

Press release of the conference of the independent data protection supervisory authorities of the federal and state governments from November 26th, 2020

100th data protection conference met successfully

No.20201127

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11/27/2020

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The conference of the independent data protection supervisory authorities of the federal and state governments (Data Protection Conference – DSK) met via video on November 25th and 26th, 2020 for their 100th meeting since its inception (see DSK press release of November 19th, 2020).

The anniversary meeting took place under the regular chairmanship of the Saxon Data Protection Officer Andreas Schurig.

The conference dealt with i.a. with the question of using Windows 10 (“Enterprise” version) in compliance with data protection regulations, with the initiative taken by the German EU Council Presidency to relax end-to-end encryption for the benefit of security authorities and intelligence services, with the legal structure of telecommunications inventory data information , with initiatives to centralize data protection supervision and with the implementation of the “ePrivacy” directive (RL 2002/58/EG), which is still pending in Germany.

Andreas Schurig: “The 100th DSK also dealt with the fundamental rights and freedoms of the people affected. Since the early 1970s, the German supervisory authorities have been supporting citizens in asserting their rights against public and non-public bodies. Freedom and democracy do not thrive without the individual being given the necessary freedom to deal with the state, social insurance, local authorities and all other public bodies. However, informational self-determination is also the often controversial and decisive point in relation to companies, especially in relation to the often enormously superior companies in the information industry.”

In detail:

The conference once again dealt with the telemetry functions of Microsoft Windows 10, "Enterprise" version, as well as with the data protection improvements 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. With regard to MS Office 365, DSK will continue to talk to Microsoft. For both items, the DSK attaches importance to taking into account 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").

The DSK clearly rejects demands for access by the security authorities and secret services to encrypted communication in messenger services and private communication. In a resolution adopted on November 25, 2020, it points out that the eroding of encryption solutions, as defined 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" suggested would be counterproductive and easily circumvented by criminals and terrorists. Secure and trustworthy encryption, on the other hand, is an essential prerequisite for resilient digitization in business and administration. Companies must be able to protect themselves against industrial espionage. Citizens must be able to trust that digital administrative services will be used securely and with integrity. Encryption is also a central means for data transmission to insecure third countries. The "Schrems II" judgment of the European Court of Justice has once again made this clear.

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. 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.

The conference also calls on the legislator to finally implement the ePrivacy Directive of the European Communities from 2002 (RL 2002/58/EG) fully 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 DSK also clearly opposes demands for a centralization of data protection supervision in the non-public area. Andreas Schurig: "The supervisory authorities at federal and state level enjoy a high professional reputation. Their centralization would be extremely counterproductive, because centralization also means being further and further removed from the concerns and concrete circumstances of the people concerned. Instead of unnecessary centralization debates, it should be ensured that all supervisory authorities can fully fulfill their statutory tasks in terms of personnel and organization."

Other topics at the 100th DSK included: the improvement of cooperation in the European Data Protection Board (EDPB) and the future functioning of the DSK.

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

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