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Consequences of the LfDI Rhineland-Palatinate from the ECJ judgment C-311/18 ("Schrems II")The ECJ has declared data transfers to the USA on the basis of the so-called Privacy Shield to be inadmissible. The Privacy Shield is invalid and cannot justify data transfers to the USA. As a consequence of this judgment, the LfDI Rheinland-Pfalz will promptly approach companies to determine whether they have based their data transmission to the USA on the Privacy Shield in the past. Since this is no longer possible with immediate effect, those responsible must take measures and explain how the corresponding data processing will be structured in the future. To do this, the companies must be informative. The ECJ has declared data transfers to the USA to be inadmissible on the basis of the so-called Privacy Shield. The Privacy Shield is invalid and cannot justify data transfers to the USA. As a consequence of this judgment, the LfDI Rheinland-Pfalz will promptly approach companies to determine whether they have based their data transmission to the USA on the Privacy Shield in the past. Since this is no longer possible with immediate effect, the person responsible must take measures and explain how the corresponding data processing will be structured in the future. To do this, the companies must be informative. Data transmission to the USA and other third countries outside the European Union on the basis of standard contractual clauses is and remains possible. But it is conditional. The standard contractual clauses may need to be supplemented by other agreements or elements to ensure that the appropriate level of protection is maintained when data is transferred to the third country. For data transfers to the USA, this means that considerable efforts are required on the part of those responsible, which can probably only be considered sufficient in rare cases. But this is a question of the individual case. At the same time, those responsible must check their data transfers to other third countries, e.g. India, China or Russia, to ensure that they meet the level of data protection required by the General Data Protection Regulation. This was already the case before and is now even more urgently required. Relevant checks are recommended here. The LfDI Rhineland-Palatinate will approach companies in the context of complaints or otherwise in the medium term in order to receive corresponding explanations. The LfDI Rheinland-Pfalz points out that those responsible must suspend their data transmissions if they do not meet the requirements of the General Data Protection Regulation as specified by the ECJ in the Schrems II judgment. In addition, those responsible must request the return or destruction of the personal data that has been transmitted up to that point on the basis of the Privacy Shield and maintain documentation on this. If those responsible do not do this, the LfDI Rheinland-Pfalz will take

appropriate measures. In the event of inactivity or sustained unwillingness on the part of the company, further sanctions can also be considered. The LfDI Rheinland-Pfalz recommends examining whether and to what extent data transfers to third countries outside the EU are absolutely necessary in specific contexts. Solutions that take place within the European Union were and still are preferable and much less problematic. It can be assumed that commercial companies headquartered in the USA are reviewing their structures to see whether European solutions that do not involve any data transmission to the USA are possible. The business partners of such companies should keep such considerations in mind. If the LfDI Rheinland-Pfalz encounters illegal data transfers to third countries, all remedial measures provided for by the General Data Protection Regulation are available to it. In concrete terms, corresponding orders are particularly suitable, with which an illegal situation is remedied. In the case of persistent and lasting violations, fines are also possible. The German and European data protection supervisory authorities are working on recommendations on how data transfers to third countries can be made legally secure. This is about additional precautions that, together with standard contractual clauses, continue to support international data transfers. In view of the dynamic development of the matter, the LfDI Rhineland-Palatinate, in cooperation with the other data protection supervisory authorities, will monitor the situation and provide assistance and recommendations as early as possible to enable companies to continue data transfers to third countries.

Further information: ECJ judgment C-311/18FAQs of the LfDI Rhineland-Palatinate on the ECJ judgmentFAQs of the European Data Protection Board on the ECJ judgment (English)Test steps for data transfer to third countries according to Schrems II, a graphic of the LfDI RLP

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