

11/30/2020

Kugelmann: End-to-end encryption must remain secure - resolutions of the 100th data protection conference are available

The conference of the independent data protection supervisory authorities of the federal and state governments unanimously passed important resolutions at their 100th meeting. Among other things, the data protection conference (DSK) is clearly against current EU plans, according to which end-to-end encryption for messenger services such as WhatsApp, Threema or Signal should be softened. The State Commissioner for Data Protection and Freedom of Information (LfDI) Rhineland-Palatinate, Professor Dieter Kugelmann, says: "At the EU level, there are currently discussions about granting security authorities and secret services access to private, encrypted communication in messenger services. As DSK, we strictly reject such considerations. If the proposals of the Council of the European Union were implemented, secure end-to-end encryption would be undermined and necessary trust destroyed. This would happen without the intended goal of improving the investigative capabilities of security authorities being achieved in a sustainable and effective manner."

Kugelmann emphasizes: "The encryption techniques must remain secure and have integrity; instead of undermining trust in encryption, these techniques should be strengthened for privacy reasons. More companies, government agencies and citizens should use them. Secure end-to-end encryption must become the norm in order to ensure secure, trustworthy and integrity-based communication in administration, business, civil society and politics, especially in the age of digitization."

In its current resolution, the DSK also points out that the erosion of encryption solutions, as suggested in the Council of the European Union in draft resolution no. 12143/1/20 of November 6, 2020 "Security through encryption and security despite encryption", would be counterproductive and easily circumvented by criminals and terrorists.

At the DSK meeting, which took place via video on November 25th and 26th, 2020 and was chaired by the Saxon data protection officer Andreas Schurig, the following topics were discussed:

- The conference again dealt with the telemetry functions of Microsoft Windows 10, version "Enterprise", as well as with the improvements in data protection announced by Microsoft for MS Office 365. With regard to the telemetry functions, a DSK working group had previously determined in three test scenarios that when using the Enterprise version, those responsible must use the "Security" telemetry level and contractually, technically or organizationally ensure that no personal telemetry data is transmitted to Microsoft - this lifts the new DSK decision. With regard to MS Office 365, DSK will continue to talk to

Microsoft. The DSK attaches importance to considering the judgment of the European Court of Justice on the transfer of personal data to unsafe third countries of July 16, 2020 (C-311/18) ("Schrems II").

- In the interest of legal certainty, the DSK is appealing with a further resolution to the federal legislator to finally implement the requirements of the Federal Constitutional Court of May 2020 for the design of the manual inventory data disclosure procedure. The court had recognized that both the transmission of data by telecommunications service providers and the retrieval by authorized bodies (e.g. public prosecutor's offices) each require a proportionate and standardized basis ("double door model"). The current version of Section 113 of the Telecommunications Act and the retrieval standards on the part of the recipient groups do not meet these requirements. In a resolution, the conference calls on the federal and state legislators to make the manual information procedure for security authorities and intelligence services conform to the constitution as quickly as possible.

- In a further resolution, the conference calls on the legislator to finally implement the ePrivacy Directive of the European Communities from 2002 (RL 2002/58/EG) in full and in accordance with the General Data Protection Regulation of 2018 into German law. According to Art. 5 Para. 3 ePrivacy Directive, the user's active informed consent is required, in particular if the person responsible sets "cookies". Website operators and other actors who have to make their services lawful with regard to "cookies", among other things, need legal clarity and certainty.

The 101st DSK, scheduled for April 2021, will be chaired by the Saarland.

Further information: - PM of the DSK on the results of the 100th meeting - PM of the LfDI RLP in the run-up to the 100th meeting

return