

Press release of the conference of the independent data protection supervisory authorities of the federal and state governments from July 28th, 2020

07/29/2020

privacy

press release

In its judgment of July 16, 2020 (Case C-311/18), the European Court of Justice (ECJ) declared Decision 2016/1250 of the European Commission on the transfer of personal data to the USA (Privacy Shield) to be invalid. At the same time, the ECJ determined that Commission Decision 2010/87/EC on Standard Contractual Clauses (SCC) is still valid in principle. The judgment of the European Court of Justice on the transfer of personal data to third countries ("Schrems II") strengthens the Data protection for EU citizens In its judgment of July 16, 2020 (Case C-311/18), the European Court of Justice (ECJ) declared the European Commission's Decision 2016/1250 on the transfer of personal data to the USA (Privacy Shield) to be invalid explained. At the same time, the ECJ found that the Commission's decision 2010/87/EG on standard contractual clauses (Standard Contractual Clauses - SCC) is still valid in principle Fundamental data protection rights of citizens in the European Union strengthened. According to an initial assessment by the DSK, the judgment has the following effects on the transfer of personal data to the USA and other third countries: The transfer of personal data to the USA on the basis of the Privacy Shield is inadmissible and must be stopped immediately. The ECJ has declared the Privacy Shield invalid because the US law assessed by the ECJ does not offer a level of protection that is essentially equivalent to that in the EU. The US law referred to by the ECJ concerns e.g. B. the intelligence service collection powers according to Section 702 FISA and Executive Order 12333. For the transfer of personal data to the USA and other third countries, the existing standard contractual clauses of the European Commission can in principle continue to be used. However, the ECJ emphasized the responsibility of the controller and the recipient to assess whether the rights of the data subjects enjoy an equivalent level of protection in the third country as in the Union. Only then can it be decided whether the guarantees from the standard contractual clauses can be realized in practice. If this is not the case, it should be examined what additional measures can be taken to ensure a level of protection that is essentially equivalent to that in the EU. However, the law of the third country must not affect these additional protective measures in a way that thwarts their actual effect. According to the judgment of the ECJ, standard contractual clauses without additional measures are generally not sufficient for data transfers to the USA. The assessments of the judgment also apply to

other guarantees under Article 46 GDPR, such as binding internal data protection regulations ("binding corporate rules" - BCR), on their basis personal data is transferred to the USA and other third countries. Therefore, additional measures must also be agreed for data transfers on the basis of BCR if the rights of the data subjects in the third country do not enjoy an equivalent level of protection as in the Union. These measures must also be able to guarantee an essentially equivalent level of data protection for the transmitted data as in the EU. The transmission of personal data from the EU to the USA and other third countries under Article 49 GDPR is still permitted, provided that the conditions of Article 49 GDPR in the are met on a case-by-case basis. The European Data Protection Board has published guidelines on the application and interpretation of this provision. Controllers who wish to continue to transfer personal data to the USA or other third countries must immediately check whether they can do so under the conditions mentioned. The ECJ has not granted a transitional or grace period. Even if the ECJ emphasized the primary responsibility of the transmitter of personal data and the recipient in its decision at various points, it also gave the supervisory authorities a key role in enforcing the GDPR and other decisions on Assigned data transfers to third countries. The German supervisory authorities will coordinate their approach with their colleagues in the European Data Protection Board and will also advise on more specific issues in the future. Following the judgment of the ECJ, the European Data Protection Board has key questions and answers after an initial statement at its meeting on July 23, 2020 (FAQ) on the implementation of the judgment published. The DSK supports the positioning of the European Data Protection Board. The English text of the FAQ is available on the European Data Protection Board website at:

[https://edpb.europa.eu/news/news/2020/european-data-protection-board-publishes-faq-document-cjeu-judgment-c-31118-schrems\\_de](https://edpb.europa.eu/news/news/2020/european-data-protection-board-publishes-faq-document-cjeu-judgment-c-31118-schrems_de) to find.

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Judgment of the European Court of Justice on the transfer of personal data to third countries ("Schrems II") strengthens data protection for EU citizens

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