[DE] Interior Ministry Tables Data Protection Amendment

IRIS 2011-2:1/17

Sebastian Schweda
Institute of European Media Law (EMR), Saarbrücken/Brussels

The Bundesministerium des Innern (Federal Ministry of the Interior - BMI) tabled a bill amending data protection law on 1 December 2010. The bill particularly included measures to prevent serious breaches of privacy.

According to the ministry, the bill, which was initially submitted to the department ministers for a federal government vote, is mainly designed to strengthen the right of individuals to decide how their personal data is used on the Internet. For this reason, a new Article 38b is to be included in the Bundesdatenschutzgesetz (Federal Data Protection Act - BDSG), regulating the publication of this data via telemedia. Under this provision, publications that seriously breach privacy will only be allowed if permitted by the law, if the person concerned has expressly agreed or if there is a predominant legitimate interest for the publication.

The BMI considers that particularly serious breaches of privacy are committed when data is deliberately collected, stored and used for commercial purposes in order to create extensive personality or movement profiles, or if the person concerned is depicted or described in an insulting manner. Other examples mentioned by the BMI include the publication of personal contact details or information about a person’s dependents.

However, predominant legitimate interests such as freedom of speech, freedom of research or artistic freedom could mean that such publication is allowed in individual cases. As well as the existing “privilege of the press”, enshrined in Article 41 BDSG, press-type reporting will also be able to rely on predominant legitimate interests as part of the freedom of the press.

The bill also contains proposals for the regulation of “Internet services that are particularly relevant to the protection of privacy”. In this category, the BMI includes facial recognition systems, with which people can be identified on the Internet using biometric features, services that create profiles based on search engine entries, and the collection of location data from mobile telephones and GPS smartphones. Since this is completely new territory, the BMI suggests that these proposals should be discussed in detail. The BMI was restrained in its views on the introduction of new sanction mechanisms, since it was hard to predict how this area would develop in future.

© European Audiovisual Observatory (Council of Europe) 2026

Individuals whose privacy is seriously breached will, in future, also be entitled to immaterial damages from private companies. The level of damages should be sufficient to give them a preventive effect.

The new bill was tabled in the context of discussions about the Google Street View map service. The Federal Minister of the Interior stressed that he opposed the adoption of a specific law about this new service. He said that, as far as possible, existing provisions should be used and self-regulatory mechanisms strengthened. The proposed amendments were designed to keep the law “open to future developments”.

Informationsdokument des BMI vom 1. Dezember 2010 zum Gesetzentwurf

http://www.bmi.bund.de/SharedDocs/Downloads/DE/Themen/OED_Verwaltung/Informationsgesellschaft/rote_linie.pdf?__blob=publicationFile

BMI information document on the bill, 1 December 2010

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026