



Follow-Up on Safe Harbor Agreement: ECJ rules Safe Harbor invalid

Following our newsletter on the EU Advocate General's criticism of the Safe Harbor agreement, the European Court of Justice (ECJ) issued its ruling on the matter, which was the subject of much media attention. This ruling upholds the invalidity of the original Safe Harbor agreement¹.

The ECJ explained that as a result of its ruling, the national data protection authorities must review whether the transfer of European data to the United States in line with the applicable data protection directive is to be suspended because it does not provide an adequate level of protection for personal data in its current form.

Until the Safe Harbor agreement is renegotiated, the following recommendations should be considered:

- Agree upon the inclusion of the relevant and suitable EU model contract clauses also for existing data recipients currently registered under the Safe Harbor agreement. In the event of commissioned data processing, the ten (10) requirements stipulated in Sec. 11 of the German Federal Data Protection Act (BDSG) should also be observed.
- Adjust binding corporate rules that do not provide for such.
- Also, adjust any deviating company agreements.

The German data protection supervisory authorities intend to now work together to formulate specific recommendations for future handling of data transfers to the United States². We will keep you informed of the results.

Please feel free to contact us with any questions.

1 ECJ press release: <http://curia.europa.eu/jcms/upload/docs/application/pdf/2015-10/cp150117de.pdf>

2 <https://www.datenschutz-hamburg.de/news/detail/article/eugh-kippt-transatlantisches-safe-harbor-abkommen.html>



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