

June 1, 2021

### **Coordinated investigation of international data transfers**

#### **Nationwide assessment of companies' compliance about Schrems II decision of the European Court of Justice by data protection supervisory authorities**

Companies' data transfers to countries outside the European Union or the European Economic Area (third countries) are reviewed as part of a nationwide investigation. The goal is to broadly enforce the requirements of the European Court of Justice in its Schrems II decision of July 16, 2020 (Case C-311/18). There, the court ruled that data transfers to the U.S. can no longer be made on the basis of the Privacy Shield regulations. Furthermore, if the controller's assessment has shown that an equivalent level of protection for the personal data cannot be ensured in the recipient state, the use of the standard data protection clauses for data transfers to third countries is only valid if additional effective measurements are taken. In many cases, the ECJ's ruling requires a fundamental change in long-established business models and processes.

The German data protection authorities participating in the inspection will now contact companies individually with a standardized questionnaire. Among other things, this will cover the use of third-party providers like e-mail-services, webhoster, services for web tracking or managing applicant data, and the intra-Group exchange of customer data and employee data within companies. Each supervisory authority decides individually in which of these subject areas it will take action.

The Court has made clear its expectation that authorities "suspend or prohibit" unauthorised transfers. Suspending a transfer can likely succeed in many cases through cooperative dialogue with companies. Where this is not possible, the available supervisory measures will be used to respond. The supervisory authorities are aware of the particular challenges that the ECJ ruling on Schrems II poses for companies in Germany and Europe. They are also available to answer questions of understanding in the further course of the examination procedure, insofar as this is possible in accordance with the available capacities.

Johannes Caspar, Hamburg Commissioner for Data Protection and Freedom of Information, commented: "In view of the fact that many companies are affected, it is very difficult to achieve a uniform enforcement here. But closing one's eyes is not a solution either. Frequently, cross-border data traffic is already triggered by the use of commercially available services for office communication, without a direct international exchange of data in business transactions by the respective companies being affected at all. Especially for office communication or data storage, it is usually possible to use services without inadmissible third-country transfers too. The implementation of the principle of digital sovereignty will further facilitate these possibilities in Europe in the future. In this respect, the questionnaire campaign should primarily contribute to offer companies solutions for data transfer with an adequate data protection standard. The Schrems-II-ruling sets hurdles for many companies, for reasons for which they are ultimately not responsible. It must therefore be repeatedly reminded that the key to the fundamental right of informational self-determination in this case lies in the recipient

states. In particular policy in the U.S. should recognize: Appropriate safeguards against access by U.S. security authorities to protect the transferred data, as well as effective legal protection for people from the EU, are prerequisite for freedata traffic. A solution lies in the interest of both sides.”

The questionnaires for each case group can be accessed here in German language:  
<https://datenschutz-hamburg.de/pages/fragebogenaktion/>.

**Press contact:**

Alina Feustel

Phone: +49 40 428 54-4708

E-mail: [presse@datenschutz.hamburg.de](mailto:presse@datenschutz.hamburg.de)