

Draft law of the state government to reorganize data protection law:

Further improvements urgently needed!

The state government has passed a draft law that regulates data protection for Lower Saxony authorities in the light of the General Data Protection Regulation that will come into force on May 25, 2018. As part of the association's participation, the state commissioner has already had the opportunity to comment in detail on the draft law.

"It is gratifying that the state government has taken up numerous suggestions for improvement from my authority," says Barbara Thiel. This includes e.g. B. the regulation that authorities have to document the reasons for a restriction of the rights of data subjects (right to information about data processing, right to information or notification) in every case.

"Nevertheless, the draft law still has significant shortcomings in many places. It falls short of the previous level of data protection and only inadequately implements the requirements of the General Data Protection Regulation," the state representative continued. Examples for this are:

According to current law, an authority must first try to collect the necessary data directly from the citizen concerned. This so-called principle of direct collection is abandoned. In the future, the authorities will be able to obtain data from third parties and thus "behind the backs of the person concerned".

The draft law also provides for an unreasonable expansion of video surveillance. This will be permitted in the future if it is necessary to perform a task that is in the public interest. "This "general clause" opens the door to an endless expansion of video surveillance," said the state commissioner. Until now, video surveillance of public buildings was limited to exercising domestic authority and protecting people and property.

A core concern of the General Data Protection Regulation is effective remedial powers for the data protection authorities if there are violations of data protection law. This also includes the possibility that an order from the data protection authority must be enforceable, i.e. enforceable by means of coercive measures, if the addressee does not comply with it. This is already common practice in relation to business, and the draft law does not provide for any enforcement option in relation to authorities.

Finally, the General Data Protection Regulation provides for the imposition of fines in the event of data protection violations in addition to or instead of the powers to remedy. Here, too, the draft law makes insufficient use of the possibilities of European law. Fines can only be imposed on authorities if data protection is disregarded in the context of economic activity. "The

forthcoming parliamentary deliberations should be used not only to maintain data protection in Lower Saxony for the citizens concerned, but also to further improve it," concluded the state commissioner for data protection, Barbara Thiel.

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