

Checking cookies and third-party services on Lower Saxony websites

web tracking

Companies in Lower Saxony use cookies sparingly on their company websites, but at the same time they do not inform users enough about which data is collected when their websites are visited. This is the result of a cross-industry audit by the Lower Saxony State Commissioner for Data Protection (LfD) on data protection-compliant tracking on websites. For this purpose, the LfD sent a questionnaire to 15 small and medium-sized companies that offered one or more websites.

The site operators should answer, among other things, whether they had integrated services from third-party providers (e.g. map or weather services), whether they use cookies and whether their use was based on the consent of the users. In addition, the selected pages were technically checked - both before and after the questionnaires were sent out.

Websites are of enormous importance for the external presentation of companies. At the same time, they offer a wide range of options for collecting and using data about users. The General Data Protection Regulation and the E-Privacy Directive provide for regulations that are intended to protect the rights of the data subjects. With the tracking check, the LfD Niedersachsen wanted to get an impression of whether these are being observed by those responsible.

"When we call up a website, a lot of data processing takes place there in the background, for which the site operator needs consent so that it is legally compliant," says Lower Saxony's state data protection officer, Barbara Thiel.

In order for consent to be effective, the operator must provide users with transparent and complete information, for example about which data is collected when surfing, for what purpose and to which recipients it goes. "Many of the tested websites showed deficiencies in this area. Some of these were so significant that they rendered the consent invalid." For example, on some pages it was not possible to give the informed consent required by law because the necessary information was not made available.

Users must have real choice when it comes to cookies

Another problem was that some sites more or less vehemently "pushed" users into consent by using so-called nudging. The behavior of people should be subliminally influenced by subtle interventions by the person responsible. On websites, this often happens because the "Agree" option in the cookie banner is more conspicuous in color than the "Reject" option, or the process of rejecting is unnecessarily complicated by longer click paths. "If a user no longer has any real freedom of choice between consent and rejection as a result of such nudging measures, the limit of what is permitted has been exceeded," says Barbara

Thiel.

On the other hand, the State Data Protection Commissioner rated positively that the majority of the websites used a self-programmed cookie window or the consent tool of a service provider, provided that there were processing operations requiring consent. "Since the General Data Protection Regulation came into force, we have observed a tendency for the 'simple' cookie banner that had prevailed until then to be replaced by a consent tool on websites," says Thiel. With the help of these tools, differentiated consent for the use of cookies can be obtained.

As a result of the audit, the Lower Saxony LfD has developed guidelines for the design of consent on websites, which are published together with the audit results.

Low number of cookies no surprise

It was also pleasing in the current test that the websites checked used cookies relatively sparingly. A maximum of 14 cookies were found on one page, some even used only one. "We got the impression that the majority of website operators have deliberately dealt with the use of cookies and their relevance to data protection law is largely known," says the state data protection officer.

In this case, however, the low number of cookies was not a great surprise, since they are generally not used as frequently in the sectors of the websites checked as in other economic sectors. The LfD Lower Saxony is currently carrying out a coordinated examination of the websites of online media with the supervisory authorities of several other federal states. The final results on this are not yet available. But it can already be seen that the websites of the media companies contain a significantly larger number of cookies and third-party services than the websites of the companies currently being examined.

More information An overview of the most important results of the test

Questionnaire of the exam

Instructions for designing consents on websites