

Positioning in a Volatile World

AFBS Get Together 2025

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FINMA Guidance 08/2024 – Key Takeaways

✓ **Broad AI Definition** – Include traditional applications with similar risks.

✓ **Risk Management** – Identify, classify, and mitigate key risks:

- **Operational** (robustness, correctness, explainability, bias)
- **Data** (security, quality, availability)
- **IT & Cybersecurity**
- **Third-party dependencies**
- **Legal & Reputational**
- **Responsibility Allocation Challenges**



AI Governance

✓ **Clear Accountability** – Define responsibility for AI development, implementation, monitoring & usage.

✓ **Data Quality** – Establish internal rules and directives, ensure knowledge & control over external AI data to avoid unsuitable and manipulated data.

✓ **Testing & Continuous Monitoring** – Conduct regular tests, define KPIs, and monitor data drift.

✓ **Documentation** – Maintain records on purpose, data selection, model performance, limitations & controls for material applications.

✓ **Explainability** – Ensure that output can be understood, explained, and reproduced, justify decisions to stakeholders.

✓ **Independent Reviews** – Separate AI development from its evaluation.



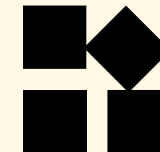
Practical Guidance for AI Adoption

- ◆ **Define AI** – Clearly define and scope “AI” (include traditional applications with similar risks)
- ◆ **Identify & Classify Risks** – Develop an AI risk model, identify and classify risks in AI system and models.
- ◆ **Governance & Directives** – Implement a general “AI Directive”, define internal accountability.
- ◆ **Processes & Evaluation** – Establish processes, measures, and documentation, separate development from evaluation, and maintain an AI inventory (key figures & risk classes)



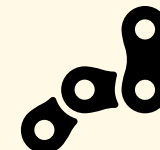
Groundwork

- ◆ **Select & Test Applications** – Select or develop an AI application, test data quality, model behavior, and functionality, and assess risks (operational, data, IT & cybersecurity, third-party dependencies, legal, and reputational)
- ◆ **Training & Monitoring** – Train employees at all levels, continuously monitor with tests, KPIs, and data drift analysis.



App-Specific

- ◆ **Supplier & Cloud Management** – Manage suppliers and update contracts (quality, compliance, e.g., with EU AI Act), conduct cloud-specific risk assessments.



Supplier

- 🔍 **External Fraud Detection**
 - Machine learning classification (analytical approach)
 - Proactive fraud attempt indication and identification (insights)
- 🔍 **Transaction Monitoring**
 - Correlation & regression techniques
 - Reduction of false positive alerts
- 🔍 **Sanctions Risk Detection**
 - Deep learning & text search
 - Optimization levers, scenario results, and risk factors
- 🔍 **eDiscovery & Digital Forensics**
 - Natural language processing (NLP) & generative AI
 - Context-based document retrieval
- 🔍 **(Live) KYC Due Diligence**
 - AI model ensembles
 - Real-time customer KYC insights
- 🔍 **Regulatory Compliance Assurance**
 - Generative AI for legal context interpretation
 - Chatbot & Q&A from regulatory databases
- 🔍 **Content Generation**
 - Summaries, marketing texts, job descriptions, emails
- 🔍 **Customer Service Optimization**
 - AI-driven classification of customer complaints

Switzerland's AI Strategy: No "Swiss AI Act"

Approach:

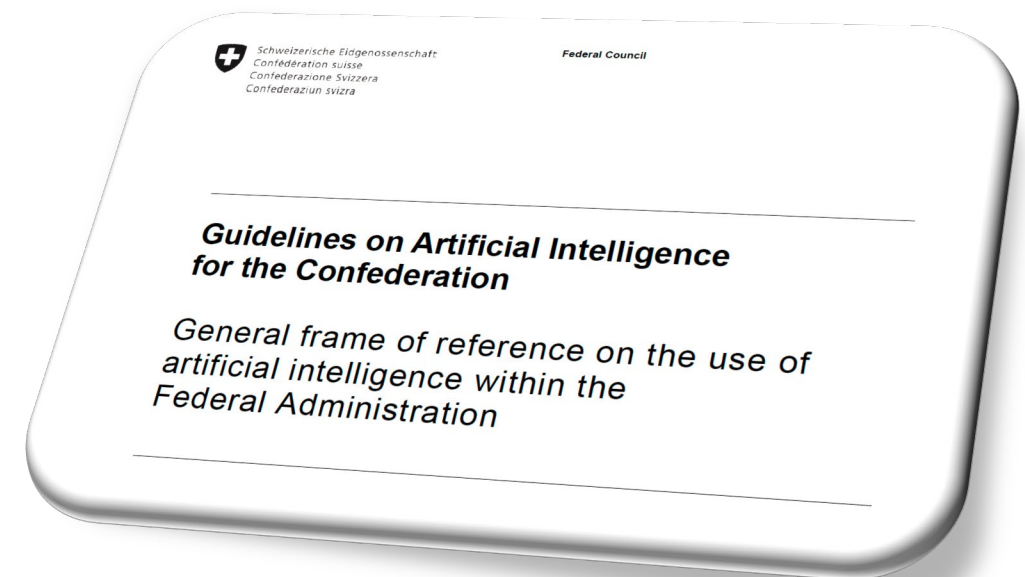
- ⚖️ 12 February 2025
- ⚖️ No Swiss equivalent of the EU AI Act
- ⚖️ Ratifying the **Council of Europe's Convention on AI**
- ⚖️ **Targeted Swiss law amendments:**
 - Where necessary (e.g., transparency obligations, risk & impact assessments)
 - Sector-specific (e.g., healthcare, transport)
 - Cross-sector rules limited to critical areas like data protection

Key Objectives:

- ✅ Strengthen Switzerland as an innovation hub
- ✅ Protect fundamental rights
- ✅ Boost public trust in AI

What's Next?

- 📌 Proposal to incorporate Convention on AI into Swiss law by **end of 2026**
- 📌 Sector-specific amendments to Swiss law with cross-sector rules for critical areas
- 📌 Non-legally binding measures: Self-declaration agreements, industry-led solutions



Contact

Dr. Christian Kunz co-heads Bär & Karrer's Data Protection & Digital Economy as well as Technology, Media & Telecommunications (TMT) practice groups. He is an expert in the field of data, data protection, cybersecurity and technology law.

He advises Swiss and international clients on data, data protection, cybersecurity and technology law matters, including cybercrime issues, the development and implementation of data strategies and data protection-related processes, the use and monetisation of data, (cloud) outsourcings of data, international data transfers and data disclosure requests (e.g., based on MLAT requests or the U.S. Cloud Act), and data breach incident management and response.

He also advises on data-driven business models and platform solutions (XaaS, cloud services, IoT, online platforms, digital marketplaces), advanced technology projects (AI, Machine Learning, Big Data, blockchain / distributed ledger technology (DLT), etc.), digital infrastructure and technology transactions, and other complex Swiss and European data protection, cybersecurity and technology law issues. Besides that, Christian conducts large-scale internal investigations and e-discovery projects.

He is KnowledgeNet Chapter Chair of the International Association of Privacy Professionals (IAPP) in Switzerland. He regularly gives lectures, participates in panel discussions, publishes scientific articles and newsletters and holds internal and external trainings in his areas of expertise. He is an author in the "Basler Kommentar zum Datenschutzgesetz" and in the "Orell Füssli Kommentar zum Datenschutzgesetz", leading commentaries on the revised Swiss Federal Data Protection Act. And he is a lecturer for the CAS Data Protection course at the University of Zurich.

Christian is listed in Chambers Europe 2024 as "Up and Coming" for TMT, with reference to a client who says that "Christian's knowledge and expertise are exceptional, coupled with a witty and insightful approach to complex issues". Legal 500 EMEA ranks him as Next Generation Partner for TMT in 2024 and recommends him for data privacy and data protection advice since 2023. At the IFLR Rising Stars Awards EMEA 2022, he was recognized as Rising Star in the field of data protection & data security. And Leaders League has rated him as excellent for data protection as well as IT and outsourcing advice in Switzerland since 2022.

Privacy & Data Protection

Technology, Media &
Telecommunication

Crisis Management &
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Corporate & Commercial

Healthcare & Life Sciences

Consumer Goods & Retail

PARTNER

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*Christian Kunz is an exceptional legal mind
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LANGUAGES

German, English, French