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Data protection supervisory authorities: Additional checks and measures necessary despite new EU standard contractual clauses for data exports; Kugelmann: "Now all the cards are on the table. It is the responsibility of those responsible." With the implementation decision of June 4, 2021, the European Commission issued new standard contractual clauses that are intended to enable the legally compliant transfer of personal data to third countries. The conference of the independent data protection supervisory authorities of the federal and state governments (Data Protection Conference, DSK), like the European Data Protection Board (EDSA), points out that even when using the new EU standard contractual clauses, an examination of the legal situation in the third country and additional supplementary measures are required.

In its decision, the EU Commission addressed, among other things, the "Schrems II" decision of the European Court of Justice (ECJ). In its judgment of July 16, 2020 (case C 311/18 – Schrems II), the ECJ determined that transfers of personal data to the USA can no longer take place on the basis of the so-called Privacy Shield. In principle, the standard contractual clauses adopted by the EU Commission can continue to be used as the legal basis for the transfer of personal data to third countries. However, all those responsible must also carry out an examination as to whether the legal situation or practice in the respective third country can have a negative impact on the level of protection guaranteed by the standard contractual clauses. If this is the case, for example because the authorities of the third country have excessive access rights to processed data, the data controllers must take additional measures before the data is transferred to the third country in order to ensure a level of protection that is essentially equivalent to the level guaranteed in the European Union is. If this is not possible, the transfers must be stopped. To check the legal situation in the third country and the additional measures, those responsible can refer to the "Recommendations 01/2020 on measures to supplement transfer tools to ensure the level of protection under Union law for personal data". The EDPB decided on its final version after public consultation on June 18, 2021. The new standard contractual clauses have not changed the situation described and the resulting obligations. Rather, these now expressly regulate the requirements that previously only followed from the case law of the ECJ (Clause 14). The EU Commission and the EDPB have deliberately coordinated the new standard contractual clauses and the recommendations 01/2020. This means that even when using the new clauses, the data exporter must check the legal situation and practice in the third country and, if necessary, take additional protective measures or, if this does not succeed, refrain from the transfer. Professor Kugelmann,

State Data Protection Officer of Rhineland-Palatinate, clarifies : “The data protection supervisory authorities will help with information. Ultimately, however, it is the task of those responsible to check their data transfers to third countries and to change them if necessary. This remains a major task, but it must be tackled now at the latest.” In its “Schrems II” judgment, the European Court of Justice examined the level of data protection in the USA in detail and found it to be insufficient. In the case of data transfers to the USA, additional measures are therefore regularly required to prevent the US authorities from accessing the processed data. However, such measures are only conceivable in a few cases. Companies and other actors who transfer personal data to third countries must be able to prove to the supervisory authority that they have carried out the examination of the level of protection in the third country described here in individual cases and have come to a positive result . The German supervisory authorities have started consultations and reviews on whether and how the requirements of the "Schrems II" judgment are being met. Further information on the data protection conferenceContact: Independent Data Protection Center SaarlandFritz-Dobisch-Straße 1266111 SaarbrückenEmail: medien@datenschutz.saarland.de

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