Recommendations for reviewing data processing contracts

from providers of video conferencing services

In our supervisory work we had to realize that

certain deficiencies in data processing agreements of providers of

Video conferencing services are popping up more frequently. Therefore we recommend the

responsible persons subject to our supervision, when examining the

contracts to pay particular attention to the following aspects:

If the service contract is concluded online, it must be ensured that

that the order processing contract is actually in the contract

is included. The order processing contract must

Cover the requirements of Art. 28 GDPR.

In particular, the providers must act fully in accordance with instructions,

So the personal data must not be used for your own purposes or

Process third-party purposes (Art. 28 Para. 3 lit. a DS-GVO) and must them

immediately after completion of the service provision at the option of the

publish or delete the responsible body (Art. 28 Para. 3 lit. g DS-

GMO). The providers must also undertake to provide all information

to prove compliance with those laid down in Art. 28 DS-GVO

to provide obligations and reviews – including pro-

On-site inspections - to enable and contribute to (Art. 28 para. 3

lit. h GDPR). The obligation to provide must have all the required

Information includes and must not be specific to the

full proof insufficient documents limited

become. Likewise, the right of control must not be based on the request of

or access to documents may be restricted. In very special

In exceptional cases, an unannounced on-site inspection must also be possible

be. In any case, for reviews due to violations by the provider

become necessary against their obligations, an obligation to bear the costs must be incurred

be excluded from those responsible, otherwise this

right of review would be de facto devalued.

Providers must contractually undertake, all according to Art. 32 DS-GVO

implement the necessary technical and organizational measures.

Does the contract refer to an exhaustive list of certain

measures to be implemented, this is generally not sufficient.

Subcontractors may only do so with the consent of the responsible body

be switched on (Art. 28 Para. 2 DS-GVO); in the case of a general

Permission for subcontractors, the provider must be responsible

Inform the agency proactively and in good time about planned subcontractors.

Those responsible must have a real right to object

Have subcontractors, so not only the right of use for the

Service may be omitted while the obligation to pay remains. All

Control rights must also be fully opposed

Subcontractors apply (Art. 28 Para. 4 S. 1 DS-GVO).

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Especially for providers with headquarters or place of processing outside of
EU and EEA, the contractual formulations must be carefully observed.
If the contract - such as Article 28 (3) lit. a and h GDPR - exceptions
of the binding instructions, these must be exactly according to the
comply with the limits permitted by law. These exceptions are allowed
exclusively on the law of the EU and as far as relevant
Member States refer, therefore not inadmissible Art. 48 DS-GVO
is bypassed.
According to Art. 5 Para. 2 DS-GVO, those responsible must provide evidence at any time
ensure that they comply with legal requirements. This requires
mandatory that on the one hand the order processing contract is clearly formulated
is and no doubts are possible that all legal
requirements are met. Any ambiguities and
Contradictory regulations are to be avoided, even if it is at someone else's
Place clauses there that are inconsistent with any of the regulations
grant priority of validity (priority clauses). On the other hand, you also have to
the permissible subcontractors must be clearly defined at all times so that the
pure reference in the contract to a list on a website or just one
general designation such as "affiliated companies" or an indication

without a full name including legal form and address is not sufficient.

If the data processing takes place in third countries, i.e. outside of the

Scope of the DS-GVO, the transmission must be carried out by suitable means

Guarantees must be secured, for example by agreeing to the EU

Commission approved Standard Contractual Clauses. there is

in particular, it should be noted that the rights and obligations arising from

Standard contractual clauses may not be restricted, not even in

other contract documents, otherwise the data export will be inadmissible.

Restrictions are also inadmissible if they are contractual

priority rules exist. Because a priority rule already included

the Standard Contractual Clauses themselves, so any restriction anyway

is invalid under civil law; nevertheless, only unmodified can

Standard contractual clauses for data export are used.

Only additions that are exclusively for the benefit of the

data subjects and the level of data protection. intended for

Data exports to the USA must be based on the Privacy Shield

those responsible check whether the self-certification is actually

exists and whether it includes all processed data and purposes,

in particular personal data (HR data).

Standard Contractual Clauses and Privacy Shield are currently the subject

a proceeding before the Court of Justice of the European Union and

could subsequently be rejected as ineffective from the outset. This

speaks in favor of extending the data processing to the area of the EU and EEA and

other by the EU Commission as comparable in terms of data protection

to restrict states.

When naming the persons concerned, it should be noted that

is also discussed about third parties, so that their personal

data are processed.

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