

## **Press release**

6 June 2016

### **Inadmissible data transfer to the USA**

#### **First fines are final, other cases still pending**

The European Court of Justice (ECJ) has repealed the Safe Harbor decision in October 2015, thus declaring an essential basis for a lawful transfer of data to US companies to be invalid. As a result, the Hamburg Data Commissioner has conducted inspections in 35 internationally active Hamburg based companies.

The inspections have shown that the vast majority of those companies have changed the data transfer within the several months of the implementation period to so-called standard contractual clauses. A few companies had not established allowed alternative methods even six months after the cessation of the Safe Harbor Agreement. The data transfer of these companies to the USA was thus without any legal basis and unlawful.

Whilst some of these proceedings initiated could still not be concluded and other inspections still under way, three legally binding fine notices for the unlawful transfer of employee and customer data to the USA have been issued. After the initiation of administrative fine proceedings, the companies concerned have changed their data transfer legally to standard contractual clauses.

Johannes Caspar, the Hamburg Commissioner for Data Protection and Freedom of Information, said:

"The fact, that the companies have eventually implemented a legal basis for the transfer had to be taken into account in a favourable way for the calculation of the fines. For future infringements, stricter measures have to be applied.

In the further course, it remains to be seen whether the succession plan for Safe Harbor, the Privacy Shield, that the EU Commission presented end of February, establishes an adequate level of data protection. In regard to this matter, serious doubts had been expressed not least by the Art. 29 Data Protection Working Party, the joint representative body of the data protection authorities of the EU member states and the European Data Protection Supervisor. The EU commission and the US government are called upon to amend the draft in the essential points. Against this background, it is necessary to decide on the admissibility of those alternative transmission tools, especially on the so-called standard contractual clauses, that are currently not objected."

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