

[DE] Bundestag report questions constitutionality of NetzDG amendment

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In a report published on 15 September 2020, the *Wissenschaftliche Dienst* (research office) of the German *Bundestag* (lower house of parliament) noted that parts of the new law on combating right-wing extremism and hate crime were unconstitutional. The report raises concerns about the constitutionality of the law's provisions on obligations to hand over deleted content and IP addresses to German prosecution authorities. It comes after the German *Bundesverfassungsgericht* (Federal Constitutional Court) recently declared current rules on the disclosure of inventory data unconstitutional.

The Bundestag had adopted the *Gesetz zur Bekämpfung des Rechtsextremismus und der Hasskriminalität* (Act to combat right-wing extremism and hate crime) after its third reading on 3 July 2020. The legislative process is designed in particular to make it easier to prosecute those responsible for right-wing extremist hate crime and the distribution of child pornography on the Internet. The existing *Netzwerkdurchsetzungsgesetz* (Network Enforcement Act – NetzDG) was therefore amended.

According to Article 3a of the revised NetzDG, social network providers are obliged to report certain criminal content to the *Bundeskriminalamt* (Federal Criminal Police Office – BKA) in order that a criminal prosecution can be launched by the relevant criminal prosecution authorities. The IP addresses and port numbers of the users concerned must also be disclosed. The BKA then investigates whether the reported content is actually illegal and can ask for additional information in order to identify the person responsible. Finally, it sends this information and content to the relevant criminal prosecution authorities of the *Länder*.

The report concludes that providers of telecommunication services currently have no constitutional authority to disclose IP addresses from the inventory data that they collect. The BKA therefore cannot use IP addresses disclosed by social network providers under the Act in order to identify users. Such information can therefore not be used for criminal prosecution purposes and its disclosure is unconstitutional.

The law is currently awaiting the signature of the German Federal President. According to media reports, the Office of the Federal President intends to wait

until the relevant passages have been amended.

Gutachten des Wissenschaftlichen Dienstes des Deutschen Bundestags vom 17. September 2020

<https://cdn.netzpolitik.org/wp-upload/2020/09/WD-10-030-20-Gesetz-Hasskriminalitaet.pdf>

Report of the research office of the German Bundestag of 17 September 2020

