

## Judgment of the European Court of Justice

Transfer of personal data to

Third countries ("Schrems II") strengthens the data

protection for EU citizens

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Munich, July 29, 2020

The European Court of Justice (ECJ) ruled on July 16

2020 (Case C-311/18) Decision 2016/1250 of the European

ische Commission for the transfer of personal data to the

USA (Privacy Shield) declared ineffective. At the same time, the ECJ

found that Commission Decision 2010/87/EC on

Standard Contractual Clauses (SCC)

basically still valid.

The Conference of Independent Data Protection Authorities

Federal and the federal states (DSK) sees with this judgment the data protection

fundamental rights of citizens in the European Union

(EU) strengthened. For the transmission of personal data in the

United States and other third countries passed the verdict after a first

Assessment of the DSK the following effects:

1. The transfer of personal data to the USA on the

basis of the Privacy Shield is prohibited and must

be adjusted promptly. The ECJ has the Privacy Shield for

declared invalid because the US law evaluated by the ECJ

does not offer a level of protection essentially equivalent to that in the EU

is equivalent. The US law to which the ECJ referred

has taken effects, for example, the intelligence

Section 702 FISA and Executive powers of collection

Order 12 333.

2. For a transfer of personal data to the USA

and other third countries can use the existing standard

Although the European Commission's contractual clauses

can continue to be used. However, the ECJ emphasized the

Response of the person responsible and the recipient to

evaluate whether the rights of data subjects in the third country

enjoy an equivalent level of protection as in the Union.

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The Bavarian State Commissioner for Data Protection informed

Only then can it be decided whether the guarantees from the

standard contractual clauses are implemented in practice

can. If this is not the case, it should be checked

what additional measures to ensure a dem

Level of protection essentially equivalent in the EU

protection levels can be taken. The right of

However, third countries may use these additional protective measures

not affect in a way that their actual

effect thwarted. According to the judgment of the ECJ

standard contractual clauses for data transfers to the USA

basically not possible without additional measures.

3. The assessments of the judgment also apply to other guarantees

according to Article 46 GDPR application as binding internal

data protection regulations ("binding corporate rules" - BCR), on

based on the transmission of personal data

to the USA and other third countries. Therefore also have to  
for data transfers based on BCR  
measures to be agreed, provided that the rights of the  
affected persons in the third country does not have an equivalent one  
Enjoy the same level of protection as in the Union. This measure also  
ment must be essentially for the data transmitted  
guarantee the same level of data protection as in the EU  
can.

4. The transfer of personal data from the EU in  
the USA and other third countries according to Article 49 GDPR  
continue to be permitted, provided that the conditions of Article 49  
DSGVO are fulfilled in individual cases. For application and  
compliance with this provision, the European data protection  
committee published guidelines.

5. Controllers who continue to process personal data in the  
USA or other third countries  
immediately check whether they are among those mentioned  
conditions can do. The ECJ has no transitional  
or grace period granted.

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The Bavarian State Commissioner for Data Protection informed  
Even if the ECJ in its decision at different points  
the primary responsibility of the transmitter of personal  
ned data and the recipient, he also has the supervisory  
authorities play a key role in enforcing data protection  
Basic Regulation and other decisions on

Assigned data transfers to third countries. The Germans

Regulatory authorities will act in accordance with their

Colleagues in the European Data Protection Board

and in the future also on more specific questions

advise.

After the judgment of the ECJ, the European data protection

shot after an initial statement at its July 23 meeting

2020 key questions and answers (FAQ) on the implementation of the judgment

published. The DSK endorses the positioning of the European

Austrian Data Protection Committee. The English text of the FAQ is up

the website of the European Data Protection Board

[https://edpb.europa.eu/news/news/2020/europeandata-protection-](https://edpb.europa.eu/news/news/2020/europeandata-protection-board-publishes-faq-document-cjeu-judgment-c-31118-schrems_de)

[board-publishes-faq-document-cjeu-judgment-c-31118-schrems\\_de](https://edpb.europa.eu/news/news/2020/europeandata-protection-board-publishes-faq-document-cjeu-judgment-c-31118-schrems_de)

find.

Prof. Dr. Thomas Petri

The Bavarian State Commissioner for Data Protection controls the Bavarian

public bodies compliance with data protection regulations. It's from Bavarian

Elected state parliament, independent and not bound by instructions from anyone.