

Press release

Berne, 28 June 2019

Amendment of the federal law to address developments in the technology of distributed electronic ledgers If my cloud provider goes bankrupt, what happens to my data?

At present, there are no rules about what happens to corporate or personal data when the cloud provider that stores it goes bankrupt. Can I still access the data? Can I demand that it be handed over, and if so, is it then deleted from the bankruptcy assets or does it remain there and maybe passed on to third parties? In an increasingly digitalised world, the present situation is untenable. To tackle this, ICTswitzerland Chairman and National Councillor Marcel Dobler submitted a proposal to parliament in 2017, requesting that the gap in the legislation be closed. The Swiss Federal Council now intends to implement this proposal as part of the amendment of the “Federal law to developments in distributed ledger technology.” However, ICTswitzerland believes that the current proposal does not go far enough and thus still leaves central questions unanswered. In its position statement on the issue, ICTswitzerland therefore calls for the proposal to be modified.

In the consultations on the amendment of the “Federal law to developments in distributed ledger technology”, which end today, the Federal Council is, amongst other things, planning a targeted modernisation of the Debt Enforcement and Bankruptcy Act (SchKG). This is urgently needed because the SchKG currently provides for a right to the segregation of “objects” only, not data.

ICTswitzerland Chairman and National Councillor Marcel Dobler considers this is an untenable situation: “Nowadays data such as customer files or accounting records is often much more important to a company than physical objects. In the case of private individuals, there is often also the emotional value of items such as e.g. photos. Now just imagine that this data is suddenly inaccessible because bankruptcy proceedings have been initiated and the administrators have pulled the plug on the server and you don’t know if or when you will ever get the data back. This would be an intolerable situation for those concerned.”

ICTswitzerland welcomes the fact that the Federal Council has recognised the problem and wants to close the gap in the legislation. But the current proposal, namely to amend Article 242(b) SchKG, is not sufficient to properly solve the problem. In contrast to the parliamentary initiative of National Councillor Dobler (see [17.410](#)) and the objectives stated in the explanatory report of the Federal Council, the current proposal stipulates only that the data may be viewed. This still leaves the question of the release of the data and its subsequent removal from bankruptcy assets (so that it is no longer available to third parties).

In its position statement, ICTswitzerland therefore calls for the amendment and clearer formulation of the proposed article in order to create legal certainty for data subjects.

In addition to this specific article on the handling of data in the event of bankruptcy, ICTswitzerland welcomes the Federal Council’s draft law on improving the framework conditions for blockchain / distributed ledger

technology (DLT) applications. Switzerland would do well to create suitable framework conditions for the numerous blockchain and fintech start-ups domiciled in Switzerland.

ICTswitzerland's complete position statement can be found here:

ictswitzerland.ch/en/publikationen/stellungnahme-dlt

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About ICTswitzerland

ICTswitzerland is the umbrella organisation for the digital economy. Founded in 1980, the organisation brings together 31 large and medium enterprises, along with 21 associations. ICTswitzerland represents their interests towards the general public, the authorities and other associations, and aims to promote and develop digital technologies, and the education and further training of ICT specialists. ICTswitzerland is also committed to the identification and prevention of cyber-risks. In Switzerland, a total of about 200,000 ICT specialists are employed throughout all the business sectors and in public administration (2017). With a gross value of CHF 29.7 billion in 2015, the ICT core sector is Switzerland's seventh-largest industry. www.ictswitzerland.ch/en/