

Coordinated testing of international data transfer

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Schrems

II

questionnaire action

Cross-border control of the data protection supervisory authorities of companies to implement the Schrems II decision of the European Court of Justice

As part of a transnational control, data transfers by companies in countries outside the European Union or the European Economic Area (third countries) are checked. The goal is the broad enforcement of the requirements of the European Court of Justice in its Schrems II decision of July 16, 2020 (Case C-311/18). In it, the court determined that transmissions to the USA can no longer take place on the basis of the so-called Privacy Shield. Furthermore, the use of the standard data protection clauses for data transfers to third countries is only sufficient with the use of effective additional measures if the examination by the person responsible has shown that an equivalent level of protection for the personal data cannot be guaranteed in the recipient country. In many cases, the judgment of the ECJ requires a fundamental conversion of long-established business models and processes.

The authorities participating in the inspection now write to the selected companies on the basis of a common catalog of questions. Among other things, this will involve the use of service providers for sending e-mails, hosting websites, web tracking, managing applicant data and the intra-group exchange of customer and employee data. Each supervisory authority decides individually in which of these areas it will become active.

The Court has clearly stated its expectation that the authorities will “suspend or prohibit” improper transfers. In many cases, the suspension of a transmission can probably be achieved in a cooperative dialogue with the company. Where this is not possible, the regulatory measures available will be used to respond. The supervisory authorities are aware of the special

challenges that the ECJ judgment on Schrems II entails for companies in Germany and Europe. They are also available for questions of comprehension in the further course of the examination procedure, insofar as this is possible in accordance with the available capacities.

The catalog of questions for the respective case groups can be accessed [here](#).

Johannes Caspar, Hamburg's representative for data protection and freedom of information: "In view of the fact that many companies are affected, it is very difficult to achieve uniform enforcement here. But turning a blind eye is not a solution.

Cross-border data traffic is often already triggered by the use of commercially available services for office communication, without the respective companies even aiming for a direct international exchange of data in business transactions. Especially for office communication or data storage, services without inadmissible third-country transmission can usually be used. The implementation of the principle of digital sovereignty will further facilitate these opportunities in Europe in the future. In this respect, the questionnaire campaign is primarily intended to help companies to propose solutions with an appropriate level of data protection. The Schrems II judgment sets hurdles for many companies for reasons for which they are ultimately not responsible. It must therefore always be remembered that the key to the fundamental right of informational self-determination lies in the recipient states. Politicians in the USA in particular should recognise: Appropriate guarantees against access by the US security authorities to protect the transmitted data and effective legal protection for people from the EU are key prerequisites for free data traffic. A solution is in the interests of both parties."

press contact

rot13("Znegva Fpurzz", "amuxdjleoygtncib");mmehcS nitraM

Phone:

+49 40 428 54-4044

Email: rot13("cerffr@qngrafpuhgm.unzohet.qr", "ycxlovztngdqumeh");ed.grubmah.ztuhcsnetad@esserp