

Email Marketing Compliance: Switzerland

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Country Q&A | [Law stated as of 24-Sep-2021](#) | Switzerland

A Q&A providing a high-level summary of email marketing (spam) compliance requirements in Switzerland. It addresses requirements for opt-in or opt-out consent, consent exceptions, email subject lines, email content, and unsubscribing. It also identifies relevant statutes, regulations, guidelines, regulatory authorities, sanctions, and remedies.

This Q&A only addresses personal data processing requirements or restrictions relevant to using email addresses to send marketing messages. It does not address personal data use for broader marketing purposes, such as targeting email content based on behavior or generated profiles.

To compare high-level requirements across multiple countries, visit [Email Marketing Compliance: Country Q&A Tool](#).

Primary Legislation and Regulatory Authority

1. What primary legislation and regulatory authority governs email marketing activities?

Primary Legislation

- The [Federal Act Against Unfair Competition](#) (in German) (UCA), which:
 - is the primary legislation regarding email marketing; and
 - regulates, among other things, the conditions for sending commercial emails.
- The [Telecommunications Act](#) (in German) (TCA), which sets forth the precautions that telecommunications providers must take, including measures to prevent unsolicited email marketing.
- The [Federal Act on Data Protection](#) (FADP), which regulates personal data used in email marketing activities. On September 25, 2020, the Swiss Parliament adopted the [Revised Federal Act on Data Protection](#) (in German) (Revised FADP), which, among other things, adapts Swiss data protection law to the internet age. The Revised FADP is expected to replace the current FADP, likely in the second half of 2022, but is generally not expected to affect email marketing rules. For more, see the guidance in [Federal Data Protection](#)

and Information Commissioner (FDPIC): The new Data Protection Act from the FDPIC's perspective (February 9, 2021).

Regulatory Authority

The authorities responsible for enforcing email marketing restrictions in Switzerland consist of various public authorities and self-regulation bodies, including:

- The competent cantonal prosecuting authority.
- The competent cantonal courts.
- The [State Secretariat for Economic Affairs](#) (Staatssekretariat für Wirtschaft).
- The [Swiss Commission for Fairness in Commercial Communications](#) (in German) (Schweizerische Lauterkeitskommission).
- The [Federal Data Protection and Information Commissioner](#) (*Eidgenössischer Datenschutz- und Öffentlichkeitsbeauftragter*).

Unsolicited Email Marketing Requirements Summary

2. Does this jurisdiction generally require opt-in consent or does including an opt-out mechanism satisfy requirements?

Opt-In Consent or Opt-Out Mechanism Requirements

Opt-in consent.

The [Federal Act Against Unfair Competition](#) (UCA) (in German) generally requires organizations to obtain the recipient's voluntary and express consent before sending marketing emails (Article (3)(1)(o), UCA). An exception to the consent requirement applies to senders of bulk advertising telecommunications (emails, SMS, and MMS) where there is a pre-existing customer relationship (see [Exceptions to Consent Requirements](#)).

The UCA does not set explicit, formal requirements on how to secure consent, so commercial email senders can obtain consent orally, in writing, or by implied conduct. However, a recipient's silence or non-reaction does not provide valid consent. Best practices and industry standards in Switzerland expect commercial email senders to:

- Document obtained consent in writing or in electronic form.
- Send an email confirming the recipient's opt-in consent, known as a double-opt-in consent.

Once the commercial email sender obtains valid consent, future advertising sent via telecommunications must include:

- The sender's identity.
- The sender's contact information.
- A simple, clearly disclosed, and free of charge opt-out (unsubscribe) option.

(Article 3(1)(o), UCA.)

Swiss law permits providing an unsubscribe link at the end of each advertising email or a link to an unsubscribe form online. However, senders may not require a recipient to unsubscribe using a different form of communication, such as via telephone or postal mail. Senders also cannot intentionally conceal or falsify their identity or contact information.

A recipient may revoke consent at any time. Once withdrawn, the sender must stop all future marketing emails immediately.

In addition to the UCA, the [Federal Act on Data Protection](#) (FADP) requires consent before sending mass advertising communications because they usually do not satisfy the legal transparency requirement (Article 4(3), FADP). Using a double opt-in procedure helps senders meet the FADP's requirements by providing:

- Assurances that processed personal data is correct (Article 5(1), FADP).
- Proof of obtained consent under Swiss data protection law, as the burden of proof falls on the sender.

On September 25, 2020, the Swiss Parliament adopted the [Revised Federal Act on Data Protection](#) (in German) (Revised FADP), which, among other things, adapts Swiss data protection law to the internet age. The Revised FADP is expected to replace the current FADP, likely in the second half of 2022, but is generally not expected to affect email marketing rules. For more, see the guidance in [FDPIC: The new Data Protection Act from the FDPIC's perspective](#) (February 9, 2021).

For more on the FADP, see [Country Q&A, Data protection in Switzerland: overview](#).

For a model opt-in clause, see [Standard Clause, Email Marketing Consent and Disclosures \(Switzerland\)](#).

3. What exceptions to the consent requirements exist, if any?

Exceptions to Consent Requirements

The [Federal Act Against Unfair Competition](#) (UCA) (in German) establishes a limited consent requirement exception for bulk messages to pre-existing customers about similar products and services. This exception applies when:

- The sender collected the individual's contact information during business transactions, such as the purchase of goods or ordering of service.
- The sender informed the recipient about the person's right to refuse advertising messages (opt-out).
- The communication relates only to the sender's own similar products or services.
- The communication does not include third party products or services.
- The communication clearly identifies the sender and contains a simple, clearly disclosed, and free of charge unsubscribe option (see [Email Content Requirements](#)).

(Article (3)(1)(o), UCA.)

4. Do the requirements for business-to-business email marketing differ from business-to-consumer email marketing?

Business-to-Business vs Business-to-Consumer Email Marketing

Swiss law does not differentiate between business-to-business and business-to-consumer email marketing.

5. Must the email subject line meet any specific requirements?

Email Subject Line Requirements

No. The Swiss regulatory framework does not contain any express email subject line requirements.

6. Must the email body text or header information meet any specific requirements?

Email Content Requirements

The [Federal Act Against Unfair Competition](#) (UCA) (in German) requires commercial email advertisements to include:

- The sender's identity.
- The sender's contact information.
- A simple, clearly disclosed, and free of charge opt-out (or unsubscribe) option.

(Article (3)(1)(o), UCA.)

Senders using a third party to send bulk emails must ensure that the email clearly identifies their organization's identity and contact information. These content requirements apply to all bulk email advertisements, even when a consent exception applies (see [Exceptions to Consent Requirements](#)).

Swiss law permits providing an unsubscribe link at the end of each advertising email or a link to an unsubscribe form online. However, senders may not require a recipient to unsubscribe using a different form of communication, such as via telephone or postal mail.

Email content requirements may also differ depending on:

- The scope of the recipient's consent.
- Other legal requirements when, for example:
 - advertising specifically regulated products, such as drugs, tobacco, alcohol, or precious metals; or
 - the marketing communication discloses prices.

For a set of model email disclosures, see [Standard Clause, Email Marketing Consent and Disclosures \(Switzerland\)](#).

Sanctions and Remedies

7. What are the potential sanctions and remedies for non-compliance?

Violations of the [Federal Act Against Unfair Competition](#) (UCA) (in German) may result in:

- Criminal prosecution for willful infringement of the UCA, which is punishable by imprisonment for up to three years or a fine (Article 23, UCA.)
- a fine of up to 180 daily rates (*Tagessätze*) with a maximum of CHF3,000 per rate, dependent on the violator's personal and financial situation (Article 34(1) and (2), [Swiss Criminal Code](#)).

- Individual civil court actions for compensation of damages caused, for the unlawful sending of bulk advertising communications (Article 9(1), UCA).
- Injunctive relief preventing further unlawful sending of bulk advertising communications, if requested by a legitimate person (Article 9(1), UCA).

With few exceptions, no effective sanctions for violations of the [Federal Act on Data Protection](#) (FADP) exist. However, recipients of unlawful advertising communications may initiate civil proceedings at any time (Article 15(1), FADP).

The [Revised Federal Act on Data Protection](#) (in German) (Revised FADP) will implement stronger personal criminal sanctions once it enters into force, including fines for natural persons up to CHF250,000 for violations of:

- Information, disclosure, and cooperation obligations (Article 60, Revised FADP).
- Duties of care (Article 61, Revised FADP).
- Professional secrecy obligations (Article 62, Revised FADP).
- Disregard of FDPIC orders (Article 63 Revised FADP).

While the above sanctions aim to target the natural persons primarily responsible within an organization, organizations themselves can be fined up to CHF50,000 if an investigation to determine the punishable natural person within the organization would entail disproportionate efforts (Article 64(2), Revised FADP).

Individuals can also file a complaint with existing self-regulatory bodies such as the [Swiss Commission for Fairness in Commercial Communications](#) (in German). However, it limits the remedy for these complaints to:

- Recommendations by the self-regulatory body.
- Publication of the results of the complaint.

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