

Improved data protection, but still in breach of European law

## New Police and Regulatory Authorities Act

Today, the Lower Saxony state parliament passed a new police and regulatory authority law with additional powers for data processing. Extensive committee deliberations took place beforehand, in which the state representative Barbara Thiel participated intensively and ultimately successfully. "The draft law presented was a torso in terms of data protection law and out of the question," said Thiel. "Therefore, I expressed clear criticism in the hearing, which was happily confirmed in many parts by the statements of the legislative and advisory service."

## Many demands of the LfD accepted

"We consider it a great success for our efforts that the legal text has been revised in numerous places to improve data protection," said the state representative. For example, the new surveillance instrument, the so-called electronic tag, can only be ordered by a judge. The same applies to residence requirements, contact bans or longer-term registration requirements. The draft law initially did not provide for these judicial reservations. For the first time, maximum storage periods are provided for video surveillance in public spaces. As a rule, image material may only be stored for six weeks. Data protection procedural regulations are now consistently anchored in the law, which enable effective data protection control by the state commissioner. So are u. to justify and document secretly carried out police measures. Parliament's ability to monitor the police in the case of intervention powers that are particularly relevant to fundamental rights will also be strengthened.

## Unconstitutional conditions in the police force ended

"What is also positive about the new law is that the legislator takes up numerous demands that I have repeatedly raised in the past," Thiel continued. The new hazard prevention law now provides the framework for the use of bodycams, video surveillance for traffic surveillance and for route-related speed controls (section control). "The data processing associated with these measures has so far been carried out by the police without an adequate legal basis. This unconstitutional state of affairs will now be eliminated." When it comes to section control, however, it is questionable whether the country has the legislative competence for this form of speed measurement.

Online searches and source TKÜ remain inadmissible encroachments on civil liberties and a danger to IT security

Nevertheless, the new police and regulatory law still needs to be corrected in many places from the point of view of data protection. The intervention thresholds for many police measures are lowered without valid justification. So e.g. B. the online

search or the electronic tag can be ordered in advance of a specific risk. "I still reject the new police powers of monitoring telecommunications sources and online searches, as these measures deeply interfere with the fundamental rights of the affected target persons and require the use of so-called state trojans." In this context, Thiel points out that state authorities consciously have to keep IT security gaps open in order to be able to use state Trojans. However, this contradicts the state obligation to protect the IT infrastructure comprehensively against cyber attacks.

#### Law remains contrary to European law

Finally, the state commissioner clearly criticizes the lack of implementation of European data protection regulations. The new law does not implement the JI Directive, which has been in force since May 6th, 2018, into national law. This means that the data of citizens in the area of hazard prevention and crime prevention are still being processed in violation of European law.

"Nevertheless, the coalition factions and the Ministry of the Interior have announced that they intend to quickly end this situation, which is contrary to European law, by further amending the law," says Barbara Thiel. "I will remind those involved of this in due course."

#### License plate reader currently unconstitutional

In addition to European law, current decisions of the Federal Constitutional Court on the so-called license plate reader must also be incorporated into the new law on averting danger. The court had declared corresponding regulations in Bavaria, Baden-Württemberg and Hesse to be unconstitutional at the end of 2018 and gave the legislators a period until the end of 2019 to rectify the situation. Among other things, the license plate check, which covers all vehicles without cause, may only be used to protect important legal interests. The police may only compare the recorded data with legally defined databases. So far, both requirements have been missing from the Lower Saxony regulation. "The legislative and advisory service of the state parliament rightly put its finger in the wound and described the current regulation as unconstitutional," said the state representative.

"All in all, the state government has unfortunately only partially done its homework on data protection with today's passing of the new Police and Regulatory Authorities Act."

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