy and lists related initiatives and committees. Updates on how the Strategy is being implemented are also published on this website.⁹³⁹ Through the digital dialogue website, organisations, companies, municipalities and cantons can propose measures for a Digital Switzerland in the action plan. You can directly upload a proposal on this website and it will be reviewed in the context of the “Digital Switzerland” action plan.⁹⁴⁰

In 2018, the Federal Council established the opendata.swiss website, “the Swiss public administration’s central portal for open government data.”⁹⁴¹ The website, managed by the Federal Statistical Office, “supports organisations in publishing their open data” and “continuously monitors the quality of the catalogue.”

Finally, the “Plateforme Tripartite Suisse” is an information hub and platform to exchange dialogue. It was founded in light of the “World Summit on the Information Society” in 2003 to prepare for this conference. It now “serves as a national forum for the informal exchange of information and experience on WSIS implementation and follow-up activities. It is open to all interested representatives from the administration, the business sector, civil society and the internet community at the national level and meets on an ad-hoc basis.”⁹⁴²

AI Events in Geneva

Switzerland is a hub for international policy as many international organizations are based in Geneva. The United Nations hosted the first

⁹³⁸ Schweizerischer Eidgenossenschaft: Der Bundesrat: Das Portal der Schweizer Regierung, Vernehmlassungen (July 2019), <https://www.admin.ch/gov/de/start/bundesrecht/vernehmlassungen.html>

⁹³⁹ Digital Switzerland Strategy, <https://www.digitaldialog.swiss/en/>

⁹⁴⁰ Digital Switzerland Strategy, <https://digitaldialog.typeform.com/to/ulwdzc>

⁹⁴¹ opendata.swiss, *Portal*, <https://opendata.swiss/en/about/>

⁹⁴² Schweizerischer Eidgenossenschaft : Federal Office of Communications OFCOM, May 2007, <https://www.bakom.admin.ch/bakom/en/homepage/ofcom/international-activities/un-world-summit-on-the-information-society/wsis.html>

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annual AI for Good Global Summit in 2017.⁹⁴³ Co-organized by ITU and the XPRIZE Foundation, the event convened 500 representatives of government, industry, academic and research institutes, United Nations agencies and civil society to “explore the potential of AI to accelerate progress in fields such as health, education, energy and the protection of our environment.” The most recent AI for Good Summit was held online.

In October 2020, the Swiss Federal Institute of Technology (ETH) in Zürich launched the Center for AI. The research center comprises 29 professorships, a new executive director and a fellowship program.⁹⁴⁴ The vision for this research center is to “lead the way towards trustworthy, accessible, and inclusive AI systems for the benefit of society.” Among the key goals:

- To “contribute to international networks (Europe & beyond)”
- To “provide a stimulating, transdisciplinary, and inclusive environment”
- To “address ethical, societal, and policy implications”
- To “engage with the general public on AI topics⁹⁴⁵”

AI and Criminal Justice

According to AlgorithmWatch, the Swiss government is using AI in the penal system. The application helps to triage inmates, which is the first of several steps to develop the inmate’s release plan. Further, the Federal government uses a system for automatic vehicle detection and traffic monitoring at state borders. Finally, the Federal Customs Administration uses a different system, like a data processing system, to help assess goods coming into the country. Some cantons use a police software to predict domestic burglaries. According to AlgorithmWatch, “it should be noted that the use of predictive policing in Switzerland is currently limited to a relatively small and clearly defined area of preventive police work.”⁹⁴⁶

⁹⁴³ International Telecommunications Union, *Artificial Intelligence* <https://www.itu.int/en/ITU-T/AI/Pages/201706-default.aspx>

⁹⁴⁴ ETH Zürich, *New Centre for AI research* (Oct. 20, 2020), <https://ethz.ch/en/news-and-events/eth-news/news/2020/10/pr-new-centre-for-ai-research.html>

⁹⁴⁵ ETH Zürich: ETH AI Center, *About Us*, <https://ai.ethz.ch/about-us.html>

⁹⁴⁶ AlgorithmWatch, *Automating Society 2020*, (Oct. 2020), <https://automatingsociety.algorithmwatch.org/report2020/switzerland/>

Algorithmic Transparency

Switzerland is outside the European Union and is therefore not directly subject to the GDPR. The Federal Act on Data Protection (FADP) was revised as of September 2020 to comply with the modernized Council of Europe Convention 108.⁹⁴⁷ Switzerland ratified the Council of Europe Convention in 2019.⁹⁴⁸ Article 9(1)(c) of the Convention gives every individual the right “to obtain, on request, knowledge of the reasoning underlying data processing where the results of such processing are applied to him or her.”⁹⁴⁹ The Swiss Data Protection Act establishes a Data Protection and Information Commissioner (FDPIC) with independent supervisory authorities. The Act creates obligations to undertake privacy impact assessments in certain circumstances. A key amendment increased transparency in data processing.⁹⁵⁰

Article 21 of the new FADP introduces the "Duty to inform in the case of an automated individual decision."⁹⁵¹ The FADP states that: (1) “The person responsible shall inform the person concerned of a decision that is based exclusively on automated processing that is associated with a legal consequence for them or significantly affects them (automated individual decision) and (2) “On request, it shall give the data subject the opportunity to state his or her position. The data subject may request that the automated individual decision be reviewed by a natural person.”

Further, article 25(g) establishes a data subject's right to algorithmic transparency in the case of an automated individual decision: "In any case, the following information will be communicated to the data subject: g. if

⁹⁴⁷ Linklaters, *Data Protected – Switzerland* (Oct. 2020), <https://www.linklaters.com/en-us/insights/data-protected/data-protected---switzerland>

⁹⁴⁸ Council of Europe, <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/223/signatures>

⁹⁴⁹ Council of Europe, *128th Session of the Committee of Ministers* (May 17-18, 2018), https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016807c65bf

⁹⁵⁰ Lexology, *Revision of Swiss data protection act adopted* (Sept. 25, 2020), <https://www.lexology.com/library/detail.aspx?g=ebc8ce19-0fee-457d-a94f-a0625e4805b8>

⁹⁵¹ Swiss Parliament, *Vorlage der Redaktionskommission für die Schlussabstimmung, Bundesgesetz über den Datenschutz (DSG)* (Sept. 25, 2020) (“Presentation by the editorial board for the final vote on the Data Protection Act”) [DT]ra, <https://www.parlament.ch/centers/eparl/curia/2017/20170059/Schlussabstimmungstext%203%20NS%20D.pdf>

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applicable, the existence of an automated individual decision and the logic on which the decision is based."

OECD AI Principles

Switzerland endorsed the G20 AI Principles. Regarding implementation of the AI Principles, the OECD notes Switzerland's active involvement in relevant international organisations and processes. Particularly important for Switzerland is to ensure that fundamental and established values and norms such as human rights are respected and that all relevant stakeholders are involved in decision-making. "Particularly important for Switzerland is to ensure that fundamental and established values and norms such as human rights are respected and that all relevant stakeholders are involved in decision-making."⁹⁵²

Human Rights

Switzerland is a signatory to many international human rights treaties and conventions. Switzerland typically ranks among the top nations in the world for the protection of human rights and transparency.⁹⁵³

Evaluation

Switzerland has newly established a national set of guidelines on ethics that are aimed at the public administration. Further, across most reports and initiatives, ethics have been considered, integrated and implemented in the governments work on AI policy. However, there is no clear regulatory strategy for the private sector. There is also, at the moment, no express support for the Universal Guidelines for AI or the Social Contract for the Age of AI.

⁹⁵² G20 Digital Economy Task Force, *Examples of National AI Policies* (2020), <https://www.mcit.gov.sa/sites/default/files/examples-of-ai-national-policies.pdf>.

⁹⁵³ Freedom House, *Freedom in the World 2019: Switzerland* (2019), <https://freedomhouse.org/country/switzerland/freedom-world/2019>.