

07/16/2020

Bang: CJEU shreds the Privacy Shield, but data transfer to countries outside the EU is still possible on a contractual basis. Numerous companies transfer personal data to places outside the EU, e.g. to business partners in the USA or China. This is now becoming more difficult and demanding. In today's judgment, the ECJ decided on the so-called EU-U.S. Privacy Shield has been declared invalid, which is no longer the legal basis for data transfers to the USA. However, the required legal basis for the data transfer can continue to be the standard contractual clauses of the EU Commission. However, a high level of protection for the fundamental right to data protection must be ensured.

The state commissioner for data protection and freedom of information in Rhineland-Palatinate, Prof. Kugelmann, emphasizes: "The protection of fundamental rights does not end at the EU border and also requires an examination of whether and how US security authorities have access to the data. The ECJ once again strengthens the rights of the individual. For the companies concerned, this means a lot of hard work in order to be able to conduct their business in accordance with data protection. Specifically, the judgment in the so-called Schrems II proceedings is about the effectiveness of the legal basis for data transfers to the USA, which Facebook and other US companies also need to implement their business models. The ECJ rejects the so-called Privacy Shield, an agreement on data protection principles for the transfer of personal data to the USA, as the legal basis because the regulations do not guarantee adequate protection. The companies that used the Privacy Shield need to make the switch.

The validity of the EU Commission's standard contractual clauses - probably the most widely used transfer instrument for data transfers to third countries - was confirmed. However, managers who use this transfer tool cannot rest on their laurels. "The ECJ has made it clear that companies cannot buy themselves out of their inspection obligations by using the standard contractual clauses," explains Professor Kugelmann. "The ball is now in the court of those responsible. You cannot avoid dealing intensively with the national laws of the third country to which you want to transfer data. If the data recipients are subject to legal regulations in their home country that violate European data protection law, they may not be able to comply with the contractual provisions of the standard contractual clauses. In this case, the person responsible in the EU must suspend the data transfer there, otherwise he will commit a data protection violation." This also applies to data transfers to all third countries, not just to the USA.

EU-wide coordination of the supervisory authorities is necessary in order to achieve uniform application of the law and to treat companies in the EU equally. Due to the importance of corresponding data transmissions for many companies, the LfDI expects a rush of questions from those responsible and data subjects and asks for their understanding if the processing will take some time. The FAQs of the LfDI on the judgment ([link](#)) offer assistance.

Further information: Press release of the European Court of Justice of July 16, 2020 ECJ judgment C-311/18 of July 16, 2020

Standard data protection clauses of the EU Commission FAQs on the ECJ judgment C-311/18 of July 16, 2020

[return](#)