

New standard contractual clauses – deadline for the conversion of old contracts is ending soon

The State Commissioner for Data Protection (LfD) Lower Saxony points out that an important deadline for companies and other bodies that transfer personal data to countries outside the European Economic Area or to international organizations will end shortly before the turn of the year. Data exporters often base these transfers on so-called standard contractual clauses within the meaning of Article 46 (2) (c) of the General Data Protection Regulation (GDPR).

These are model contracts adopted by the European Commission, with which European data protection standards are contractually agreed between data exporters and importers. When using standard contractual clauses, personal data may be exported to third countries or international organizations without further approval from regulatory authorities.

New Standard Contractual Clauses since 2021

The European Commission had already issued standard contractual clauses on the basis of the EU data protection directive, which could also continue to be used under the GDPR. In the middle of last year, the Commission then presented an implementation decision on new clauses that were adapted to the GDPR. The resolution provides for a gradual replacement of the previous standard contractual clauses.

Since September 27, 2021, the new standard contractual clauses must be used for new contracts. For old contracts that were concluded before September 27, 2021, the Commission has provided for a transitional period to switch to the new clauses, which will soon end. All old contracts must have been converted by December 27, 2022 at the latest. After this date, the previous standard contractual clauses are no longer considered an "appropriate guarantee" within the meaning of Art. 46 (2) (b) GDPR for the export of personal data.

Check the need for conversion for old contracts

"With a view to the approaching deadline, companies and other responsible bodies must check whether they are still transferring personal data on the basis of the previous standard contractual clauses. If that's the case, you should change the contracts to the new clauses immediately," says state data protection officer Barbara Thiel. If a supervisory authority determines that personal data has been transferred to third countries or international organizations without suitable guarantees, it can order that these transfers be suspended. A fine may also be imposed.

With regard to the additional requirements for the use of standard contractual clauses developed by the European Court of Justice in the Schrems II judgment, nothing has changed due to the new clauses. This means that even when using the new

clauses, the data exporter must check the legal situation and practice in the third country and take additional measures if necessary

or, if necessary, even stop the transmission.

Further information

Implementing decision of the EU Commission on the new standard contractual clauses (PDF)

The Schrems II Judgment and its Significance

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