

Strengthening of user rights

Microsoft supplements Standard Contractual Clauses

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The Hessian Commissioner for Data Protection and Freedom of Information welcomes the initiative to secure international data transfers.

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According to the judgment of the European Court of Justice on Schrems II in July 2020, international data transfer from Europe to the USA is still possible to a very limited extent, although numerous US providers are key players in global data processing. One reason for this is the mass surveillance by US security authorities, such as the NSA, which is completely exaggerated from the point of view of the ECJ, which is why data from Europeans may only be transmitted under additional protective measures. Last week, the European Data Protection Board issued initial recommendations for action on the design of protective measures and invited to a consultation.

All those involved and decision-makers in international data transfer are called upon to find legally tenable solutions based on suitable protective measures that take sufficient account of European data protection concerns.

As one of the central providers of globally networked IT products for companies, Microsoft has now made a number of proposals for guarantees that directly strengthen user rights.

An evaluation of these proposals will now be made by all decision-makers, including in the forthcoming deliberations of the data protection conference. As a contribution to these consultations, the data protection supervisory authorities of the states of Baden-Württemberg, Bavaria and Hesse assess this as follows:

The HBDI, Prof. Dr. Michael Ronellenfitsch says:

“The question of whether there is adequate data protection for European export companies in the USA must be answered by a weighing decision. This was burdened by the limited predictability of the trade policy pursued by the previous US administration. In view of the election result, an improvement in the negotiating situation can be expected in the future. But

even then, success in the negotiations can only be expected if the data protection problems are discussed step by step with an open mind at all decision-making levels. All that matters is that the relevant arguments are brought to the table. It doesn't matter who does it. The actual consideration can then only be made by the responsible committees."

The President of the BayLDA Michael Will:

"Microsoft's proposals are a valuable impetus for the joint search for legal certainty for data transfers to the USA as well as to other countries whose legal system cannot adequately guarantee the protection standard of European data protection law. The European Court of Justice has clearly decided that data flows from Europe to the USA are no longer permitted without additional measures. With the initiative presented today, Microsoft has taken up this demand of the European Court of Justice and the data protection supervisory authorities responsible for enforcing the GDPR in a first step. This is encouraging news, especially for small and medium-sized companies that are particularly dependent on the uncomplicated and data protection-compliant use of standard products."

Prof. Dr. Petri, the Bavarian Data Protection Officer, adds:

"Bavarian public authorities should primarily use services that do not transfer data to third countries. However, it would be unrealistic to believe that this is possible for all common office applications. It is all the more important if US providers of office applications also meet the requirements of the GDPR. I consider Microsoft's current proposals to be an important starting point for the coming negotiations."

In a parallel press release, the LfDI Baden-Württemberg emphasizes Dr. Stephen Brink:

"If a data processing company wants to operate on the European market in the future, it must meet European legal standards, in particular the GDPR. This includes companies informing those affected when security authorities gain access to their data. It is good and necessary for a company like Microsoft to comply with European data protection and change its contractual clauses accordingly. The European Court of Justice has clearly ruled that data flows from Europe to the US are no longer permitted without such additional measures."

Microsoft's new contract clauses contain provisions on

the information of the data subject if Microsoft has been legally obliged by a governmental order to release data to US security authorities;

Microsoft's obligation to pursue legal action and appeal to the US courts to challenge the governmental release order;

the right to compensation for the data subject whose data has been processed unlawfully and who has suffered material or non-material damage as a result

According to the joint assessment of the data protection supervisory authorities involved, this does not generally solve the transfer problem to the USA - because an amendment to the standard contractual clauses cannot lead to the access of the US secret services to the data, which the European Court of Justice has criticized as being disproportionate, being prevented will. But the fact that Microsoft, as one of the largest, internationally active corporations in the world, with significant market power in Europe, is now moving in the right direction and is including significant improvements for the rights of European citizens in its contract clauses, is an important step and a clear one signal to other providers to follow suit.

Before the end of the year, the DSK will continue its talks with Microsoft on the Office package - the progress that has now been made promises "tailwind".

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