

press release

Data protection supervisory authorities: Supplementary

Tests and measures despite new ones

EU standard contractual clauses required for data exports

Erfurt, June 21, 2021

The Thuringian state commissioner for data protection and freedom of information

(TLfDI), Dr. Lutz Hasse, hereby informs you about the press release of the DSK

from June 21, 2021:

“With the implementation decision of June 4, 2021, the European Commission has new

Issue standard contractual clauses that ensure a legally compliant transfer of personal

related data to third countries. The Conference of Independents

Federal and state data protection supervisory authorities (data protection conference,

DSK), like the European Data Protection Board (EDSA), points out that

also when using the new EU standard contractual clauses, an examination of the

Legal situation in the third country and additional supplementary measures are required.

In its decision, the EU Commission refers, among other things, to the "Schrems II"

Decision of the European Court of Justice (ECJ) received. The ECJ had

in its judgment of July 16, 2020 (Case C 311/18 - Schrems II) stated that over-

Transfers of personal data to the USA are no longer based on the so-called

ten Privacy Shields can take place. Those decided by the EU Commission

In principle, standard contractual clauses can still be used as a legal basis

used for transfers of personal data to third countries. Al

However, all those responsible must also carry out an additional check to determine whether the

Legal situation or practice in the respective third country negative influence on the

level of protection guaranteed by the Standard Contractual Clauses. is

This is the case, for example, because the authorities of the third country have excessive access rights

have processed data, the persons responsible must, before the data is transferred, in the third country take additional measures to restore a level of protection guarantee the level guaranteed in the European Union is equivalent. If this is not possible, the transmissions must be stopped.

For examining the legal situation in the third country and the additional measures, Those responsible for the “Recommendations 01/2020 on measures to supplement

Postal address :

*The specified email address is only used to receive simple messages without signature/encryption and for messages encrypted with PGP.

Telephone: 0361 57 3112900

Fax: 0361 57 3112904

Email*: poststelle@datenschutz.thueringen.de

Internet: www.tlfdi.de

PO Box 900455

99107 Erfurt

Office building: Hässlerstraße 8

99096 Erfurt

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at the

June

2021

consultation

Transmission tools to ensure the level of protection under Union law for personal sun-related data”. The EDPB has the final version

public

decided

([https://edpb.europa.eu/system/files/2021-](https://edpb.europa.eu/system/files/2021-06/edpb_recommendations_202001vo.2.0_supplementarymeasurestransferstools_en.pdf)

[06/edpb_recommendations_202001vo.2.0_supplementarymeasurestransferstools_en.pdf](https://edpb.europa.eu/system/files/2021-06/edpb_recommendations_202001vo.2.0_supplementarymeasurestransferstools_en.pdf)).

In the situation described and the resulting obligations

nothing has changed as a result of the new standard contractual clauses. These regulate the

rather, the requirements that follow only from the case law of the ECJ

expressly (clause 14). The EU Commission and the EDSA have the new standards

standard contract clauses and the recommendations 01/2020 deliberately

it's correct. This means that even when using the new clauses, the data export must

check the legal situation and practice of the third country and, if necessary, add additional protective

take action or, if this is unsuccessful, refrain from the transmission

take.

In its “Schrems II” judgment, the European Court of Justice determined the level of data protection

examined in detail in the USA and found to be insufficient. In the case of data transfer

transmissions to the USA, additional measures are therefore regularly required,

which prevent US authorities from accessing the processed data. Such

However, measures are only conceivable in a few cases.

Companies and other actors that transfer personal data to third countries

average, must be able to prove to the supervisory authority that they

The level of protection in the third country presented here is checked on a case-by-case basis

have and have come to a positive result. The German supervisory

authorities have started consultations and examinations as to whether and how the requirements

requirements of the “Schrems II” judgment are complied with.”

dr Lutz Hasse

Thuringia State Commissioner for Data Protection

and freedom of information

Hässlerstrasse 8

99096 Erfurt

www.tlfdi.de