

GZ: 2021-0.024.862 from February 2nd, 2021 (case number: DSB-D485.007)□

[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 basis of the A** Verkehrsbetriebe GmbH□

(Responsible), represented by N** Rechtsanwälte GmbH, on December 10, 2020□

initiated procedure according to Art. 36 GDPR regarding an intended□

Data processing ("impact detection test for bridges") as follows:□

- The request for prior consultation under Art. 36 GDPR is rejected.□

Legal basis: Articles 5, 6, 13, 14, 35 and 36 of Regulation (EU) 2016/679 (data protection□

Basic Regulation, hereinafter: GDPR), OJ No. L 119 of 4.5.2016 p. 1;□

A. Submissions of those responsible:□

REASON□

1. By letter dated December 10, 2020, the person responsible initiated a procedure in accordance with□

Art. 36 GDPR and stated as follows:□

Those responsible intend to use "impact detection on bridges" to identify and□

Video documentation of claims - those caused by a vehicle collision□

caused by a bridge of those responsible - to build. The privacy□

Impact assessment comes to the conclusion that with regard to the assessed□

processing activity remains a high (residual) risk or cannot be ruled out□

could. The application was the "Data protection impact assessment test operation impact detection□

at bridges" of those responsible settled.□

2. The responsible person specified - at the request of the data protection authority□

Statement of January 7, 2021 to the effect that the high risk for□

the data protection rights of the persons concerned recognize that due to the specific□

circumstances of the processing is a viable legal basis for the data processing□

exists, however, reliable information from the persons concerned about the□

Data processing is not guaranteed. Because the person responsible has no direct□

Contact with the drivers and passengers of approaching vehicles, which information□

could ensure. There is also no empirical evidence that the appropriate□

Information signs are also noticed by affected persons "in passing".□

The person responsible is also not the preserver of the motorways in question, but only□

of the transferring railway bridges, which the space available for□

Information signs can restrict.□

The specific circumstances of the processing therefore result in the risk that the□

data subjects from data processing in the form of video surveillance in their□

private or professional life can be recorded without worrying about the fact of□

processing and/or the identity of the person responsible. manifest in it□

a high risk for the data protection rights of the data subjects, in particular for□

the right protected by Art. 5 (1) (a) GDPR that personal data is only processed in□

processed in a way that is comprehensible to the data subjects.□

The present data protection impact assessment therefore comes to the conclusion that the□

planned technical and organizational measures alone cannot suffice,□

completely eliminate these risks.□

B. Findings of Facts□

Those responsible intend to use video-based "impact detection on bridges".□

maintenance is their responsibility. The planned application is as□

Test position consisting of a sensor and video recording system designed, which in the□

Area of railway bridges attached to those responsible, over public

traffic areas run. The system is used for the detection and video documentation of

Claims resulting from the collision of a vehicle with a bridge

be caused to those responsible.

Excerpts from the data protection declaration are as follows (formatting not

reproduced 1:1):

SECTION:

"1.

PROCESSING OPERATIONS

DESCRIPTION

AND

DELIMITATION

THE

[...]

1.2 Functional description of the application

[...]

Detailed presentation of the planned processing operations

In the area of selected railway bridges of those responsible, which over

running along public traffic areas, digital, fixed video cameras are used

Installed. In addition, laser light barriers are used in the area of the railway bridges

as a so-called "starter trigger" installed, which trigger (trigger) as soon as a vehicle

happened, which exceeds the permissible total height (impact cause). For the

Camera system, two different camera perspectives are provided, which

each fulfill different recording purposes:

(i) Recording of the structural soffit for the identification and documentation of

any optical changes to the supporting structure as well as for more precise

Analysis of the impact (nature of the part of the vehicle in contact with

the bridge structure, speed at impact, etc.).

The camera lens is aligned in such a way that no public

Traffic areas (e.g. street, footpath, bike path) are recorded.

(ii) Recording the lane of oncoming traffic in

close proximity to the secured railway bridge for the purpose of

Detection of crashing vehicles and their license plates and

if necessary, the handlebars from the front.

Depending on local conditions, the application will be either as

"Event recording system" or implemented as "Event storage system",

whereby in terms of data minimization (Art 5 Para 1 lit c GDPR) the

Event recording system is to be implemented:

(i) Event recording system: If the local conditions in individual cases

a corresponding positioning of the laser light barriers on the ground

responsible persons (not on third-party ground) in the run-up to the secured bridge

allow, no continuous recordings are made by the installed

cameras, but only become so when the event of a collision is registered

put into operation, thus when a vehicle showing the permissible

total height exceeds one of the installed laser light barriers

(occasion recording).

(ii) Event Storage System: In all other cases - ie where none

suitable reason for those responsible for installing the laser light barriers

is available in the run-up to the bridge – the laser light barriers are switched on

installed on the bridge itself. In this case it would be without a certain lead time

Camera recording not possible, possible damaging parties and their vehicles

to be identified by purely occasional recordings (the technically necessary

Otherwise, the "lead time" for activating the camera system cannot be guaranteed□

will). It is therefore a permanent operation of the installed video cameras□

necessary.□

However, the continuously recorded image data is only temporary□

saved in a ring memory and overwritten regularly. the□

concrete storage period depends on the maximum expected□

Approach speed and the actually visible approach line□

away. The maximum storage time is 10 seconds. One□

Any further storage of captured image data only occurs if□

Registration of a collision event, i.e. when a vehicle which□

the□

installed□

passed the laser light barriers. In this case, the overwriting of image data□

suspended under the ring memory until a corresponding□

Evidence has been secured (due to storage).□

allowable total height□

exceeds□

one□

the□

[...]□

The image data saved as part of the event recording or event storage□

will immediately - but in any case within 96 hours - from there to□

analyzed and evaluated by authorized persons of those responsible. These events□

are logged. The further use and storage duration of the image data in the□

Individual cases then result from the designated documentation purposes under□

Consideration of the principles of data minimization (Art 5 Para 1 lit c GDPR) and□

Storage limitation (Art 5 Para 1 lit e GDPR).□

[...]□

The legitimate interests pursued (if Art 6 Para. 1 lit f GDPR as□

legal basis is used)□

The legitimate interests pursued by the data controller through the application□

can be summarized as follows:□

-

Crash incident detection and analysis to ensure safety and security□

To be able to guarantee the functionality of the protected infrastructure and□

take appropriate remedial action if necessary□

(e.g. necessary□

Repair work on bridge sections or barriers affected by an impact□

from rails);□

Obtaining information for the ongoing fulfillment of the maintenance□

-

of their□

and traffic safety obligations of those responsible with regard to□

railway bridges,□

especially through the better recognition and□

Assessment of hazardous situations and their proactive elimination or□

defuse;□

-

Clarification of collision incidents including identification of the□

Cause and corresponding evidence, whereby in particular the□

Initiation of any (administrative) criminal proceedings enables and the effective□

Enforcement of civil law claims by those responsible□

shall be.□

That the video documentation of damage in public road traffic per□

se corresponds to a legitimate interest of the person responsible is undisputed (cf□

VwGH Ro 2015/04/0011).□

The processing is also necessary to safeguard this legitimate interest,□

because there is no milder way to get the drivers of an impacting vehicle□

to identify or the license plate number and thus a conclusion on the□

to identify license holders. The capture via video recording is at this□

Purpose therefore required, whereby the person responsible (as described overleaf)□

extensive measures are taken to limit the extent of processing to a□

to limit the necessary minimum.□

Finally, there are no overriding interests of the processing□

affected persons. Because initially the processing is limited to□

a sequence lasting a few seconds in which affected persons□

Participants on public roads can be captured visually.□

In particular, no highly personal areas of life are recorded or sensitive□

Processes data within the meaning of Art 9 GDPR. The processing therefore has□

Compared to other image processing, it has a relatively low intensity of intervention. the□

Image recording records a publicly perceptible behavior of the persons concerned□

Persons.□

Above all, however, in the context of this balancing of interests according to recital 47□

GDPR to be based on the reasonable expectations of the data subjects (cf□

DSB-D550.084/0002-DSB/2018).□

for the representational□

Application assumed that the affected road users□

can reasonably foresee that in the area of critical infrastructure such as about□

Photographs may also be taken of railway bridges. So are ☐

Video surveillance in Austria already at dangerous crossings, in tunnels, ☐

on motorways and open roads as well as rest areas, train stations, airports, etc. ☐

widespread. ☐

In this sense ☐

is ☐

[...] ☐

According to the DSB, dashcams can therefore be permitted in particular if ☐

the following parameters are observed: ☐

- ☐

The data is processed for the sole purpose of ☐

Documentation of an accident. The subject application is fulfilled ☐

this criterion flawlessly, since only the designated ☐

documentation purposes are pursued. ☐

The recording of the public space (= street) is based on the ☐

- ☐

described ☐

required ☐

Data minimization measures by those responsible also ensure compliance ☐

of this criterion. ☐

limited. ☐

extent ☐

around ☐

the ☐

In the case of storage, data is only ☐

- ☐

im absolutely□

required amount of time (the concrete storage duration□

depends on the maximum expected approach speed and the□

specifically visible approach line. The maximum storage period is 10□

seconds before the accident occurs until a few seconds later, cf□

Sketch1). Data is continuously overwritten unless there is any□

accident happened. The combination provided by the person responsible□

from ring memory and start-trigger by laser light barriers also fulfilled□

this requirement.□

is (e.g. push of a button), will□

-

If the permanent storage of image data (= stop the□

Overwriting in the ring memory) by a willful action of the□

dependent on those responsible□

in case of doubt the□

inadmissibility of the processing to be assumed. However, the is permissible□

exclusively automatic storage of image data□

(=stop of□

overwriting process) by predefined impulses, without possibility□

a manual save. Within the scope of the present application□

the overwriting process is only triggered by a keystroke of the□

Exposed laser light barriers or, in the case of the start recording, the□

Video recording only started in the first place.□

Ensuring integrity and confidentiality through the use of□

-

Encryption Techniques and Access Restrictions. Also this one□

The actual application of those responsible becomes a requirement□

fair (see point 5 below for the implemented measures).□

Also taking into account those criteria that the DPO at least in the case of□

Image processing by dashcams is deemed to be relevant is the admissibility of the□

to affirm the application in question in accordance with Art. 6 Para. 1 lit. f GDPR. Included□

is also to be considered that the use of Dashcams a□

comparatively even higher intervention intensity. Because in contrast to□

it does not correspond to the actual monitoring of critical infrastructure□

the reasonable expectations of the persons concerned that they are using Dashcam□

be filmed by other road users (cf. in this sense DSB-□

D550.084/0002-DSB/2018). In addition, it is the subject matter□

Processing activity around a stationary image recording, which is always the same□

Area of a potential road hazard recorded and also in the□

Visible as opposed to a "moving" dashcam located in a vehicle□

can be marked.□

[...]□

SECTION:□

3.□

AND□

PROPORTIONALITY OF THE PROCESSING OPERATIONS IN RELATION TO□

THE PURPOSE□

NEED□

EVALUATION□

THE□

[...]□

3.2 Information about the measures taken or planned to comply with the□

GDPR□

those to ensure necessity and□

proportionality□

in particular□

Purpose limitation principle (Art. 5 Para. 1 lit b: Collection for specified, clear and□

legitimate purposes; further use?)□

he follows□

exclusively□

The data processing□

designated□

documentation purposes. Data processing for other purposes does not take place□

instead of. This is ensured by internal training and guidelines. Furthermore□

all employees involved in the processing activity in question□

responsible by means of a separate declaration to comply with the□

Data secrecy according to § 6 DSG and the applicable internal regulations□

Committed to data protection and information security.□

the□

for□

Principle of data minimization (Art 5 Para 1 lit c: How is it ensured that only the□

required data are processed?)□

of data minimization□

the□

For the purpose of□

Lane perspective such that only the vehicles on the lane of the□

approaching traffic and also only the relevant areas of the approaching□

Vehicles (driver and front passenger seat and license plate number) are recorded.□

the camera orientation□

he follows□

The duration of the recorded sequence and camera angle is chosen so that at□

average speed an impacting truck fills the picture and therefore□

if possible, no other road users are detected.□

The alignment of the structural soffit takes place in such a way that through this□

Camera recordings are not processed at all.□

In particular, cycle paths or footpaths below the structure are not recorded.□

In addition, recording areas that are not relevant to the achievement of the purpose are included□

static blackening (digital masking) (e.g. the edge areas in which□

Pedestrians could be caught or moving away from the bridge□

oncoming traffic). The blackening will be in the process□

into the camera views□

programmed so that the area covered by the mask is not recorded at all□

ie no image pixels are processed in the relevant areas.□

fix□

Through the use of the laser light barrier, which, depending on the implementation, either the□

Camera only starts up (occasional recording) or continuous overwriting□

Exposes existing recordings within the framework of the ring memory (event storage)□

the period of recording is limited to what is necessary to achieve the purpose□

minimum reduced. Where the local conditions allow this will always be the case□

Event recording system implemented.□

Due to an impact event, only those cameras are activated that are on□

are aimed at the lane on which the impacting vehicle is located.□

Principle of storage limitation (Art. 5 para. 1 lit e: Storage period only for as long□

than necessary for the purpose)□

As part of the event recording system, data will only be saved in the event of a

Impact event recorded and saved.

As part of the event storage system, the continuously recorded

Image data is temporarily saved in a ring memory and each time it expires

overwritten by a few seconds and thus irreversibly deleted (The concrete

Storage duration depends on the maximum expected approach speed

and the concretely visible approach line. As the maximum storage period are

10 seconds provided). Any further storage of recorded

Image data is only provided when a crash event is registered.

The data storage following a collision event takes place for as long as

as is necessary for the stated processing purposes in individual cases (Art

5 para. 1 lit e GDPR). If there is no legitimate storage purpose - in particular

if there was no impact that was detrimental to the person responsible - will

the data immediately, but in any case after 96 hours after the

Recording deleted. Same for

relevant image sequences of a

saved recording (e.g. the recording of bystander road users).

for not

Information on compliance with the requirements for data transfer to third countries (or

international organizations)

The image recordings are stored on a server in Germany. There is no

Transmission to third countries or international organizations.

[...]

3.3 Information about the measures taken or planned for

Taking into account the rights of data subjects

Ensuring transparency and information obligations (Articles 12-14)

The recording activity is clearly visible in the area of the secured bridges□

appropriate signs are marked. Where local conditions this□

allow, i.e. if there is a corresponding reason for those responsible (not for a third-party reason)□

is present, the marking is clearly visible to oncoming traffic□

mounted in front of the bridge.□

The sign contains information about height control, a pictogram for□

Video surveillance, a reference to the person responsible and a link including a QR□

Code with reference to further information in the data protection declaration□

responsible. The marking essentially corresponds to Sketch 2.□

A detailed description is given in the data protection declaration of the persons responsible□

of the processing activity in accordance with Art. 13 GDPR. the□

The data protection declaration can be called up at any time on the website of the person responsible and□

can be requested at the company headquarters.□

[...]□

SECTION 4: IDENTIFICATION AND ASSESSMENT OF THE RISKS TO THE□

RIGHTS AND FREEDOM OF SUBJECTS□

[...]□

[...]□

SECTION 5: IDENTIFICATION OF REMEDIAL ACTION□

5.1 Control 1: Technical and organizational measures□

[...]□

Appropriate labeling of the application□

The recording activity is clearly visible in the area of the secured bridges□

appropriate signs are marked. Where local conditions this□

allow, i.e. if there is a corresponding reason for those responsible (not for a third-party reason)□

is present, the marking is clearly visible to oncoming traffic□

mounted in front of the bridge.□

Depending on the local conditions, this may not be the case in every case□

be ensured that the information provided by these markings□

takes place in such a way that the potentially affected persons of the application are still affected by the□

choosing a different route. But they can usually still□

stop in front of the bridge.□

is□

no□

but□

compelling□

this□

about□

DSB-D550.084/0002-DSB/2018, according to which the possibility of avoidance is "if possible"□

should exist). For example, dashcams are not qualified as not per se inadmissible,□

although with these the possibilities of providing information are even stronger or□

are at least restricted in a comparable way (cf. VwGH Ro 2015/04/0011□

or Newsletter 1/2020 of the DSB).□

legal requirement□

(see□

In addition, the data protection declaration of the person responsible contains a detailed□

Description of the processing activity in accordance with Art. 13 GDPR added. the□

The data protection declaration can be called up at any time on the website of the person responsible.□

This control reduces the risk described, but cannot reduce it entirely□

remove. A residual risk remains.□

[...]□

SECTION 6: DOCUMENTATION OF THE SOLUTION AND RESIDUAL RISK□

[...]

The sketch (SKETCH 2) in Appendix 4 is as follows (formatting not 1:1

accepted):

[Editor's note: the one reproduced at this point as a graphic file (screenshot).

Figure cannot be pseudonymised with reasonable effort.]

"

Evidence: The

met

findings

result

himself

out

to the

application initiating the procedure, its enclosure and supplementary statement.

C. In legal terms it follows that:

C.1. General

According to Art. 36 Para. 1 GDPR, the person responsible consults the before processing

Supervisory authority if a data protection impact assessment pursuant to Art. 35 leg. cit.

shows that the processing would result in a high risk if the controller

takes no measures to contain the risk.

A conclusive definition of “high risk” cannot be found in the GDPR.

However, it follows from Recital 89 that processing operations involving “high risks”

bring, especially those that use new technologies

or which are new and for which the person responsible has not yet

carried out an impact assessment (König in Gantschacher†/Jelinek/Schmidl/Spanberger,

Commentary on the GDPR [2017], Art. 36 Note 1).

Sources of risk are both internal and external, potential and actual□

risks in question. In identifying all potential risks is no less than one species□

"Foray into the Requirements of Data Protection Law" required (Ink in Knyrim,□

DatKomm Art 35 GDPR, margin no. 113). In the course of the carried out by the person responsible□

Risk analysis are therefore, in addition to purely "technical" risks, all□

those risks of□

to address data processing that may have a negative impact on a□

affected person can have and they are therefore in their envisaged by the GDPR□

affect the protection area. This also includes the lawfulness of the processing□

within the meaning of Art. 6 GDPR and compliance with all principles pursuant to Art. 5 GDPR.□

To mitigate the risk, the GDPR cites three different types of as an example□

Remedial measures, namely guarantees, safeguards and procedures by which□

the protection of personal data is ensured and proof of this is provided,□

that the GDPR is complied with. Technical, organizational and□

legal, in particular contractual, measures intended to remedy the situation (drive in□

Knyrim, DatKomm Art 35 GDPR, margin no. 116).□

C.2. In the matter□

1. The person responsible states that there is a high risk in relation to the granting of the□

reliable□

Information to the persons concerned about the data processing□

is given in such a way that the persons concerned are informed of the data processing in the form□

are captured by video surveillance in their private or professional life,□

without being informed of the fact of the processing and/or the identity of the person responsible□

to be. Specifically, the person responsible defines the risk as part of their data protection□

Impact assessment as "risk[o] for the effectiveness of the fulfillment of the information obligations□

by marking". These are – in view of those previously stated□

Considerations - a "risk" within the meaning of Art. 35 DSGVO.□

Since only those processing operations - which are also carried out after the provision of data protection□

Impact assessment defined mitigations remain high risks to natural□

Rescuing people - to be subjected to the consultation mechanism (Instinct in□

Knyrim, Art 35, margin no. 28 ff; Trieb in Knyrim, Art. 36 Rz 1), is to be checked in a next step,□

whether the person responsible has taken appropriate measures to contain the identified risk□

has met.□

2. As stated, the controller provides for "application labeling". the□

The monitored area should be clearly visible in the vicinity of the secured bridges□

corresponding information signs (SKETCH 2) are marked. The information sign□

contains a QR code in addition to a pictogram representing a video camera,□

which refers to the website - also listed on the information sign - on which the□

The data protection declaration of the person responsible can be accessed. If appropriate□

Reason the person in charge is present, marking for the approaching□

be placed in front of the bridge so that it is clearly visible to traffic.□

at□

image processing□

see□

the□

guidelines□

3/2019□

of□

European□

Data Protection Committee on the processing of personal data by video devices□

proposes a two-stage model with regard to the information to be provided.□

According to this, information at the first level should be provided by a meaningful sign.□

This information should be appropriate to enable the data subject to understand the circumstances of the surveillance can easily detect before it enters the monitored area (approximately in eye level). The location of the camera itself does not need to be disclosed as long as no Doubts exist as to which areas are covered and the circumstances of the surveillance be clearly described. The data subject must be able to assess which area is captured by a camera so that they avoid surveillance or can adjust their behavior if necessary (cf. margin no. 113).

The information on the first level (sign) should usually be the most important contain information such as B. Information on the purposes of processing, the identity of the those responsible and the existence of the rights of the data subject and others information of great importance. This can include legitimate interests, for example of the person responsible (or a third party) and (if applicable) the contact details of the data protection officers belong. You need to further to the more detailed second refer to the information level and point out where and how it can be found (ibid. 114).

Second level information must also be accessible to the data subject be made available in an accessible place, e.g. B. as a complete information sheet a central location (e.g. information desk, reception or cash desk) or on a lightweight accessible poster. As previously mentioned, the first level warning must be unambiguous refer to the second level information. In addition, it is best if the first level information to a digital source (e.g. QR code or Internet address) of the second level. However, the information must also appear not be readily available digitally. It should be possible to access the information of access the second level without entering the monitored area, in particular if the information is provided digitally (e.g. via a link). A

another suitable means might be a telephone number that can be called. the

However, information must contain all the information that is mandatory under Art. 13 GDPR

are (ibid. margin no. 117).

3. The marking provided by the person responsible is different from the planned one

local positioning as well as in terms of content, a suitable measure to

minimize identified risk. It corresponds to the model mentioned in the above

guidelines is recommended. The argument of those responsible that it is not always

due to local conditions - is possible, the selected measure in the same way

to implement and to minimize the identified risk in the same way and therefore a high one

Residual risk remains, it must be countered that not only the - in the through the

Responsible in the course of the data protection impact assessment specifically identified

Risk-associated - Measure that also has to adequately minimize the specific risk.

Rather, the determination of a possibly remaining high residual risk under

consideration

all

for

the

desired

processing

provided

containment measures to be taken. When assessing the remaining residual risk

are therefore all planned measures to ensure a GDPR-compliant

include processing.

This can be justified by a reference to the wording of Art. 35 GDPR, which

refers to the risk "to the rights and freedoms of the data subject".

Accordingly, also for the assessment of the remaining risk

Overall view of all measures and precautions taken - in the sense of a

all-encompassing weighing of interests within the meaning of Art. 5 in conjunction with Art. 6 GDPR

respectively.

4. Because of the person in charge

in the data protection impact assessment

The assessment carried out confirms the admissibility of the data processing in question

in the affirmative and has the data protection authority weigh the interests of those responsible

nothing to oppose.

The "high residual risk" raised by those responsible is in any case

Planned recording, evaluation and deletion modalities are reduced to such an extent that in

As a result, no high residual risk for those affected can be identified.

Contrary to the opinion of those responsible, it therefore has an overall view

of the measures outlined in accordance with Art. 35 (7) lit. d GDPR the existing risk

adequately contained.

The prerequisites for prior consultation in accordance with Art. 36 GDPR are therefore

not given due to the lack of high risk and it was therefore to be decided according to the verdict.