

State representative for data protection in Saxony-Anhalt

dr Harold von Bose

press release

dated March 13, 2019

When things get tough, what applies?

Information for Saxony-Anhalt companies

to prepare for a no-deal Brexit

On March 29, 2017, the United Kingdom of Great Britain and Northern Ireland announced its withdrawal from the European Union (EU) declared. In the event of an unregulated exit (no-deal Brexit), the association will United Kingdom from March 30, 2019 from 00.00 a.m. "third country" within the meaning of Chapter V of the Data General Protection Regulation (GDPR) (or possibly a little later in the event of a postponement of the effective date).

Below I present specifically for the small and medium-sized businesses with registered office or branch in Saxony-Anhalt, as a precautionary measure, present the relevant possibilities for the processes of cross-border trending data traffic from March 30, 2019 in compliance with data protection. last

All parties involved should work together to avoid negative economic effects.

The GDPR contains a range of instruments to justify data transfers in countries the one outside the EU. In addition to well-established instruments such as the adequacy decisions of the EU Commission (Art. 45 DS-GVO), Standard Contractual Clauses (Art. 46 Para. 2 lit. c and d DS-GVO) or Binding Corporate Rules (Art. 46 Para. 2 lit. b, Art. 47 DS-GVO) transmissions can also be approved rules of conduct and certifications (Art. 46 Para. 2 lit. e and f DS-GVO) are supported.

Preferably, because it can be implemented with relatively little effort, the agreement of

Standard data protection clauses will be:

1. Because an adequacy decision made by the EU Commission

confirms that a data protection level comparable to that of the GDPR exists in the third country and allows data export without further approvals. The adequacy decision

However, this is preceded by an extensive test procedure, which will only be started after Brexit the can. Therefore, at least for a transitional period that cannot be precisely predicted, another res data protection instrument to choose.

2

2.

Binding Corporate Rules (BCR) are binding corporate guidelines which are group or Allow internal data transfers. The introduction of BCR, including approval regulatory approval, is a lengthy process that is more appropriate for large corporations and corporate groups.

3. With the DS-GVO, according to Art. 46 (2) lit. e DS-GVO, the possibility Data transmissions based on industry-specific rules of conduct in accordance with Art. 40 GDPR GMOs to legitimize, provided they come with legally binding and enforceable obligations provided by the person responsible or the processor and approved by the competent supervisory authority have been approved.

Certifications according to Art. 42 DS-GVO can now also be granted according to Art. 46 (2) lit. f DS-GVO. together with any legally binding and enforceable obligations of the Controller or of the processor as the legal basis for data transfer to a third country be drawn if the certification mechanisms have been previously approved.

The practical application of these instruments is in terms of legal frameworks and procedural issues have not yet been adequately tested. Therefore, they can in the current situation of Brexit cannot be recommended as an instrument to be implemented quickly.

4.

The DS-GVO also contains exceptions for data transmissions in certain individual cases len. Personal data may e.g. B. to implement a contract with the data subject person or in their interest and to enforce or defend legal claims be sent to entities outside the EU. However, the data transmission must be

ment of the aforementioned purposes is actually necessary and may only occasionally and not take place on a recurring basis.

Finally, customers or users can also ask for consent to the processing of data

be requested in the UK. Those affected must communicate in simple language

informed of the purpose of data processing and your right of withdrawal, of possible risks of

mediation of the data and then e.g. in the online form the consent per

Express checkbox (Art. 49 Para. 1 S. 1 lit. a DS-GVO).

3

Accordingly, I recommend particularly due to the shortness of the remaining time and on basis

of brief paper no. 4 of the data protection conference

"Data transmission

in third countries"

([http://lsaur.de/KP04Third countries](http://lsaur.de/KP04Third%20countries)):

5.

The agreement of standard data protection clauses of the EU Commission (Art. 46 Para. 2 lit. c and

d DS-GVO) is regularly the appropriate instrument. These can, if they are

be agreed quickly bilaterally without the need for regulatory approval

will. However, the prerequisite is that the clauses apply to the specific processing situation

fit and that the contracting parties meet the requirements laid down there.

On the one hand, the EU provides standard data protection clauses in the event that the British

cal recipient is the order data processor

(<http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32010D0087>),

on the other hand, in the event that the British recipient is responsible (two versions

call:

<http://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32001D0497> or

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004D0915>,

the second version being the newer one and more preferable in terms of content).

The standard data protection clauses contain obligations for both (British) data import

porteur as well as the (Saxony-Anhalt) data exporter and justify building on the

Permissibility of data processing according to the DS-GVO the export of the data to the United Kingdom rich.

I also refer to information from the European Data Protection Board (Annex 1) and the

Data protection conference (Annex 2), the body of the independent German data protection supervisory

Federal and state authorities to whom further information on the transmission of personal

Data can be found in the UK.

The above explanations are also provided to the commercial chambers in the state of Saxony-Anhalt

made available so that they can forward the information to their members. They are located

also on my homepage under

<https://datenschutz.sachsen-anhalt.de/landesbeauftragter/pressemitteilungen-datenschutz/>.

State representative for data protection in Saxony-Anhalt

dr Harold von Bose

ladder street 9, 39104 Magdeburg, postal address: PF 1947, 39009 Magdeburg

Telephone: 0391 81803-0, fax: 0391 81803-33, [www.datenschutz.sachsen-anhalt.de](http://www.datenschutz.sachsen-anhalt.de)

[www.informationsfreiheit.sachsen-anhalt.de](http://www.informationsfreiheit.sachsen-anhalt.de)

Email: [poststelle@lfd.sachsen-anhalt.de](mailto:poststelle@lfd.sachsen-anhalt.de)