

Press release from the Conference of Independent Data Protection Authorities

of the federal and state governments from 28.07.2020

Judgment of the European Court of Justice

for the transfer of personal data to third countries ("Schrems II")

strengthens data protection for EU citizens

The European Court of Justice (ECJ) in its judgment of July 16, 2020 (Case C-

311/18) Decision 2016/1250 of the European Commission on the transmission of personal

of personal data to the USA (Privacy Shield) was declared ineffective. At the same time he

CJEU found that Commission Decision 2010/87/EC on standard procedures

contract clauses (Standard Contractual Clauses - SCC) continue to apply.

The conference of the independent data protection supervisory authorities of the federal and state

With this judgment, the (DSK) sees the basic data protection rights of the citizens

strengthened by the European Union. For the transmission of personal data in the

According to an initial assessment by the DSK, the judgment in the USA and other third countries is as follows

Effects:

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

Shield is illegal and must be discontinued immediately. The ECJ has the

vacy shield declared invalid because the US law evaluated by the ECJ no

Offers a level of protection essentially equivalent to that in the EU. the US law,

to which the ECJ referred relates e.g. B. the intelligence services

exercise powers under Section 702 FISA and Executive Order 12 333.

2. For a transfer of personal data to the USA and other third countries

the existing standard contractual clauses of the European Commission can

generally continue to be used. However, the ECJ emphasized the responsibility of

controller and the recipient to assess whether the rights of the data subjects

sons in third countries enjoy an equivalent level of protection as in the Union. Only then

it can be decided whether the guarantees from the standard contractual clauses in the practice can be realized. If this is not the case, it should be checked what additional measures to ensure a level of protection in the EU essentially equivalent levels of protection can be taken. The right of However, third countries may not impose these additional protective measures in a way harm, which thwarts their actual effect. According to the judgment of the ECJ for data transfers to the USA standard contractual clauses without additional measures basically did not exclude.

3. The assessments of the judgment also apply to other guarantees under Article 46 GDPR

Application as binding internal data protection regulations ("binding corporate rules" -

BCR), on the basis of which a transfer of personal data to the USA

and other third countries. Therefore, for data transmissions on the

Based on BCR supplementary measures are agreed, provided the rights of

data subjects in the third country do not have an equivalent level of protection as in the Union

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enjoy. These measures must also essentially

can guarantee an equivalent level of data protection as in the EU.

4. The transfer of personal data from the EU to the US and others

Third countries according to Article 49 GDPR are still permitted, provided that the conditions of the

Article 49 GDPR are met in individual cases. For the application and interpretation of these

The European Data Protection Board has published guidelines in writing.

5. Those responsible who continue to transfer personal data to the USA or other third parties

countries wish to transmit must immediately check whether they are doing so under the

mentioned conditions can do. The ECJ has not set a transitional or grace period

cleared.

Even if the ECJ in its decision at various points gives priority to

response of the transmitter of personal data and the recipient stressed,

he also gives the supervisory authorities a key role in enforcing the GDPR

and other decisions about data transfers to third countries. the

German supervisory authorities will discuss their approach with their colleagues

vote in the European Data Protection Board and in the future also on specific

advise on difficult issues.

After the judgment of the ECJ, the European Data Protection Board, after a first

Statement in its meeting on July 23, 2020 key questions and answers (FAQ) on

Implementation of the judgment published. The DSK endorses the positioning of the European

schen data protection committee. The English text of the FAQ is available on the Euro-

European Data Protection Board at [https://edpb.europa.eu/news/news/2020/european-](https://edpb.europa.eu/news/news/2020/european-data-protection-board-publishes-faq-document-cjeu-judgment-c-31118-schrems_de)

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

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