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"Dashcams"

THE USE OF MOBILE VIDEO SURVEILLANCE CAMERAS INTENDED TO FILM THE PUBLIC ROAD (“DASHCAMS” TYPE) COMPLIANT WITH GDPR?

The National Data Protection Commission regularly receives requests for information relating to mobile CCTV cameras installed in private cars, on bicycles, motorcycles, or fixed on the helmets of cyclists, motorcyclists ... (these cameras are not however confused with devices installed in cars helping the driver to park and which do not record images). In this regard, the CNPD would like to recall that it considers that the use of such video cameras (sometimes called "dashcams") which film the public road and which are likely to capture images of recognized people. sables is in practice very difficult to reconcile with the obligations arising from the general data protection regulations (hereinafter the “GDPR”).

First of all, the capture and recording by such devices of images of identifiable persons or vehicles whose number plate appears legibly constitute processing of personal data within the meaning of the GDPR.

In principle, data processing carried out by a person within the framework of a strictly personal or domestic activity does not fall within the scope of plication of the GDPR ([article 2 letter \(2\), c\) of the GDPR](#)). The Court of Justice of the European Union considers that this exemption must be interpreted strictly. She has moreover specified the contours of this personal and domestic exemption during the Ryneš case of December 11, 2014.

In this case, the Court thus considered that the exception provided for for processing relating to the exercise of strictly personal or domestic activities does not apply. do not apply to a video surveillance system, installed by a natural person on his family home, which extends to the public space or to the land of a neighbor and which, therefore fact, is directed outside the private sphere of the person processing the data. Such processing therefore falls within the scope of the GDPR.

Therefore, this exemption is not likely to apply to the use of "dashcams" because they are likely to film public roads. The GDPR will therefore have your cation to apply when using such cameras.

It is then necessary to analyze whether the data processing carried out by the “dashcams” complies with the GDPR.

Any processing of personal data is only [lawful](#) if at least one of the conditions referred to in [Article 6 of the GDPR](#) is met. The CNPD considers that in practice the The organizer of a "dashcam" will hardly be able to justify that one of the conditions listed in the aforementioned article constitutes an appropriate basis of lawfulness in such a case. Indeed it For example, to date, there is no applicable law in Luxembourg which would make the use of "dashcams" necessary. However, the processing could be lawful on basis of the legitimate interest of the user of a "dashcam" if the recordings resulting from the use of a "dashcam" are limited to short durations, for example when they do not exceed a few minutes. In such a case, the CNPD could consider that the legitimate interest of the user of a "dashcam" prevails over the interests or fundamental rights and freedoms of the persons concerned. In addition and although the condition of lawfulness may be met in certain cases, the controller of- still respect the principles set out below.

Processing of personal data is still only permitted if the data is collected for specific [, explicit and legitimate purposes](#) and is not further processed in a manner incompatible with these purposes. The images from these “dashcams” could therefore not be reused for incompatible purposes. patible (for example, they could not be published on the internet if the initial purpose was to provide evidence in the event of an accident).

In addition to these principles, the data controller must also respect [the principle of transparency](#) (see Articles [12](#) and [13](#) of the GDPR) which implies that the data subjects are informed of the processing of personal data that it implements. In the present case and in accordance with this principle, the user of a "dashcam" will, as responsible for processing images, inform users of public roads of the processing it implements. However, the CNPD considers that the res- pect of such a principle proves difficult to respect in practice. Indeed, the Commission wonders how the user of a dashcam could materially respect ter such an obligation to provide information to road users.

This interpretation also overlaps with what exists in other European legal orders, for example in Germany, where case law on this subject is abundant. For example, the Federal Court was led to conclude that the permanent and unjustified recording of traffic is incompatible with the rules of the Federal Data Protection Act [1].

Similarly, it should be noted that the Austrian data protection authority (" *Datenschutzbehörde* ") imposed, in a [decision of 27 September 2018](#) , a administrative penalty in the amount of 300 euros to a person who had installed "dashcams" in his vehicle, because this did not justify on what legality criterion of Article 6 (1) of the GDPR, the processing was based (the authority also adds that it does not see which criterion of lawfulness would be likely to apply) [2], contravened the principles listed in article 5 of the GDPR (principles relating to the processing of personal data) [3] and did not respect the right to information (article 13 of the GDPR) [4].

In view of the foregoing developments and in the absence of Luxembourg case law which would contradict these elements, the National Commission considers derives that the use of a "dashcam" within the public space in Luxembourg is proving to be delicate and problematic, particularly from the point of view of respect for the principle of transparency stated above.

In addition, the CNPD would like to stress that respect for the right to image of people likely to be filmed would also be problematic when using “dash- cams ”. For more details on this point, the Commission refers to its [thematic file on image rights](#) .

[1] "Die permanence und anlasslose Aufzeichnung des Verkehrsgeschehens ist mit den datenschutzrechtlichen Regelungen des Bundesdatenschutz-gesetzes nicht vereinbar" (Bundesgerichtshof, 15.05.2018 - VI ZR 233/17). Unofficial translation into French.

[2] “Eine die Rechtmäßigkeit dieser Datenverarbeitung tragende Rechtsgrundlage iSd Art 6 Abs. 1 DSGVO ist nicht ersichtlich und wurde vom Beschuldigten auch nicht vorgebracht. "(Point III.7. Of the decision of 27 September 2018)

[3] "Da die vom Aufnahmebereich der gegenständlichen Dash-Cams erfassten Verkehrsteilnehmer insbesondere dann, wenn kein Unfallgeschehen vorliegt, vernünftigerweise nicht damit rechnen müssen, aufgenommen zu werden, verstößt der Betrieb der Bildaufnahme gegen die in Art 5 normierten Grundsätze ”(point III.7. of the decision of 27 September 2018)

[4] “Dies ist im vorliegenden Fall nicht gegeben, da auf dem Kraftfahrzeug keinerlei Kennzeichnung angebracht wurde, welche auf die vom Fahrzeuginneren ausgehende Bildauf- nahme hinweist. "(Point III.8 of the decision of September 27, 2018)

“In Anwendung der Erfordernisse und Verpflichtungen der Art. 5 und 6 DSGVO sowie des § 13 DSG auf den vorliegenden Sachverhalt kommt die erkennende Behörde zum Ergeb- nis, dass der Verantwortliche die verfahrensgegenständliche Bildaufzeichnung nicht betreiben hätte dürfen ”(point III.9. of the decision of 27 September 2018)

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