

GZ: DSB-D485.000/0001-DSB/2018 from 9.7.2018□

[Note editor: Names and companies, legal forms and product names,□

Addresses (incl. URLs, IP and email addresses), file numbers (and the like), etc., as well as□

their initials and abbreviations may be abbreviated for reasons of pseudonymization□

and/or changed. Obvious spelling, grammar and punctuation errors□

have been corrected.]□

For the same GZ and with the same date, there is a notice in the category "Warning Notice"□

issued.□

RECOMMENDATION□

The data protection authority speaks on the occasion of the consultation procedure pursuant to Art. 36□

DSGVO, initiated by the application of Dr. Tobias Q*** (intervener) from 06/08/2018,□

regarding an intended processing of data (recording and short-term□

Storage of videos by means of a video camera attached to the windscreen of a vehicle)□

the following recommendation:□

~ The intended processing of data may not be carried out.□

Legal basis: Article 5 (1) (c), Article 36 (2) of Regulation (EU) 2016/679□

(General Data Protection Regulation - GDPR), OJ No. L 119 p. 1; §§ 1 and 18 et seq□

Data Protection Act (DSG), Federal Law Gazette I No. 165/1999 as amended.□

REASONS FOR THIS RECOMMENDATION□

A. Facts and Findings:□

With a letter dated June 8th, 2018, the intervener notified the data protection authority in accordance with Art. 36□

GDPR consulted, since the data protection□

Impact assessment according to Art. 35 GDPR shows that the intended□

Processing of data (recording and short-term storage of videos using the□

video camera mounted on the windscreen of a car) pose a high risk.□

Specifically, in the present case, the attached video camera is its□

continuously deletes the recordings made at an interval of 60 seconds. Continuous□

only the 60 seconds before and after an accident are saved, which the□

video camera by the vibration of the accident and/or by operating an emergency□

button on the dashboard.□

As a justification, the intervener states in his data protection impact assessment that□

that the processing of the data is to protect the legitimate interests of the person responsible□

he follows. The intervener comes, however, in particular with regard to the before the entry into force□

GDPR issued case law (e.g. VwGH Ro 2015/04/0011) to the conclusion that the□

intended processing results in a high risk for data subjects.□

Evidence assessment: These findings result from the procedural application.□

B. In legal terms it follows□

In the decision of the Administrative Court of September 12, 2016, already cited by the intervener,□

Zl. Ro 2015/04/0011, this came to the conclusion that the registration of a□

Data application in the form of persistent storage of image data by one in one□

Vehicle-mounted video camera was to be rejected.□

It can be inferred from the facts on which this decision is based that the□

Storage of the image data in encrypted form is overwritten every 60 seconds□

would. Only when there is a strong shock or when an “SOS button” is pressed□

(legible) storage of the image data for a maximum period of 90 seconds. To□

the legal situation in force at that time according to §§ 1 para. 2 and 7 para. 3 DSG 2000 set the□

Admissibility of data use presupposes that the resulting interventions in the□

Fundamental right to data protection only to the extent necessary and with the least risk□

available funds and that the principles of § 6 DSG 2000□

be respected. The VwGH justified the rejection with the fact that due to the□

a proportionality test should be carried out in the provision shown and that□

Video recording system due to the possibility of storing the image data through□

Pressing the "SOS button" at any time and thus apparently without restrictions□

could. For this reason alone, this system is not considered the mildest means within the meaning of□

Section 1 (2) and Section 7 (3) DSG 2000 can be seen.□

The case to be assessed is also about video surveillance, with the□

Image data is also overwritten every 60 seconds. A difference to□

The facts stated above only exist with regard to the duration of the actually permanent□

saved recording, since in the present case it is 30 seconds longer□

video sequence is saved.□

§ 1 para. 2 DSG is still valid unchanged.□

According to Article 5 (1) (c) GDPR, the principles of the GDPR also provide that□

personal data appropriate and relevant to the purpose and to what is necessary for the□

The purposes of processing must be limited to what is necessary ("data minimization").□

According to this provision, an examination has to be carried out to determine whether a□

Restriction to what is necessary for the purposes of processing. To that extent□

can due to the unchanged scope of § 1 DSG as well as due□

of the new legal situation according to the GDPR, the above-cited decision of the Administrative Court□

assessment of the case in question.□

Because pressing the emergency button also saves the image data□

triggers cannot be said to be limited to what is necessary□

is limited, especially since the emergency button can be pressed at any given time□

could and thus a permanent storage of the image data even without an accident□

could happen.□

According to Art. 6 Para. 1 lit. f GDPR, the processing is lawful if it is used to protect□

the legitimate interests of the person responsible or a third party, provided that□

not the interests or fundamental rights and freedoms of the data subject who□

Protection of personal data prevail, especially when it is□

the data subject is a child.□

It can be inferred from recital 47 of the GDPR that, in particular, if□

personal data are processed in situations where a data subject□

reasonably does not have to expect further processing that interests and□

The fundamental rights of the data subject outweigh the interests of the person responsible□

could. In this respect, the question of the lawfulness of the processing would have to be assessed□

to carry out a proportionality test within the meaning of Article 6 (1) (f) GDPR.□

However, people who take part in road traffic do not reasonably have to do so□

reckon that their personal data, and this indisputably includes those associated with the□

planned processing, are processed in this way.□

It cannot be said that storing image data using□

Video cameras mounted in vehicles are now common practice in road traffic□

is equivalent to.□

In this respect, the intended processing also appears with regard to Art. 6 Para. 1 lit. f□

GDPR not justified.□

According to Art. 36 Para. 2 GDPR, the above recommendation was to be issued.□

Apart from that, in the sense of the above statements, the attached□

To issue a warning in accordance with Article 36 (2) in conjunction with Article 58 (2) (a) GDPR.□