

PRESS RELEASE

the Conference of Independent Data Protection Authorities

of the federal and state governments of June 21, 2021

Data protection supervisory authorities: Additional checks and measures despite

new EU standard contractual clauses for data exports required

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

ment of the European Court of Justice (ECJ). The ECJ had in its

Judgment of July 16, 2020 (case C-311/18 – Schrems II) stated that transmissions

personal data to the USA no longer on the basis of so-called privacy

Shields can be done. The standard procedures adopted by the EU Commission

Although contract clauses can in principle continue to serve as the legal basis for transmission

transfers of personal data to third countries. However

all those responsible must also carry out a check as to whether the legal situation

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

standard contractual clauses can have guaranteed level of protection. Is that the case,

for example because the authorities of the third country have excessive access rights to processed data

must have before the data is transferred to the third country

take additional measures to restore a level of protection that

is essentially equivalent to the level guaranteed in the European Union.

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

averaging tools to ensure the level of protection under Union law for personal

personal data". The EDPB has published the final version

public consultation on 18 June 2021 ([https://edpb.europa.eu/sys-](https://edpb.europa.eu/system/files/2021-06/edpb_recommendations_202001vo.2.0_supplementarymeasures-transferstools_en.pdf)

[tem/files/2021-06/edpb_recommendations_202001vo.2.0_supplementarymeasures-transferstools_en.pdf](https://edpb.europa.eu/system/files/2021-06/edpb_recommendations_202001vo.2.0_supplementarymeasures-transferstools_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

is 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 measurement

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.

Further information on the data protection conference:

www.datenschutzkonferenz-online.de

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