GZ: 2020-0.013.649 from January 21, 2020 (process number: DSB-D202.235)

[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.]

NOTICE

S P R U C H

The data protection authority decides on the application of the N*** research institute

(Applicant) of July 24, 2019 for the granting of approval in accordance with Section 7 (3) DSG

as follows:

1. Approval is granted to the applicant for the purpose of developing

Test data for algorithms in the field of (partially) autonomous driving personal

Data in the course of image recordings in public places within Austria from a perspective

of the driver of road or rail vehicles to be determined and processed.

2. In order to safeguard the interests of the data subjects that are worthy of protection at the in

Clause 1 approved processing, the following conditions are imposed:

a. the vehicles carrying out the recordings are to be marked in such a way that the

The identity of the applicant is disclosed and those affected are informed where

they receive information in accordance with Art. 13 GDPR;

b. Access to the images with personal data is through the

Protect applicants in a suitable manner in accordance with Art. 32 (1) GDPR, e.g.

by lock (for paper records) or by password (for electronic records).

Records);

c. access to and evaluation of the images may only be given by certain

trained employees of the applicant who have been informed about § 6 DSG

or its processors, their reliability in handling data

is guaranteed in accordance with Section 6 (3) DSG;

i.e. the image data may only be published in an anonymous form;

e. a transmission of image data in the context of cooperation may only be

scientific institutions, which are also involved in the development of secure algorithms

research into (partially) autonomous driving or who credibly promise this

research purposes in this area. Only such image data may be used

are transmitted, where interests of recognizable persons, the protection

require personal data, the interests of the applicant or others

scientific institutions, safe algorithms for (partly) autonomous driving

develop, not dominate. To scientific institutions in third countries without

appropriate level of data protection, image data may only be transmitted if

Standard contractual clauses within the meaning of Article 46 (2) (c) GDPR are concluded.

3. The application for permission to provide personal data in the course of image recording

public places within the European Union with the exception of Austria

To determine the driver's view of road or rail vehicles is

rejected.

4. According to § 78 of the General Administrative Procedures Act 1991 (AVG), BGBl.

No. 51/1991 as amended, in conjunction with Sections 1, 3, Paragraph 1 and TP 1 of the Federal Administrative Tax Ordinance

1983, BGBl No. 24 idgF (BVwAbgV), the applicant has an administrative fee

of EUR 6.50 to be paid.

Legal basis: Section 7 of the Data Protection Act (DSG), Federal Law Gazette I No. 165/1999 as amended;

Art. 13, Art. 25, Art. 55 and Art. 89 of Regulation (EU) 2016/679 (Privacy

Basic Regulation - GDPR), OJ No. L 119 p. 1; as well as § 78 of the General

Administrative Procedures Act 1991 (AVG), Federal Law Gazette No. 51/1991 as amended, in conjunction with §§ 1, 3 Paragrap

and TP 1 of the Federal Administrative Tax Ordinance 1983 (BVwAbgV), Federal Law Gazette No. 24 as amended.

REASON

A. Submissions of the Applicant

The applicant submitted an application for approval on July 24, 2019

according to § 7 para. 3 DSG and essentially argued that he as

non-university research institute Algorithms in the field of autonomous driving

explore.

The applicant's researchers are currently working to increase road safety

research that the correct interpretation of image data by algorithms

will be ensured. The big challenge is to make image data reliable

to analyze and categorize in order to subsequently create a "mechanical

Scene understanding" to calculate that it enables (partially) autonomous vehicles to

to plan further driving manoeuvres. Algorithms in (partly) autonomous vehicles must - so

the applicant further - be able to streets, people, street signs, traffic lights,

Recognizing and distinguishing between trees, cyclists, etc. Would

Algorithms that take people for streets, for example, would have catastrophic consequences

Effects. To check whether algorithms reliably detect objects and

classify, would first capture images (still images) of people manually

classified. The aim of the classification is to make a "copy" of the image recording, in

of objects (color-coded) were recognized by humans. This "copy" of

Image capture would also be referred to as "ground truth". Using this valid

Test data, various algorithms can then be checked to see whether

can recognize these objects with the same quality as humans. To ensure,

that algorithms are correct in all situations that arise in everyday traffic

work, it is necessary for researchers with a corresponding number

can work with different image recordings. For this reason determine the

Applicants are already targeting image recordings (film recordings) with commercially available cars

public places in Austria from the driver's point of view. From the film footage would

then still images are selected and classified as best suited for review

of algorithms. In doing so, particular attention is paid to

To depict traffic events as representatively as possible or special recordings

select which are known to pose a challenge for algorithms

(e.g. wet road, darkness, low position of the sun, etc.). In connection

with a representation of the traffic situation that is as representative as possible is next

Step planned, filming in all member states of the European Union

to make. This is because the traffic situation in other Member States is different

differ from that in Austria. So would different in other Member States

or other traffic signs used, is the composition of

Different road users (e.g. higher proportion of cycling or motorcycling)

or are there other geographical conditions (e.g. coastal roads). means

Stickers on the vehicles should be in German and English

the applicant as controller and the purpose of the recordings

be informed. Via a link visible on the stickers, people are supposed to

an English-language website of the applicant should be made aware of the

for more information about data processing and research activities

Increasing road safety in connection with (partially) autonomous vehicles.

Planned trips to record footage would be posted on this website in advance

to be announced. Since it is planned to record images in public road and

In order to produce rail transport, it is unavoidable that personal data must also be processed

detect. In particular, it cannot be ruled out that, for example, image data from

Pedestrians crossing the street can be detected. The identity of

Road users is not important for the applicant. The fact that

On the other hand, it is essential that people are recognizable in still images.

Finally, it must be ensured that algorithms in (partly) autonomous vehicles

people can be clearly identified as such. In no case, however, does the

Attempt to identify other road users. Identifying suitable

Image recordings - but in particular the subsequent classification of the images - is a

extremely time consuming process. Let's classify pictures by people

been used, these would serve as reference material for testing any number of algorithms

can be used. Through the repeated and long-term use of the

Reference material should be a constant development in the field of automated

driving and in particular the associated road safety

as they are from the Federal Ministry for Transport, Innovation and Technology

(hereinafter referred to as “BMVIT”). To conduct research in the field of

To speed up traffic safety, the applicant is therefore planning to

Images and their classification also other scientific institutions

to make it available worldwide for research purposes in this area. The

Transmission of merely anonymous image recordings (e.g. by making unrecognizable

faces) is not possible. This would mean that the items to be checked or

developing algorithms cannot reliably identify people. In the end

in this case, the algorithms would only know people with unrecognizable faces

being. However, other scientific institutions would only be able to use such images

Be made available where interests of identifiable persons need protection

require personal data, the interests of the applicant or others

scientific institutions, safe algorithms for (teli)autonomous driving

develop, not dominate.

The applicant only wanted images and corresponding classifications

transmit scientific institutions that are known to do the same

researching algorithms to increase road safety (e.g. based on

relevant scientific publications) or who would credibly promise this.

Furthermore, image data would only be transmitted if it was guaranteed that

processed exclusively for research purposes and in no case personal

Image data will be published.

To scientific institutions in third countries without an adequate level of data protection

image data would only be transmitted if the recipient communicated with the applicant

conclude standard data protection clauses. The transmission of personal image data

including classification to recipients other than scientific institutions

intended.

The planned processing should only take place within the scope of the activities of the

applicant in Austria. However, image material should also be used in public

and rail transport in all Member States. The applicant can

not foresee which or how many persons will be affected by the planned processing

will be affected. Referring to the “Guidelines for determining the

lead supervisory authority of a controller or processor”.

Article 29 Working Party, the applicant stated that the envisaged processing:

- cannot entail damage, loss or hardship for individuals,

- will not limit or nullify any rights,

- the health, well-being or peace of mind of individuals

affect

- do not pose any financial or economic disadvantages for individuals,

- not likely to discriminate against individuals or unfair treatment

to suspend

- do not include analysis of special categories of personal data,

- no improbable, unforeseeable or undesired consequences for

bring individuals and

- also do not involve the processing of a wide range of personal data.

However, also with reference to the guidelines mentioned, the applicant stated that

through the planned processing activity

- personal data of an unlimited number of road users

processed,

- may also collect personal data from children and

- possibly embarrassing or other negative findings about individuals

would be brought to light (e.g. that a person crossed a road in an improper manner and

way crossing or committing another violation of traffic rules).

It cannot therefore be ruled out that the processing activity is suitable

Inducing individuals to significantly change their behavior. This in particular

also because road users are currently not reasonably expecting it

need that their personal data about using a in a motor vehicle

attached camera can be saved. However, since no attempts were made

Identifying individuals and identification would only be possible by means that

are not used at general discretion, it is ultimately questionable whether the planned

Processing significant impact on data subjects in more than one

member state and there is therefore cross-border processing.

The applicant summarized the impossibility of obtaining consent

from, obtaining the consent of persons who happen to be through the

would move the recording area of the cameras, could not be done without a high

To drive effort and a processing operation, namely the one direct

Identification that creates a personal reference. This procedure is for

Achievement of the scientific research purpose is not necessary at all or

intended. Obtaining consent would therefore not only be one

cause disproportionate effort, but at least the protective purpose of §§ 1

Para. 1 and 7 DSG.

The applicant justified the public interest with the fact that algorithms for

(Partially) autonomous driving would be validated in order to make them more reliable and therefore safer

do. This is an essential prerequisite for safe (partly) autonomous

to realize driving and avoid accidents. The applicant therefore departs from

Existence of a public interest.

With regard to professional suitability, it was stated that the data determination was carried out exclusively by

certain, trained employees who have been informed about data secrecy

become. The evaluation of the image data is only carried out by employees who work in the field of

Analysis of image data or the development of valid test data for algorithms

research, take place.

Insofar as the assistance of contract processors is necessary for the classification of image data

be, only those would be used that comply with data protection law

provisions could ensure. Furthermore, processors and those of

these persons employed, contractually for confidential treatment

personal data obligation. In addition, potential

The applicant's processors also demonstrate that they have appropriate technical

and have taken organizational measures to protect personal data.

The declaration of an authorized person according to § 7 para. 4 DSG is not necessary, since the

data required for the research purposes are determined by the applicants themselves

would.

B. Findings of Facts

The data protection authority puts the above under A. on file

documented factual basis of their decision.

C. In legal terms it follows that:

For the determination and processing of image data in Austria according to clause 1.:

General

§ 7 DSG standardizes data processing for purposes that are in the public interest

Archival purposes, scientific or historical research purposes or statistical

purposes. Image data is also (identifiable) personal data within the meaning of Art. 4

Z 1 GDPR. At the same time, however, there is no special processing involved with these image data

Categories of personal data within the meaning of Art. 9 GDPR (cf. e.g. DSB of June 7th

2018, GZ: DSB-D202.207/0001-DSB/2018, with further references).

The determination and evaluation of image data for scientific purposes

Research is subject to the special provision of § 7 DSG. From the ascertained

The facts of the case are that the requirements of § 7 para. 1 and para. 2 Z 1 and Z 2

are not available, so that the planned use of data is only based on approval

can be carried out by the data protection authority in accordance with Section 7 Paragraph 2 Z 3 in conjunction with Paragraph 3

Prerequisites for the approval according to § 7 paragraph 3 DSG

The use of personal data for scientific purposes is permitted in accordance with Section 7

Para. 3 DSG is permissible if the data protection authority has given its approval for this

is present, whereby according to para. 3 leg. cit. the conditions specified there for the grant

must be given for approval.

§ 7 para. 3 no. 1 DSG is met, among other things, if the size of the circle of affected

Persons that the disproportionality of the research entails (see

Gantschacher†/Spanberger in Gantschacher†/Jelinek/Schmidl/Spanberger, commentary

on the Data Protection Act [2018], § 7 note 10). For the assessment of

Disproportionality of the effort involved in obtaining the consent of those affected

people, time and cost factors must be taken into account (cf. e.g

Pollirer/Weiss/Knyrim/Haidinger, DSG comment, § 7, note 14).

Those affected are a group of people whose current address

could not be determined for the applicant at all or only with disproportionate effort,

as these could only be identified and contacted afterwards. For this reason

it can be assumed that obtaining consent is therefore partly impossible, partly

would be possible at best with disproportionate effort, so that the conditions

are given according to § 7 Abs. 3 Z 1 DSG.

The applicant has the public interest (improving algorithms to

to realize (partly) autonomous driving and to avoid accidents) at the applied for

Use sufficiently explained.

As can be seen from the findings of fact, the applicant is a general

recognized research institution that guarantees that the determination and

processing of the image data is carried out in Austria by qualified specialists,

which is why the requirement of § 7 Para. 3 Z 3 DSG is also met. Since the

personal data are determined by the applicant herself is not

Obtain/enclose a declaration in accordance with Section 7 (4) DSG.

The data protection authority issued a decision dated June 1, 2019, DSB-D202.220/0002-

DSB/2019, granted permission to the same applicant, personal data

for the purpose of developing test data for algorithms in the field of (partly) autonomous

Driving in the course of taking pictures in public places in Austria from the point of view of the

determine and process the driver. The present application was, however, to that extent

more specific than referring to the issuance of a permit for the purpose of drafting

of test data for algorithms in the field of (partly) autonomous driving

personal data in the course of taking pictures in public places within

Austria from the point of view of the driver of road and rail vehicles.

Having said that, the authorization for the identification and processing of

Photographs taken in public places within Austria from the driver's point of view

to be granted to road and rail vehicles.

Regarding point 2:

The conditions imposed serve to ensure data security when processing the data and

Securing data secrecy.

To determine image data within the European Union with the exception of

Austria according to point 3.:

The application made for the determination of image recordings within the European Union

was rejected for the following reasons:

In the case of Art. 89 Para. 2 GDPR ("Guarantees and exceptions in relation to processing

archiving purposes in the public interest, for scientific or

historical research purposes and for statistical research purposes")

an "opening clause". This allows it according to the national legislature

Art. 6 para. 2 DSGVO that when processing personal data

scientific or historical research purposes and for statistical purposes

"In the law of the Member States, exceptions to the rights under Articles 15, 16,

18 and 21 are (may) be provided, as these rights are expected to be the

make it impossible or seriously impair the achievement of the specific purposes

and such exceptions are necessary for the fulfillment of those purposes."

The Austrian legislator has benefited from the opening clause in accordance with Art. 89 Para. 2

DSGVO used insofar as he § 7 DSG ("Processing for public

Interesting archival purposes, scientific or historical research purposes

or statistical purposes").

The explanations to § 25 of the Ministerial Draft 322/ME XXV. GP - now § 7 DSG -

are as follows:

"Art. 6 para. 2 GDPR provides that the member states "more specific provisions on

Adaptation of the application of the provisions of this regulation in relation to the

Maintain or introduce processing to comply with paragraph 1 letters c and e

(can) by providing specific requirements for processing as well as others

Measures more precisely to determine a lawful and good faith

to ensure the processing that takes place, including for other special purposes

Processing situations in accordance with Chapter IX." This so-called "flexibility clause"

thus enables the Member States, despite the existence of a Union regulation

Limits the scope of application of Union law in principle to the public

and private sector is equally applicable, at national level (in addition to Art. 6

Paragraph 3, Art. 23 and Chapter IX of the GDPR) certain "more specific provisions".

enacted (...)"

In principle, the European legislator has the option with Art. 6 Para. 2 GDPR

created for Member States, “more specific provisions to adapt the

to maintain or introduce application of the provisions of this Regulation, (...),

including for other special processing situations in accordance with Chapter IX.” The

Austrian legislator has - as already explained above - with regard to Art. 89

DSGVO made use of it and the more specific, national provision of § 7

DSG created.

Now it can be assumed that not only Austria, but also others

Member states have made use of Art. 6 Para. 2 in conjunction with Art. 89 GDPR, what

total means that for the processing of personal data

scientific research purposes not only the GDPR, but also the respective

national data protection law of the Member States is relevant. For this reason alone

for the requested approval for the determination of scientific images

Research purposes within the European Union not only the GDPR and

Austrian law (here: § 7 DSG) applies, rather - in addition to the GDPR -

to apply the respective national data protection law of the country in which - how

requested - the image data for scientific research purposes (here: the determination

of image data to test algorithms in the field of (partly) autonomous driving).

should be.

It can therefore also remain undecided whether it is the subject of the application

Data processing within the European Union is a cross-border one

Processing in accordance with Art. 4 Z 23 lit. b GDPR is what - in the opinion of the

Applicant - cannot be assumed because there are no "significant effects" on

those affected would be available. In the present case it is not

– obliging supervisors to “collaborate and coherently” –

Use case of Chapter VII GDPR ("Collaboration and Consistency"), so that it

Overall, it does not matter whether "cross-border processing" pursuant to

Art. 4 Z 23 lit. b GDPR exists. Rather, in the present case - in addition to Art. 89

GDPR – the leges speciales issued on the basis of Art. 89 Para. 2 GDPR, the

more specific provisions of Member States for data processing

scientific research purposes.

In this context, Art. 55 Para. 1 GDPR ("any supervisory authority

is responsible for the performance of the duties and the exercise of the powers conferred on you by this

Regulation have jurisdiction in the territory of their own Member State")

to refer, according to which the Austrian data protection authority only in its own

national territory has judicial competence. The present application was therefore

not only to the approval of the determination of data within Austria, but

within the entire European Union and thus to countries outside the

jurisdictional competence of the Austrian data protection authority,

to reject.

Regarding point 4:

The cost of the ruling (administrative fee) is based on the quoted

provisions. Granting permission to process data for

scientific research purposes is not exempt from the fee and

Tax exemption clause of Section 69 (6) DSG.

This sum is to be transferred to the account BAWAG P.S.K., Georg-Coch-Platz 2, 1018 Vienna, IBAN:

AT460100000005490031, BIC: BAWAATWW, made out to the data protection authority,

to deposit The reference number and the completion date may be used

be specified.

Thus, the decision had to be made accordingly.

[abbreviated here, fee notification]