

Do not enforce diesel driving bans at the expense of data protection

Control yes, but please in accordance with fundamental rights

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The federal government's draft law to enforce compliance with traffic restrictions for diesel vehicles with the automated recording of all road users through the use of intelligent video surveillance technology encounters considerable concerns from a constitutional and data protection point of view. The planned regulations should allow the authorities to automatically check whether passage restrictions for diesel vehicles are being violated. For this purpose, they will in future be able to use intelligent video surveillance to store and use the vehicle characteristics and license plates, an image of the vehicle and the driver, and access the data from the central vehicle register.

A control of the driving ban zones requires the establishment of a comprehensive monitoring structure for the automated scanning of motor vehicles in the areas affected by driving bans. This will be accompanied by mass interventions in the fundamental right of informational self-determination for a large number of affected citizens. According to the case law of the Federal Constitutional Court on automated vehicle scanning, such an intervention in fundamental rights is only eliminated if there is an immediate and complete deletion in the event of a non-hit. This may be implemented in the automatic comparison with the central vehicle register for correspondingly registered vehicles. However, this does not apply to the group of people who are exempt from the transit restriction for other reasons. The draft law expressly allows the data to be stored for up to six months if it cannot be clarified whether the inspection was lawful in the specific case. A massive storage of exceptions is to be feared. Incidentally, the storage period provided here exceeds the three-month limitation period for OWi procedures in road traffic.

In its two diesel judgments at the beginning of the year, the Federal Administrative Court pointed out that driving bans for car owners must not be disproportionate. According to this, there must be exceptions for groups of people affected. The court named certain groups of residents and craftsmen. In Hamburg, for example, all residents are exempt from the regulations on passage restrictions. The clean air plan in force here puts these exceptions at a volume of at least 20% of the traffic volume affected. This includes residents and their visitors, customers and employees of local shops, offices, practices or law firms, ambulances, garbage trucks, craftsmen and all delivery traffic within the affected road section. The exemption for residents applies immediately through an additional traffic sign and does not have to be applied for separately.

All of these people would be recorded by the camera system with each individual passage and - if the query in the vehicle register shows that they are not driving a vehicle whose type approval allows the vehicle to be driven through - they would first be saved. In the further course, OWi procedures could then be initiated, in the course of which those affected would have to invoke a resident regulation.

The planned regulation for permitted passages only relates to vehicle types, but not to the personal concerns of the driver. Automated video surveillance could only prevent mass suspected cases of people who have a right of passage if the federal states created databases for direct comparison that contain the corresponding license plates with the respective exemptions. However, this regulation could hardly reach spontaneous visitors from residents or craftsmen hired at short notice. The bureaucratic effort of a resident control file required for the comparison is also immense and would go far beyond the plans discussed so far from a data protection point of view. A state registration procedure for all possible exceptions from the patient to the craftsman to the visitor is to be rejected due to lack of necessity and appropriateness and incompatible with the principle of data economy.

Johannes Caspar, the Hamburg Commissioner for Data Protection and Freedom of Information: "The system of automatic diesel scanning for transit control clearly leads to a disproportionate state surveillance and control spiral and thus leads directly to a constitutional dead end. A badge solution is clearly the much less burdensome control measure, as it avoids a mass and occasional recording and storage of law-abiding citizens for a period of more than six months and also does not require endless further data storage.

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