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P r e s s e release

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After "Schrems II": Europe needs digital independence

Following the decision of the European Court of Justice (ECJ), the "EU-US Privacy Shield" declared invalid, demands the Berlin Commissioner for Data Protection and Freedom of information, Maja Smoltczyk, data processing offices in Berlin, in the USA to relocate stored personal data to Europe.

In its decision "Schrems II" (C-311/18) on Thursday 16 July, the ECJ 2020, found that US authorities have excessive access to data European citizens have. It follows that personal data up to to a change in the legal situation is usually no longer sent to the USA as was previously the case may be. Exceptions exist above all in the special cases provided for by law, for example when booking a hotel in the USA.

The ECJ notes, among other things, that in the USA government surveillance measures exist with a mass collection of personal data without clear come with restrictions. This contradicts the EU Charter of Fundamental Rights (Rn. 180 ff judgment). He further notes that European citizens have no option have to have surveillance measures judicially reviewed by US authorities.

This is the essence of the European fundamental right to effective legal protection hurt.

Transfers of personal data to third countries are only permitted if these have a level of data protection that corresponds to the European fundamental rights is equivalent. Since this, according to the findings of the highest European court in the USA is largely not the case, the ECJ explains in its decision that "EU-US Privacy Shield" invalid, on the basis of which a transfer of personal

Data to the US has so far been made in many cases. The so-called standard contractual clauses, that European companies can conclude with providers in third countries in order to

The ECJ explains that the European level of data protection must also be maintained in third countries on the other hand, is fundamentally permissible under certain conditions. He emphasizes in this

However, it is related that both the European data exporters and the

Data importers in third countries are obliged to check before the first data transfer

whether there are state access options to the data in the third country, which are

go beyond what is permissible under European law (paragraphs 134 f., 142 of the judgment). exist such

Access rights, even the standard contractual clauses cannot justify data export.

Data already transmitted to the third country must be retrieved. Different than before

widely represented, the mere conclusion of standard contractual clauses is not sufficient to

to enable data exports (paragraphs 126 et seq. of the judgment).

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- 2 -

The ECJ expressly emphasizes that the data protection supervisory authorities are obliged

to prohibit data exports that are inadmissible according to these standards (paragraphs 135, 146 of the judgment),

and that data subjects seek compensation for improper data exports

can (paragraph 143 of the judgment). This is likely to include in particular the immaterial damage

("past and pain") and must, under European law, have a deterrent effect

have height.

The Berlin Commissioner for Data Protection and Freedom of Information therefore requires all of their responsible persons subject to supervision to observe the decision of the ECJ.

Responsible persons who - especially when using cloud services - transmit personal data to the USA are now required to do so immediately Service providers in the European Union or in a country with adequate to change the level of data protection.

Maja Smolczyk:

"The ECJ stated with pleasing clarity that data exports are not just about the economy can go, but the basic rights of the people are in the foreground have to. The times when personal data is collected for convenience or because of Cost savings could be transmitted to the USA are over after this judgement.

The hour of Europe's digital independence has now come.

The challenge that the ECJ expressly obliges the supervisory authorities to Prohibit unauthorized data transfers, we suppose. Of course, that doesn't just apply to Data transfers to the USA for which the ECJ has already ruled inadmissible itself

Has been established. Even when data is transmitted to other countries such as China,

Russia or India will have to be examined to see whether there are similar or even greater problems exist."