

#DSGVO works: Microsoft adapts to European data protection

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Following the judgment of the European Court of Justice on Schrems II in July 2020, international data transfer from Europe to the USA is only possible to a very limited extent, although numerous US providers are key players in global data processing.

One reason for this is the mass surveillance by US security authorities such as the NSA, which is completely exaggerated from the point of view of the ECJ, which is why data from Europeans may only be transmitted to the USA under additional protective measures. Last week, the European Data Protection Board issued initial recommendations for action on the design of protective measures and invited to a consultation.

All those involved and decision-makers in international data transfer are called upon to find legally tenable solutions based on suitable protective measures that take sufficient account of European data protection concerns.

As one of the central providers of globally networked IT products for companies, Microsoft has now made a number of proposals for guarantees that directly strengthen user rights. An evaluation of these proposals will now be made by all decision-makers, including in the forthcoming deliberations of the data protection conference.

As a contribution to these consultations, the data protection officers of the states of Baden-Württemberg, Bavaria and Hesse evaluate this adjustment by Microsoft in their respective statements.

LfDI Stefan Brink: "If a data processing company wants to operate on the European market in the future, it must meet European legal standards, in particular the GDPR. This includes companies informing those affected when security authorities gain access to their data. In September, we gave companies recommendations on international data transfers, including Microsoft. It is good and necessary for the company to comply with European data protection and change its contractual clauses accordingly. The European Court of Justice has clearly ruled that data flows from Europe to the US are no longer permitted without such additional measures."

Microsoft's new contract clauses contain provisions on

the right to compensation for the data subject whose data has been unlawfully processed and who has suffered material or non-material damage as a result;

the information of the data subject if Microsoft has been legally obliged by a governmental order to release data to US security authorities;

Microsoft's obligation to take legal action and appeal to the US courts to challenge the government's order to release the data.

According to the joint assessment of the data protection supervisory authorities involved, this does not generally solve the transfer problem to the USA - because an amendment to the standard contractual clauses cannot lead to the access of the US secret services to the data, which the European Court of Justice has criticized as being disproportionate, being prevented become.

But the fact that Microsoft, as one of the largest, internationally active corporations in the world, with significant market power in Europe, is now moving in the right direction and is including significant improvements for the rights of European citizens in its contract clauses, is an important step and a clear one signal to other providers to follow suit.

Before the end of the year, the data protection conference (conference of the data protection officers of the federal states and the federal government, DSK) will continue its talks with Microsoft on the Office package - the progress that has now been made promises "tailwind" for this.

View this press release as a PDF document.

For questions you can contact us on the telephone number

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