

State data protection authorities control the implementation of the ECJ judgment "Schrems II" in companies

International traffic test

The State Commissioner for Data Protection (LfD) Lower Saxony participates in cross-state control of data transmissions by companies in countries outside the European Union or the European Economic Area (so-called third countries). The aim of this examination is the broad enforcement of the requirements of the European Court of Justice (ECJ) in its decision "Schrems II" of July 16, 2020. In it, the court determined that transmissions to the USA can no longer be based on the so-called Privacy Shield.

Furthermore, the use of the standard data protection clauses for data transfers to third countries is only sufficient with the use of effective additional measures if the examination by the person responsible has shown that the recipient country cannot guarantee an equivalent level of protection (compared to the EU) for the personal data. In many cases, the judgment of the ECJ requires a fundamental conversion of long-established business models and processes.

In addition to the LfD Lower Saxony, state data protection authorities from Baden-Württemberg, Bavaria, Berlin, Bremen, Brandenburg, Hamburg, Rhineland-Palatinate and Saarland also take part in the examination. They write to the selected companies on the basis of a common catalog of questions. Among other things, this will involve the use of service providers for sending e-mails, hosting websites, web tracking, managing applicant data and the intra-group exchange of customer data and employee data. Each supervisory authority decides individually in which of these areas it will become active.

The LfD Niedersachsen sends questionnaires on the subject of mail and web hosting to 18 Lower Saxony companies from various sectors. "The decision of the ECJ has put many companies and other responsible bodies in a difficult situation with regard to international data transfer," says state data protection officer Barbara Thiel. "However, as the supervisory authority, we expect those responsible to seriously deal with the new requirements and independently search for solutions."

The ECJ has clearly stated its expectation that the authorities will "suspend or prohibit" illegal transfers. In many cases, the suspension of a transmission can probably be achieved in a cooperative dialogue with the company. Where this is not possible, the regulatory measures available will be used to respond. The supervisory authorities are aware of the special challenges that the ECJ judgment on Schrems II entails for companies in Germany and Europe. They are also available for questions of comprehension in the further course of the examination procedure, insofar as this is possible in accordance with the available capacities.

Press release as PDF download (not fully accessible).

Further information

Answer sheets for the exam to download (each as a PDF, not completely barrier-free)

The Schrems II judgment of the ECJ and its significance for data transfers to third countries