



Geodata Code of Conduct

Conduct of conduct for data protection-compliant use of roadside optical sensors

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1 Preamble

Georeferenced, **roadside imagery** can be used for a variety of value-added **services** and purposes. In addition to purely commercial applications, a variety of social and non-profit applications have developed since the introduction of this technology; just as municipalities and municipal corporations can perform many of their tasks on the basis of - or supported by - appropriate **imagery in the** sense of efficient use of funds.

In the interest of an inclusive society, this **image material** can be used, for example, to supplement existing, classic map material with further information: for example, location of curb drops, wheelchair-accessible entrances to buildings, suitability of the ground for certain means of transport, or general obstacles; be it on the ground or objects protruding from the path.

Municipalities and municipal companies can, for example, cost-efficiently evaluate several conditions and information on the basis of a single data collection, where otherwise a multitude of repeated and / or personnel-intensive manual evaluations would be necessary on site. This includes, for example, the condition of green spaces, roads and buildings, the accessibility of safe facilities such as hydrants and emergency lanes. But also general surveying and planning activities and water runoff simulations can be created on the basis of such image material. Nowadays, infrastructure

planning based on such imagery is also becoming increasingly important, for example in the area of broadband expansion.

However, the requirements for such **services**, especially in terms of data protection law, are often subject to divergent legal interpretations, although their general permissibility is not disputed. This code of conduct was developed to promote the legal certainty of **service providers in** the design of their **services** and thus indirectly also to promote the legal certainty of users of such **image material**, such as municipalities. In doing so, the different interests of the **persons concerned as well as of** the users and **service providers were** taken into account and transferred into a balanced system of rights of the **persons concerned and** obligations of the **service providers**, including mandatory *technical and organisational measures*.

2 Subject of the rule of conduct

This code of conduct specifies the requirements for the use of **optical sensors on the roadside for the** purpose of *processing* the recorded data, which is in any case not merely ephemeral. **Services** that create **image material and** / or make it available to *third parties* may be subject to this code of conduct.

3 Definitions

Specific terms defined for this code of conduct are printed in **italics and bold**. Defined terms of the General Data Protection Regulation (GDPR)¹ are printed in *italics* insofar as this code of conduct refers to the definition of the GDPR.

3.1 Picture material

Image material is all georeferenced optical data

- which are suitable to represent the contents depicted not only dimly, but comprehensibly, recognisably and in its natural state for a human eye,
- which are recorded and created by means of **roadside optical sensors**.

3.2 roadside

Roadside means from an above-ground viewpoint located within the vertical corridor above

a publicly dedicated area, in particular but not exclusively (water) roads and paths, irrespective of the ownership in rem. On the street side also includes those above-ground positions within the vertical corridor above areas not dedicated to the public, insofar as these are accessible without having to overcome special fencing and, in particular, are not private gardens, courtyards and the like. It is irrelevant whether the **optical sensors are** located on or in a ground-based medium, as long as and insofar as the **optical sensors do not** exceed a height of 50m, or their carrier means are (remotely) controlled from the ground and within sight.

This code of conduct is basically technology-neutral, especially with regard to the carrier media of the **optical sensors**. However, this inevitably gives rise to difficulties in distinguishing between services that are not intended to be covered by this rule of conduct - e.g. **services that make** images available that were created by means of aircraft or satellites. At the same time, it is to be expected that the use of modern carrier media, such as drones, will increase in the future in the context of the creation of **image material** - at least in certain constellations. Drones, as ground-based carrier media, are also able to carry out a direct, unhindered and time-efficient **survey in the** case of civil engineering work or in disaster areas.

It is also conceivable that in the future the public administration will want to record building conditions over the entire building height within the framework of building supervision. The envisaged definition offers the necessary

¹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the

processing of personal data, on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation).

flexibility in the sense of the aforementioned, but at the same time ensures that those **services** or carrier media that are expressly not to be covered are actually not covered.

3.3 Georeference / georeferenced

A geo-reference exists when a single image or a sequence of images is processed together with metadata that enables a search or selection of the **image material on the** basis of location-related information, such as longitude and latitude, addresses, or other unique assignment schemes.

3.4 optical sensors

Optical sensors are such technical devices that are suitable for creating **image material**.

3.5 Service

Services or products for the creation and / or provision of **visual material** to *third parties*, insofar as these services or products are not excluded from the scope of the GDPR pursuant to Art. 2 para. 2 lit. c) are excluded.

3.6 Internal service

So-called internal services, for the operation or provision of which **image material** is only *processed* internally, are also considered equivalent to a **service**.

3.7 Internal processing

Internal processing is given when

- the *processing* of the **visual material** takes place only within the undertaking operating the **service**, or

- the *processing* of the **image material is** only carried out within a group of affiliated companies (§ 15 AktG).

A transfer of the **image material** for specific purposes by **service providers** to *processors* does not preclude the assumption of **internal processing**.

3.8 Service provider

Natural or legal persons offering **services**.

3.9 Affected

The data subject is any *data subject*, as well as any natural person who can at least sufficiently demonstrate that he or she is potentially a *data subject*.

3.10 Driving / driving on

Means the **roadside** creation of **imagery** regardless of the **optical sensors'** carrier medium.

3.11 Render unidentifiable

Means making information in the **visual material** unidentifiable. This can be done by alienation, redaction, replacement with random standard information or other equally effective measures.

3.12 Service register

See 4.1.1 Para. (1) of this code of conduct.

3.13 Announcement

See 4.2.1 of this code of conduct.

3.14 permanent update infrastructure

An infrastructure, fixed or mobile, stationary or movable, which is intended to create **image material** in a concretely defined area - for example by installing **optical sensors** on vehicles of the public administration, local public transport or by regular use by field staff of the public administration - for the purpose of a constant recording of the condition of defined objects - for example street signs, traffic lights, green areas. The tracking of individual persons must not be the purpose - not even incidentally.

3.15 Publication /publish

Publishing means making **visual material** available to unspecified *recipients*.

This includes the public provision of **image material** via the Internet, either within the framework of the **service** provided for this purpose or by extracting specific **image material for the** purpose of independent **publication**.

The **image material** is made accessible to an indefinite number of *recipients* via the Internet if the **service does** not require registration in order to view the **image material**. **It is** not equivalent to a registration obligation if registration is obligatory, but this is not moderated; in this case, anyone who requests viewing will also be able to view the **image material**.

Publication also occurs, for example, if the **image material is** to be used in the context of a public meeting or a public participation procedure. However, the admissibility of publication in this context is not regulated by this code of conduct.

4 Duties

Service providers must comply with a large number of data protection requirements when providing their **services**. This code of conduct specifies the obligations associated with the provision of **services**. The obligations can be divided into four categories:

- General obligations (4.1 of this code of conduct)
- obligations immediately prior to the creation of the **image material** and thus immediately prior to the possibly at least incidental *collection of personal data* (4.2 of this code of conduct)
- Duties after creation but before a (planned) **publication of the photographic material** (4.3 of this code of conduct)
- Obligations due to the (planned) **publication of the photographic material** (4.4 of this Code of Conduct).

This catalogue of obligations is completed with special features in the context of *processing image material* as a *processor or joint controller* (5), permanent updating infrastructures (6) and development environments (7(2)c).

4.1 General obligations

4.1.1 Maintenance of a common central information point for affected persons

- (1) **Service providers** finance the maintenance of a common central information point for **affected persons**. The common

central information point provides both a website and a telephone service for **data subjects**. The website gives data **subjects** easy access to an overview of the **services** subject to the Code of Conduct ("**service register**"), as well as an overview of both the existing and planned production of **image material for each service**.

- (2) The joint central information office will be established within the Self-Regulation Information Economy e.V..
- (3) The financial contributions for the maintenance of the joint central information point shall be regulated by a contribution regulation.
- (4) **Service providers shall** provide the common central information point with the information necessary to achieve the purposes of that information point, in particular that information for which this code of conduct provides for an obligation to report to the common central information point.
- (5) **Service providers** shall provide the common central information point with a technical interface by means of which the common central information point can offer **data subjects the** possibility of determining, by entering the address, which of the **service provider's services** subject to this conduct rule processes **image material** relating to that address.
 - a. Insofar as the **visual material** is **published** by the **service** at the time of

consultation by **data subjects**, at least one sample image of the visual material shall be provided in cases where **visual material** is processed.

- b. If the **image material has** not been **published** by the **service** at the time of the query by the **data subject**, it is generally sufficient to state whether **image material** is being processed. If possible, **service providers** should also provide information on when the **image material** was created - for example, by stating the year and quarter. If **image material** from several quarters/years is processed, this should also be provided if possible.
- (6) The joint central information point, as an independent, central body that can be easily located by **data subjects**, constitutes an essential aspect in the fulfilment of the transparency obligations of **service providers in** the context of the provision of their **services**. **Service providers** shall therefore ensure, as part of the proper administration of this code of conduct, that the joint central information point
 - a. publishes the **service providers' announcements** on its own website and, where legally permissible, also makes them available via popular social media; and

The rule of conduct pursues the goal of making information easily accessible to *those concerned* without any particular obstacles. Access to all relevant information via a common

information point without having to visit the websites of several **services** seems to be particularly beneficial.

Accordingly, the announcements on the website of the central information point should provide all relevant minimum information directly, and at most further information by reference to the websites of the respective **services**.

- b. easy access to the **service register** is made possible by allowing access via current internet browsers without further additional programmes and by dispensing with user registration for the purpose of accessing the **service register**.

4.1.2 Establishment of a data protection contact

- (1) The **service provider** shall maintain a data protection contact for a **service subject** to the code of conduct, to which data **subjects**, the *private supervisory authority as well as* the joint central information point can turn.
- (2) The data protection contact shall be notified to the joint central information point for publication in the **service register**. Any changes shall also be reported to the joint central information point without delay.
- (3) **Service providers shall** ensure that the data protection contact performs the tasks in accordance with Art. 39 GDPR, in particular by ensuring the necessary expertise.
- (4) Insofar as the **service provider** has formally appointed a data protection officer

in accordance with Art. 37 of the GDPR, this officer may also perform the function of data protection contact.

In the interest of effective support for data **subjects**, it is appropriate, especially in larger corporate structures, that the *data protection officer* is not the only person to process requests. Nevertheless, small and medium-sized companies in particular should not be unnecessarily burdened and have to appoint another functionary under this code of conduct in addition to a possibly already appointed *data protection officer*.

4.2 Duties in the context of the creation of the visual material

4.2.1 Notification to data subjects (Art. 12ff GDPR)

- (1) **Service providers shall** inform **affected persons in a** timely and appropriate manner about upcoming **drive-throughs by** means of an **announcement**.
- (2) **Notice** is timely if it is given at least seven (7) days prior to the creation of **visual material**.
- (3) For the period according to 4.2.1 Para. (2) the driving for the purpose of calibrating the optical sensors is irrelevant if and to the extent that the resulting **image material is** either not stored at all or is deleted again immediately after calibration and thus does not become part of the **image material** created in the course of the **driving for further processing**.
- (4) As far as calibration runs according to 4.2.1 (3) could take place before the date

specified in an **announcement**, this shall be pointed out in the **announcement**.

- (5) The notice period of seven (7) days may be reduced in exceptional cases if there is a risk of considerable disadvantages if the notice period is extended, e.g.
- a. due to changing weather conditions, or
 - b. due to unexpected (road) construction measures in the travel area, or
 - c. due to unexpected changes in fauna, such as the beginning of flowering, or abscission.
- (6) Prerequisite in order to meet the notice period according to 4.2.1 Para. (2) according to 4.2.1 Para. (5) in permissible manner, is to be distinguished,
1. that those **affected** had the opportunity to take note by means of a **notice**, i.e. at least seven days before the originally planned drive, and
 2. the possibility of updates has been reserved in this **announcement**, and
 3. the original **announcement** is updated before the early **boarding is carried** out with a justified notice of the early **boarding**, including the boarding dates applicable at the time of the update.

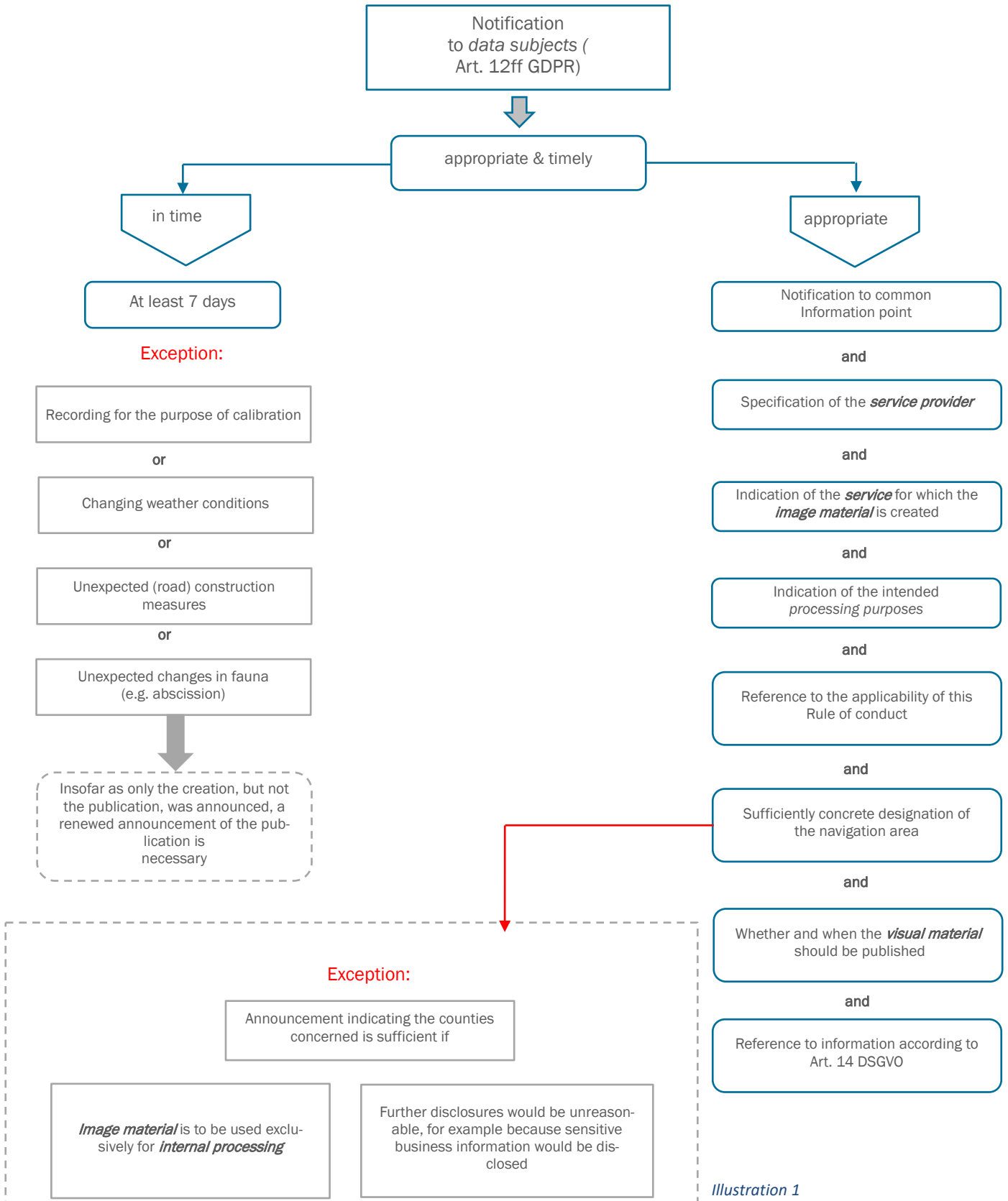


Illustration 1

- (7) An **announcement** is appropriate if it
- to the common central information point (cf. 4.1.1 of this Code of Conduct); and
 - names the **service provider**; and
 - identifies the **service** subject to this code of conduct for which the **footage** is being created; and
 - the intended *processing purposes* (cf. 4.2.2 of this Code of Conduct); and
 - to the applicability of this Code of Conduct, including the supplementary objection (4.3.2 and 4.4.3 of this Code of Conduct), application (4.3.3 and 4.4.4 of this Code of Conduct) and rights of appeal (8.2 of this Code of Conduct) for **affected persons**; and
 - the area of navigation is described in sufficient detail; and

It must be possible to record the area to be visited in a generally comprehensible form for **those affected**. This can be done, for example, by naming the affected municipality, which is particularly useful if the **image material is to be** compiled over a large area. However, specifying the affected postcode areas can also be equally effective.

If neither postcode areas nor the indication of municipality names appear to be relevant, other variants can also be used - such as visual representation by resorting to area and/or road maps; such representation may be particularly appropriate if and to the extent that only federal, district or state roads are travelled or certain sub-areas of a municipality or region that are determined according to other, objective criteria - such as supply areas.

- communicates whether it is intended to **publish** the **image material** created; if **publication** is intended, when this is to be expected, or where information in this regard can be viewed by data subjects; and

The preparation of the **image material** may take several weeks or months. **Publication** can also take place specifically for a product launch. If a date is foreseeable and predictable for **service providers**, it should be specified as precisely as possible. In practice, however, many factors have to be taken into account, so that sufficient predictability is not possible, especially in the case of larger service areas. In these cases, it should be indicated how and where those affected can obtain information about the respective publication, for example, also via the joint central information point.

- contains a reference to the information pursuant to Art. 14 of the GDPR.
- (8) Notwithstanding the foregoing para. (7) lit. **Error! Reference source not found.** respectively f an **announcement** stating the administrative districts concerned shall be sufficient if and insofar as the **photographic material** is to be used exclusively for **internal processing** or if a more concrete designation of the area of travel would give rise to the fear of undue economic disadvantages due to the publication of otherwise non-public, competitively relevant information.
- (9) In principle, direct information of the data **subject** pursuant to Art. 13 GDPR is expressly not required, as no collection from

the data **subject** takes place. Direct information pursuant to Art. 14 (1) and (2) of the GDPR is also generally not required, insofar as the **announcement** pursuant to para. (7) takes place.

- (10) In consultation with the **service providers** and in compliance with the decision-making processes provided for in this code of conduct, the joint central information point may draw up a general template for **announcements, on the** basis of which the **announcement** must in any case be made via the joint central information point. The same applies to that part of an **announcement to** the press by the **service providers**, as far as references to this code of conduct or, in particular, the presentation of data subjects' rights under this code of conduct are concerned.
- (11) To the extent that the **service provider** not only communicates the announcement via the website of the joint central information point but also provides it via its own website, these own communication channels shall always also refer to the **announcement on the** website of the joint central information point.

4.2.2 Determination of the purposes of processing

- (1) Prior to the creation of the **visual material, the processing purposes** shall be determined.
- (2) In addition to the *processing purposes within the* meaning of the GDPR, this also

includes the already existing **services which are** to use the **visual material in the** future, as well as the possible circle of *recipients*, should the **visual material not be** created for exclusive *processing* by the **service provider** itself. The definition of the circle of *recipients* suffices by defining the category of *recipients* and the expected *processing purposes* of the respective category of recipients.

In principle, a balance should be struck between the required transparency for *data subjects* and the flexibility requirements of **service providers**. The guiding principle here is, among other things, the requirement of *data economy*. A too static and inflexible approach would only lead to a constant re-collection and unnecessary multiplication of the **image material** collected and processed by **service providers**.

However, the flexibility required should not undermine other principles of data protection law, such as the purpose limitation principle.

In practice and in the scope of application of this rule of conduct, a basic distinction can be made between three overriding scenarios:

- 1) the **visual material** is **published**,
- 2) the **footage** will not be **published** but

- a. *provided to a closed but, at the time of collection, undefined group of recipients;*
- b. *provided within the group of companies.*

Mixed forms are conceivable.

The definition of the groups of *recipients* should be made accordingly. Insofar as *recipients* can be specifically designated in a transparent manner, this is recommended. If this is not possible, or if additional, as yet unknown *recipients* appear possible at the time of the survey, this should be communicated to the extent possible, in any case by naming the relevant scenarios listed above.

This should be taken into account when determining the *purposes of processing* and the **services** likely to be processed. Where specific *processing purposes* are known, these should be documented. If these differ depending on the group of *recipients*, this should be reflected in the documentation. In this context - especially in cases where there are no concrete, conclusive *recipients - purposes that are only possibly applied* can also be taken into account. If a **service provider is** regularly only able to provide a general indication of possible *processing purposes*, this list of possible *processing purposes* could also be provided by means of a reference to a central list.

The cross-references of this section to other areas of the code of conduct must also be taken into account, which on the one hand enables further flexibilities, but also requires special care in the implementation of this section. This is particularly relevant in cases where a **service provider** has made use of privileges under this code of conduct, for example by limiting the intended *recipients* at the time of collection. In these cases, if the **service provider** subsequently intends to expand the group of *recipients*, a compatibility test should be carried out, the result of which may possibly be an **announcement** communicating the change.

4.2.3 Compliance with the necessity requirement (alignment of the optical sensors)

- (1) The creation of the **image material** is to be territorially limited to those areas that are necessary for the achievement of the purpose. The casual driving through of

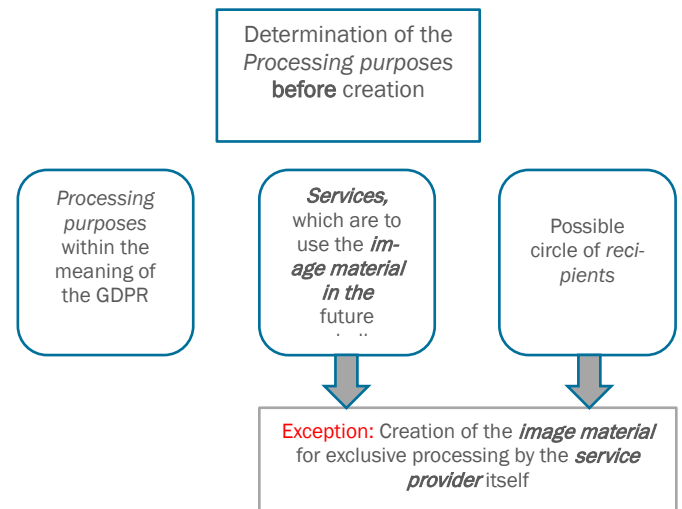


Figure 2

non-required areas with activated recording is permissible as far as a temporary deactivation is unreasonable.

Necessity would possibly not exist if and to the extent that a **drive would** take place in a cul-de-sac, or for other traffic reasons an area would be covered more than once in the course of a **drive**.

The same applies if only main or secondary roads are of interest in the context of a **journey**, but in the meantime, in order to change from one journey-relevant area to another journey-relevant area, areas that are irrelevant in themselves would also be **travelled**.

In both cases - also in terms of general road safety - constant deactivation and reactivation of the **optical sensors** including testing and possibly recalibration is inappropriate.

Of particular importance for the evaluation is the extent of the casually recorded, irrelevant areas. If, for example, there are several kilometres between the areas of interest, deactivation appears to be advisable. However, if only a few streets are involved, it should be possible to dispense with deactivation. In these cases, however, the announcement made under this rule of conduct should

nevertheless designate these areas irrelevant to the achievement of the purpose as areas of travel, insofar as these can already be determined during planning and are not due to unforeseen events, such as road closures, diversions or other traffic obstructions that negatively influence **travel**.

- (2) If the **visit** explicitly intends to collect *personal data*, this must be specified prior to collection, including the specific *personal data* required.
- (3) Regardless of the 4.2.3 Para. (2) the interests of the persons *concerned* must be given due consideration when creating **image material**. To this end, **service providers** must carry out a documented balancing of interests that at least takes into account the following criteria:
 - a. What content is required to achieve the purpose?
 - b. What quality of **footage** is required to achieve the purpose?
 - c. Does the **image material** - on the average to be expected - contain content that constitutes *data relating to persons* that is particularly worthy of protection, or is its capture merely a technically necessary, incidental exception?
 - d. Is there a singular *processing purpose* or can - in terms of *data minimisation* - the **image material be** processed for a variety of purposes?
 - e. Should the **visual material be** published?

- f. Should the **image material be** made available to *third parties* by means of a **service**?
- g. Should the **image material** only be fed to an **internal processing**?
- h. Should the **image material** only be processed by machines, e.g. in order to record objects contained and their states, distances or other, purely factual information, while other (human) processing is excluded down to the technically necessary minimum?

With regard to necessity, it must be taken into account that, especially in the case of 360° panoramic cameras, the probability of content worthy of protection decreases with increasing angle and can ultimately be excluded. Moreover, in the context of necessity, it must also be taken into account whether the processing purposes require a natural contextualisation of the further content.

- (4) **Optical sensors** must be used in accordance with the documentation as per 4.2.3 Para. (3) selected. Insofar as a limitation of the recorded contents is already economically disproportionate or technically and organisationally not appropriate at the time of the creation of the **image material**, compensatory measures shall be taken in accordance with 4.3.1 of this Code of Conduct. The **service provider** must provide sufficient documentation of the necessity and weigh up the interests.
- (5) The selection of **optical sensors** according to 4.2.3 Para. (4) should deal in particular with the following aspects:

- a. Recording quality
- b. Sensor height
- c. Sensor recording angle

The purposes of use differ considerably in practice. Particularly in the case of multiple *processing purposes*, 360° panoramic cameras are basically suitable as **optical sensors**. However, there are also application scenarios in which, due to a very specific purpose, it is determined from the outset that all local conditions above or below a certain height are not required. As far as technically possible and not economically unjustifiable, the selection of the **optical sensors** used should already avoid recording the areas that are not required.

Regardless of the specific purposes, the use of **optical sensors**, including 360° panoramic cameras, up to a height of 2.60m (two metres and sixty centimetres) is a compromise that balances interests, as long as no special purposes are pursued. This means that the information relevant and necessary for a large number of processing purposes can be captured **on the street side** without disproportionate obstruction by parked cars or other objects in the street space. At the same time, the viewing angles provide a high degree of protection for **those affected**, since at a height of 2.60 m (two metres and sixty centimetres), permissible enclosures provide almost complete protection from view.

The use of **optical sensors**, including 360° panoramic cameras, up to a height of up to 3.00m (three metres) is generally in line with the interests, insofar as in any case special application scenarios from the field of surveying. Civil engineering planning or building condition monitoring, are concerned. Not least in order to comply with legal or technical standards, **image material** is required in these contexts, which could only be processed inadequately at other camera heights due to parked vehicles and non-optimal recording angles.

The multitude of application scenarios makes it impossible to make a conclusive regulation on the height of the **optical sensors** within the

framework of this rule of conduct. For two broad categories of use cases, the above rule examples have been included for guidance. The decision is up to the **service provider to** determine the appropriate level and to provide the necessary and viable documentation. Future versions of the code of conduct may elaborate further examples of rules or - if necessary - include specific rules.

4.2.4 Respecting private areas while driving

- (1) Technical and organisational measures shall be taken to ensure that private areas are adequately respected when **driving on them**; in any case, the personnel carrying out the **driving on shall be** made aware of this and adequately trained.
- (2) **Driving on** private land does not constitute a breach of this code of conduct if it is unavoidable or necessary for the achievement of the purpose.

Privately owned roads and areas may be travelled on if they are not recognisable as such and there is no reason to assume from the local conditions that they are leaving publicly dedicated space, or the **travel is** carried out for further processing of the **image material** by public bodies, among others, and the competent authority has granted an exemption, or the **travel** is carried out in particular for updating map material, and older map material that is to be updated identifies the area as a public road .

4.2.5 No concentration effect under regulatory law

- (1) Admissibility under data protection law in accordance with this code of conduct does not exempt from compliance with other criminal or regulatory standards, in particular those of the Road Traffic Act.

- (2) The partial or total non-observance of other regulatory standards, such as the Road Traffic Act, does not automatically lead to inadmissibility under data protection law.

Data protection law does not compete with other standards, but complements them. Within the framework of this code of conduct, a balancing of interests under data protection law is carried out between those affected and those responsible, namely in relation to the creation and processing of **roadside image material**. The carrier medium to which the optical sensors are attached is irrelevant in this respect. It is conceivable that a motor vehicle drives through a pedestrian zone in a manner that is not permitted by law - and that a special permit granted subsequently turns out to be unlawful, for example for formal reasons. However, the pedestrian zone is in any case a public space. The optical sensors could also have been attached to another carrier medium - such as a cargo bike or wheelbarrow - in an otherwise identical manner. This shows that regulatory violations do not necessarily have to trigger implications relevant to data protection law. The situation is, of course, different if and insofar as non-publicly dedicated areas are used illegally for driving. This may well have implications for data protection law in the context of weighing up interests.

4.3 Obligations after creation but before (planned) publication of the photographic material

4.3.1 Compliance with the data minimisation requirement (render unidentifiable)

- (1) In order to safeguard the rights of the data subjects, the following information must always be **unidentifiable rendered** within the **image material** immediately after the creation of the **image material**

- a. Faces, and
 - b. Vehicle registration plates, and
- (2) Faces and number plates shall be deemed to be always **unidentifiable rendered** within the meaning of the preceding para.
- (3) if the automatic recognition and subsequent automatic **unidentifiable rendering** does not fall below a rate of 95% and it is ensured during further *processing that faces* or vehicle registration plates which are not automatically recognised can be immediately **rendered unidentifiable** manually or marked for immediate manual subsequent **unidentifiable rendering** by processing personnel. Insofar as a change in the technology used requires a new or further development of the existing automatic recognition and unidentifiable rendering technology, a reduced rate of 90% is permissible by way of exception for a maximum period of one year.
- (4) In order to safeguard the rights of the data subjects, the following information must always be **unidentifiable rendered** within the **image material** immediately upon becoming known
- a. Recordings of private areas, insofar as these are not covered by the provisions set out in 4.2.4 Para. (2) of this code of conduct are justified, and
 - b. Insights into the intimate sphere are made possible.

4.3.2 Processing of objections pursuant to Art. 21 DSGVO

- (1) **Service providers shall** allow **data subjects to** object easily and without obstacles to the processing of *personal* data in their **services** subject to this conduct rule in accordance with Article 21 GDPR.
- (2) **Service providers shall** allow data **subjects to** express their *objection in* text form.
- (3) **Service providers** may in principle reject objections directed against the creation of the **visual material, provided that the** specifications of this code of conduct are complied with in the creation of the **visual material**.
- (4) Deviating from para. (3) objections directed against the creation of the **image material** shall exceptionally be taken into account by the **service providers if**
 - a. the objection does not concern the creation of the **footage on the roadside**, but only prohibits the use of specifically designated areas not dedicated to the public for the creation of the **footage**, and there is no justification for the use of the **footage** pursuant to 4.2.4 Para. (2),
- (5) **Service providers shall** immediately cease the *processing of* the **image material** covered by the *objection* by **unidentifiable rendering**; in this context, only the image areas which depict the reasons justifying the *objection* arising from the specific situation of the *data subjects* and

insofar as data **subjects have** expressly stated these reasons in the objection shall be deemed to be covered by the objection. Such reasons are for example

- a. **Affected persons** are depicted fully or predominantly unclothed; or
 - b. open windows or doors allow detailed insights into a living or living situation that is clearly different from the average living or living situation; or
 - c. temporary installations containing a clear unlawful or in any case highly controversial expression of opinion or fact; or
 - d. clothing, posture or other features enable the unambiguous identification of the **data subjects** despite the unidentifiable rendering of the face; insofar as these are not features inevitably associated with the **data subjects**, the possibility of identification by third parties must be made credible; or
 - e. Cars insofar as identification is possible, e.g. due to individualisation of the vehicle or specific imprints despite **unidentifiable rendering of** the number plate, and thus an allocation to specific **persons concerned can be** made;
- (6) Notwithstanding the foregoing para. (5) further *processing* by **service providers** is permissible if they can assert grounds pursuant to Art. 21 (1) sentence 2 DSGVO. This is the case in particular if:

- a. the **unidentifiable rendering** prevents compelling areas for the purpose of achieving the *processing of the image material*, for example, the measurement or other evaluation of underlying information is excluded; unless it is a matter of completely or predominantly unclothed **data subjects**. In these cases, at least the areas of the primary and secondary sexual characteristics shall be sufficiently **unidentifiable rendered**.
- (7) In determining whether the objection is exercised by a person entitled to object, **service providers** may be guided by the requirements of the super-mandatory voluntary right to request **unidentifiable rendering** this regard.

4.3.3 Granting of a super-mandatory, voluntary right to apply for unidentifiable rendering

- (1) **Service providers shall** allow **data subjects** to easily and without obstacles request **the unidentifiable rendering of personal data** in their **services** subject to this conduct rule - also beyond the cases justified by Art. 21 GDPR - to the extent provided for in this Section.
- (2) **Service providers shall** immediately cease the **identifiable rendered processing of the image material** within the service covered by the request. Only the image areas that fulfil the following requirements expressly asserted in the

application shall be considered to be covered by the application:

a. temporary installations containing a controversial expression of opinion or fact - including advertising posters; insofar as this concerns advertising installations by means of expressly designated areas, pure product advertising is excluded from this, unless **those concerned** can show that a specific advertising campaign has been reprimanded by competent bodies or can otherwise prove that this advertising campaign has in any case

received a relevant, even if only local, critical (media) reception .

- (3) **Service providers** may require data subjects to provide proof of authorisation to apply and to dispose of the data.
- (4) Eligible to apply for **the unidentifiable rendering** according to 4.3.3 of this code of conduct are exclusively natural persons. The owner of the property is generally deemed to be entitled to dispose of the property - however, if the owner is a corporation or partnership - and thus not a natural person - there is no entitlement

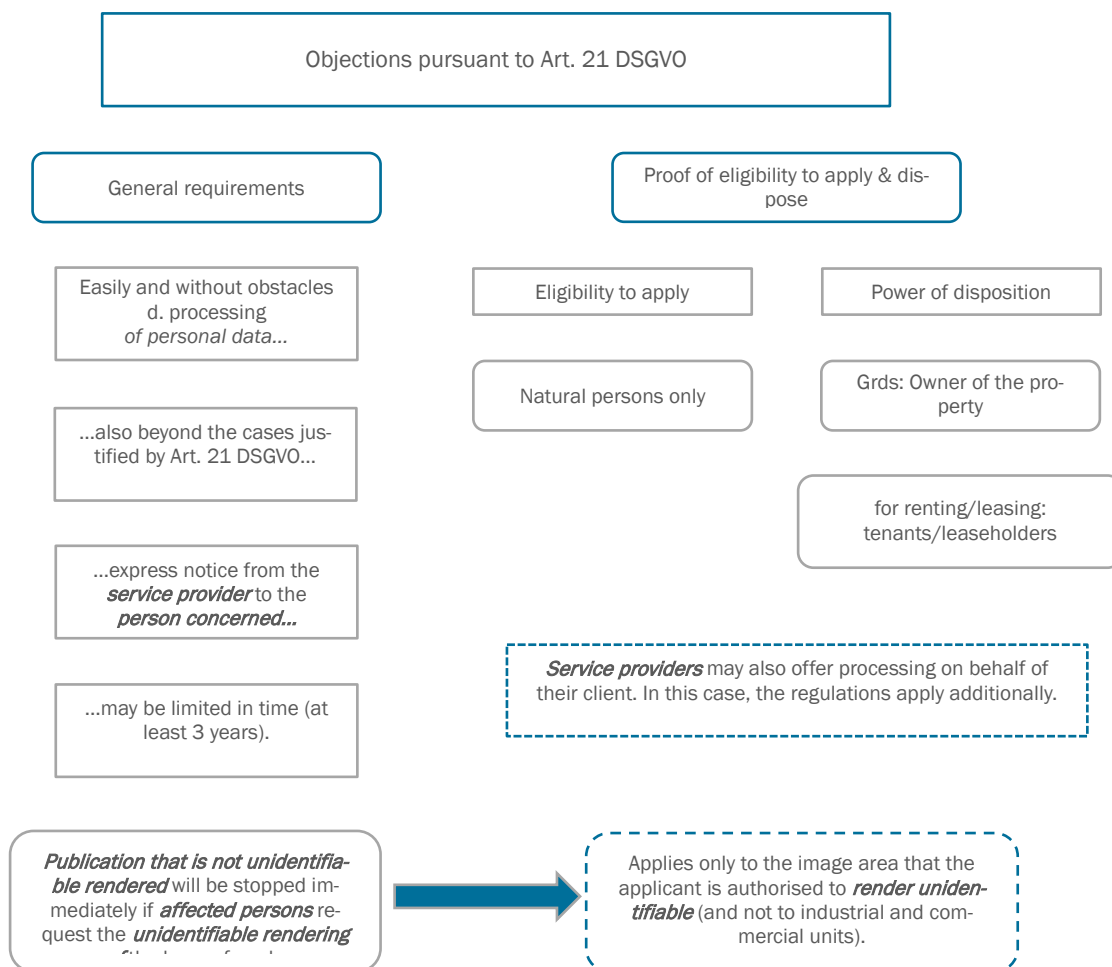


Figure 3

to apply. If the facade of the building applied for **unidentifiable rendering** belongs to a rented/leased property, only the tenants/leaseholders are entitled to dispose of it. Insofar as the property is rented/leased to several parties, the right of disposal only applies insofar as the facade of the house represents the reverse side of the area rented/leased internally by the respective applicant tenants/leaseholders.

- (5) Deviating 4.3.3 Para. (4) of this code of conduct, in the case of 4.3.3 Para. (2) lit. a of this Code of Conduct, the owners as well as tenants/leaseholders are entitled to apply for and dispose of the property, irrespective of whether the temporary installation subject of the application extends to the specifically rented/leased area.
- (6) **Service providers** are free to carry out the **unidentifiable rendering on the** basis of this voluntary right of request in cases where service **providers do** not consider the requirements for an *objection* under Article 21 of the GDPR to be met. In such cases, the **service providers shall** explicitly inform the **data subjects that the unidentifiable rendering of the image material will** not be carried out on the basis of Article 21 of the GDPR, but on the basis of the voluntary right of application under Article 21 of the GDPR. 4.3.3 of this code of conduct.

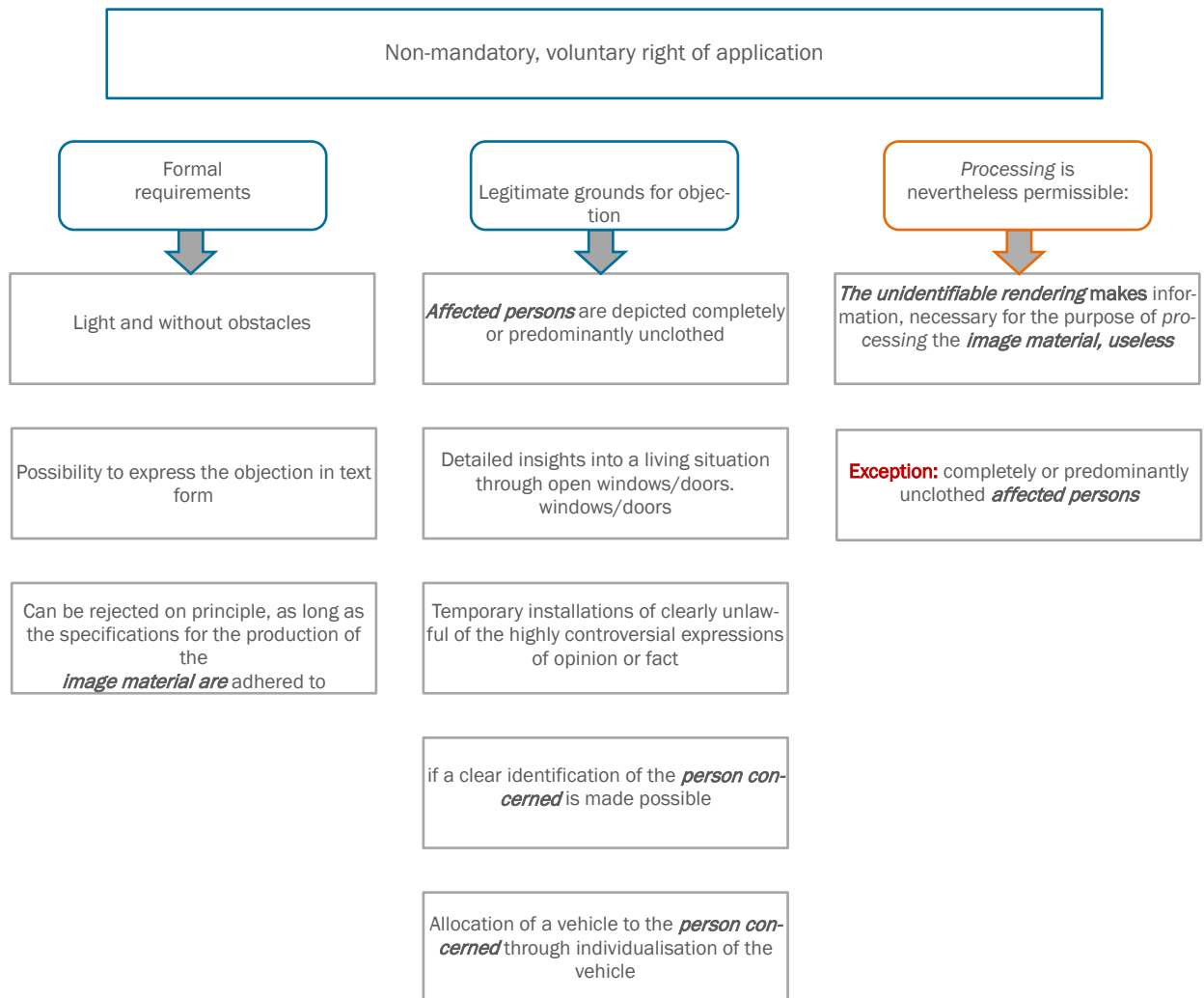


Figure 4

- (7) The voluntarily granted **unidentifiable rendering** according to 4.3.3 of this code of conduct may be limited in time by the **service providers**; in this case, the *persons concerned* must be informed of this when the request is granted. However, the time limit may not be less than three (3) years.
- (8) **Affected persons** may submit applications in accordance with 4.3.3 of this

code of conduct without additional costs or fees. **Service providers** may reject manifestly unfounded or - especially in the case of frequent repetition - excessive requests with a mere reference to this circumstance and without further justification. In addition, **service providers** may provide for a reasonable, lump-sum compensation for manifestly unfounded or excessive requests. This circumstance and

the possible costs to be expected must be explicitly pointed out to the **person concerned in the** application.

4.3.4 Monitoring and compliance with ear-marking

- (1) **Service providers** shall implement a process by which they verify on a regular basis, at least annually, that the **footage is** used exclusively for the purposes specified under 4.2.2 of this Code of Conduct.

For this purpose, an annual reminder to the recipients to observe - or, if necessary, to update - the *processing purposes* stated to the **service provider** prior to receipt is sufficient. Further measures are necessary in cases of justified suspicion of misuse or excessive processing.

- (2) Where **service providers** carry out the *processing* exclusively themselves, internal random checks shall suffice, provided that the processing staff are adequately trained on a regular basis, at least annually.
- (3) Insofar as the **service provider** makes the **image material** available to third parties for *processing*, the **service provider shall obtain** confirmation from these *third parties*, at least annually, that the *processing* continues to take place exclusively for the purposes stated to the **service provider**.
- (4) Insofar as **service providers**, within the framework of regular monitoring within the meaning of paras. (2) and (3) or otherwise become aware of possible irregularities with regard to exclusive

processing in accordance with the provisions of 4.2.2 of this Code of Conduct, he shall take reasonable steps to resolve any doubts.

4.4 Obligations due to the (planned) publication of the photographic material

4.4.1 Announcement

- (1) Insofar as **service providers in** their announcement pursuant to 4.2.1 of this Code of Conduct only announced the creation of the **image material**, but not its (planned) **publication, service providers** shall terminate the (planned) **publication in** accordance with 4.2.1 of this code of conduct.
- (2) Insofar as **service providers in** their announcement pursuant to 4.2.1 of this Code of Conduct, **service providers** shall remind the public **of** the (planned) **publication in** accordance with 4.2.1 of this code of conduct if there are more than 12 months between the original announcement and the actual **publication**.

4.4.2 Compliance with the data minimisation requirement (render unidentifiable)

- (1) The regulations according to 4.3.1 of this code of conduct apply accordingly.

4.4.3 Processing of objections pursuant to Art. 21 DSGVO

- (1) The regulations according to 4.3.2 of this code of conduct apply accordingly.

- (2) In addition to and modification of 4.4.3 (1) **service providers** are permitted to link the objection in text form to the requirement that **data subjects** must specifically mark the **visual material in** the published **visual material** via a process provided by the **service provider**.
- (3) Complementary to the measures described in 4.3.2 Para. (5) of this code of conduct, **service providers** shall immediately cease **identifiable rendered publication**, for example by **unidentifiable rendering** the relevant image areas in the **published image material** or restricting public access to the **image material** concerned, if
- house facades or gardens obviously due to temporary measures - renovation, restoration, fire, water or storm damage - present an inaccurate reflection of the basic condition of the house facade or garden from the point of view of the **persons concerned**; **service providers** may demand reasonable prima facie evidence in such cases; or
 - the **persons concerned were on** pacified territory; or
 - persons are portrayed in an objectively unflattering manner, for example due to the specific action performed, body position and posture, etc.

4.4.4 Granting of a super-mandatory, voluntary right to apply for the unidentifiable rendering

- (1) The regulations according to 4.3.3 of this code of conduct apply accordingly.
- (2) Complementary to the measures described in 4.3.3 Para. (2) of this Code of Conduct, **service providers shall** immediately cease **identifiable rendered publication if**
 - a. **affected persons** request the **unidentifiable rendering of** the facade of the house. Proof that the published **footage** represents special circumstances is not required. However, **service providers are** allowed to request proof of the right to request and dispose of the material;

The complexity of identifying the affected house facades in the entire **image material** is high.

Immediacy can therefore be ensured, among other things, by offering the **persons concerned the possibility to** mark the areas relevant for **unidentifiable rendering** themselves via the **service** in the published **image material**; in order to avoid abuse, the areas can be checked before implementation without this having a negative impact on immediacy.

Likewise, after authentication and proof of authorisation, the **image material** could be made available to the **persons concerned in** extracts for the purpose of independent marking.

- (3) **The unidentifiable rendering in accordance with 4.4.4 (a) of this Code of**

Conduct is only mandatory in respect of that part of the image that represents the part of the house facade that applicants are entitled to pixelate. Also excluded are image areas that do not represent house facades relating to residential space, but rather industrial and commercial units. House facades relating to residential premises are also excluded if the exercise of a self-employed, freelance or similar activity has been registered for the specific residential premises.

- (4) Eligible to apply for **unidentifiable rendering** according to 4.4.4 Para. (2) lit. a of this rule of conduct are exclusively natural persons. In principle, the owner of the property is deemed to be entitled to dispose of the property - however, if the owner is a corporation or partnership - and thus not a natural person - there is already no entitlement to apply. If the facade of the building applied for **unidentifiable rendering** belongs to a rented/leased property, only the tenants/leaseholders are entitled to dispose of it. Insofar as the property is rented to several parties, the right of disposal only applies insofar as the facade of the house represents the reverse side of the area rented/leased internally by the respective applicant tenant/leaseholder.
- (5) Supplementary to 4.3.3 Para. (8) of this Code of Conduct, **service providers** may, in particular for applications pursuant to 4.4.4 Para. (2) lit. a of this code of

conduct that in the event of abuse, the costs for a later requested revision of unidentifiable rendering by the actual authorised party are to be borne by the abusive applicant. In addition, **service providers** can also provide for an appropriate, lump-sum penalty payment for this case. **Affected persons** must be expressly informed of these circumstances and the possible costs to be expected as part of the application.

The identification of the relevant **image material** is highly complex, as the relevant content could be contained from different perspectives and also in reflections. It may therefore happen that although relevant content for unidentifiable rendering is **unidentifiable rendered in principle**, individual shots in the **image material** continue to show the content **identifiable rendered**, for instance because these shots have no concrete spatial connection with the relevant unidentifiable rendered content. It should therefore be sufficient in principle if the **service provider** checks the **image material** fifty (50) metres in front of and behind the relevant geo-reference point in each case, and only **unidentifiable renders the relevant content in the remaining image material** upon knowledge.

4.4.5 Monitoring and compliance with ear-marking

- (1) The regulations according to 4.3.4 of this code of conduct apply accordingly.

5 Duties in the context of driving on behalf of or for jointly responsible persons

5.1 Duties as a processor

- (1) Insofar as a **service provider** offers its **services in** whole or in part as a *processor*, the following special provisions shall apply.
- (2) The **service provider shall** act exclusively on the basis of a *contract processing agreement that* fulfils the requirements of Art. 28 of the GDPR, in particular paragraph (3) of the aforementioned provision.
- (3) The **service provider** is exempt from the obligations of this code of conduct if and to the extent that the service provider expressly informs the client in text form of the obligations set out in this code of conduct. In accordance with Article 28 (3) sentence 3 of the GDPR, the **service provider shall** also inform the client in text form that failure to comply with the obligations set out in this code of conduct or failure to implement equivalent technical and organisational measures may constitute a breach of the GDPR.
- (4) **Service providers** may also make an announcement on behalf of their client in accordance with this code of conduct. With regard to the notification obligations pursuant to 4.2.1 and 4.4.1 of this Code of Conduct, this means in addition:
 - a. Insofar as the other obligations of the code of conduct are also complied with, this **notification shall be** sufficient not only for the **service provider** but also for the client. In all other cases, it is not the task of the **service provider to** check or ensure the client's compliance with the GDPR, at least according to this code of conduct.
 - b. The announcement shall indicate that the **service provider** creates, **publishes** or otherwise *processes* the **visual material** on behalf of the **service provider in** accordance with Art. 28 GDPR.
 - c. The client and its contact details shall be stated in the announcement.
 - d. The announcement shall refer to the Principal's supplementary data protection notices.
 - e. Insofar as the requirements of this code of conduct do not apply, this must be pointed out in the announcement.
 - f. If and to the extent that the **service provider** is prevented by actions and instructions of the contracting authorities or other third parties required within the scope of the contract and not subject to the instructions of the **service provider** from giving timely notice of a (planned) **drive**, this shall not constitute a breach of 4.2.1 of this Code of Conduct,

provided that the Client has been made aware of the obligation to give timely notice and the particular importance of this in the context of the balancing of interests.

- (5) **Service providers** may also take over the processing of objections pursuant to Art. 21 GDPR on behalf of their principal in accordance with this code of conduct. With regard to this as well as the further design according to 4.3.2 and 4.4.3 of this code of conduct, this means in addition:
- a. The conditions of responsibility and the respective scope of the processing of the objections by the **service provider** must be communicated to **those affected**.

In principle, according to the GDPR, the *controller* and not the *processor* is responsible for the processing of data subjects' rights. As far as the **unidentifiable rendering** on the basis of clear and objective criteria is concerned, an outsourcing of the processing seems possible by way of exception. However, to the extent that objections concern aspects other than the **unidentifiable rendering** required by this code of conduct, a **service provider usually does** not have the necessary information and influence to process these objections. For example, an objection could be directed exclusively against specific *processing purposes*.

- b. The **service provider shall** explain the circumstances for processing the objections in its own privacy policy.
- c. The **service provider shall** ensure - e.g. within the framework of the *order processing contract* - that the client also provides appropriate information

about the responsibility and scope of the processing of the objections by the client, at least in the client's data protection declaration.

- d. The **service provider shall** also refer to the supplementary rights of objection vis-à-vis the client in its data protection declaration as well as in the processing procedure for objections.
- (6) Insofar as the **service provider** does not process the objections on behalf according to para. (5) **the service provider** shall provide more than a mere reference to the obligations of these rules of conduct pursuant to para. (3) beyond
- a. to obtain an assurance from the contracting authority that it has both the technical and organisational means to process objections from the **data subjects in a** timely manner.
- (7) **Service providers** may also offer, on behalf of their client, the processing of a super-mandatory right to request **unidentifiable rendering** in accordance with this code of conduct. Supplementary to 4.3.3 and 4.4.4 of this Code of Conduct, this means:
- a. The provisions of para. (5) shall apply accordingly.
- (8) Insofar as the **service provider** does not process a non-compulsory right of application on behalf according to para. (7) **the service provider** shall provide more than a mere reference to the obligations of

these rules of conduct pursuant to para. (3) beyond

a. point out to the contracting authority that the granting of a super-mandatory right of application constitutes an essential element in the context of the balancing of interests.

- (9) The **service provider** is exempt from the obligation pursuant to 4.3.1 Para. (1) of this code of conduct, in particular lit. a and lit. b(a) and (b), to the extent that the client expressly assures the **service provider** that it has the technical and organisational measures in place to carry out

unidentifiable rendering in conformity with the GDPR and that it will only not carry out **unidentifiable rendering to the extent that** this is permitted by law, i.e. processing of this information would be necessary for the purpose of the processing.

- (10) Should the client itself be a processor, the **service provider shall** ensure compliance with the circumstances regulated therein not by the client but by the (ultimately) *responsible party*. Likewise, with regard to the responsibility, reference is made not to that of the principal, but to that of the



Figure 5

(ultimately) *responsible party*; unless and insofar as a conclusive, deviating responsibility results from the contractual provisions.

5.2 Duties as a jointly responsible person

- (1) To the extent that a **service provider** provides all or part of its **services** as a *jointly responsible person*, the specific rules set out below shall apply.
- (2) The **service provider** will only act on the basis of a contract that fulfils the requirements of Article 26 of the GDPR.
- (3) 5.1 Para. (3) of this code of conduct shall apply *mutatis mutandis*, with the proviso that the **service provider** not only draws the attention of the other *persons responsible to the obligations* of this code of conduct, but also ensures - at least contractually - that the obligations provided for under this code of conduct are fulfilled in the entirety of the *jointly responsible persons*. This provision may be deviated from if
 - a. the *person responsible for complying* with the obligation concerned under this conduct rule can credibly demonstrate that the GDPR provides for direct or indirect exemption, that the specific obligation is not applicable to that *person responsible under the GDPR* for other reasons, or that the implementation of the obligation

- b. would impose a disproportionate burden on the *person responsible*,
- b. the derogation from this provision, including the obligations concerned, is explicitly included in the contract pursuant to Art. 26 GDPR,
- c. if and insofar as a non-applicability of the rule of conduct is concerned, this is communicated in the **announcement**.

5.3 Principles on the existence of the conditions of commissioned processing or joint responsibility, principles on the provision of the image material to third parties

- (1) In terms of data protection law, the specific form of the **service provider's** relationship with any third parties determines whether there is *commissioned processing, joint responsibility*, merely *transmission* or another form of cooperation under data protection law. This code of conduct explicitly does not make a conclusive statement about which form of arrangement constitutes which form of cooperation under data protection law.
- (2) The following aspects must be taken into account when determining the facts that lead to the determination of the actual cooperation under data protection law:
 - a. In principle, the form of cooperation - despite identical participants - can differ depending on the stage of

processing the **image material**. In any case, the starting point should be the principles already mentioned under 4 of this code of conduct. In addition, special constellations can arise from the processing according to 6 and 7(2)c of this code of conduct.

- b. Even within a processing stage, differences may arise depending on the specific processing activity or parts of the **image material**.
 - c. The fact that a **service provider** schedules the *collection* of the **image material at** a time that is oriented towards the needs of the users of its **services does** not in itself justify the assumption of *commissioned processing* or *joint responsibility*.
 - d. A data protection-friendly, as central storage of the **image material** for different users and user groups also does not in itself justify the assumption of *commissioned processing* or *joint responsibility*, even if, in addition to the central processing of *objections* (4.3.2 and 4.4.3 of this code of conduct) or super-mandatory requests for **unidentifiable rendering** (4.3.3 and 4.4.4 of this code of conduct), user (group)-specific options for **unidentifiable rendering can** also be made possible.
- (3) Irrespective of the data protection qualification of the processing-related relationship between the **service provider** and

any third parties, the **service provider shall** ensure that third parties can only access the **image material** if

- a. A contract, documented in text form in any case, exists between the **service provider** and the third party.
- b. This contract specifies the purposes of the *transfer*.
- c. Insofar as the contract permits the (partial) further processing of the **image material**, the extent to which the *objections* or applications expressed to the **service provider** and granted are to be taken into account in accordance with the super-mandatory right of application.
- d. Insofar as the contract permits the (partial) further processing of the **photographic material**, that the respective third parties bear the responsibility under data protection law for this and assure to comply with the data protection requirements.
- e. Insofar as the contract permits the (partial) publication of the **image material** by third parties by means other than the **service** itself or by using technical interfaces of the **service**, that these third parties bear the responsibility under data protection law for this and will take into account the centrally expressed and granted *objections and* applications within the framework of the balancing of

interests in accordance with the super-mandatory right of application.

- f. The contract ensures that these third parties point out the *processing* of the **image material** by way of the relevant information obligations in accordance with Art. 12 DSGVO.

6 Special obligations when maintaining a permanent update infrastructure

- (1) For technical and organisational reasons, it may be necessary or appropriate to permanently update the road space and objects located therein and their conditions with the help of **optical sensors**. The reasons why other options are not suitable or at least not suitable to the same required extent shall be documented in these cases.
- (2) In accordance with this code of conduct, such infrastructures are permissible in any case if the following additional requirements are met:
 - a. The regulations on **announcement** shall apply accordingly, with the proviso that **service providers shall** inform about the installation of the infrastructure and the area (potentially) affected by it by means of an **announcement** at least once a year.
 - b. Appropriate measures shall be taken to ensure that the permanent updating infrastructure does not create a

permanent and unrestricted image of the area concerned. For example, the circumstances that are to be recorded by the permanent updating infrastructure for further *processing* must be defined before the **image material is created**. In addition, it must be ensured that either only that **image material** is stored for further *processing* which fulfils the previously defined circumstances, or at least immediately after storage is fed into an automated *processing* which irrevocably reduces the stored **image material** to those parts which fulfil

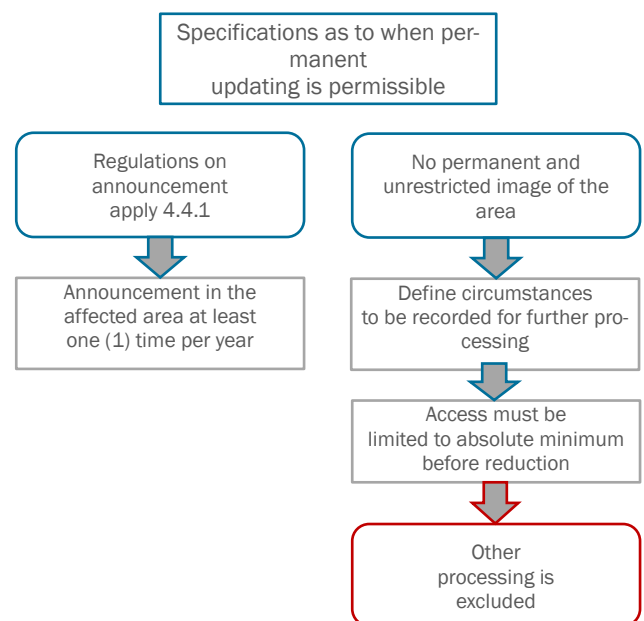


Illustration 6

the previously defined circumstances. In the case of immediate subsequent *processing*, it shall be

ensured that access to the **visual material** is limited to an absolute minimum before reduction to the relevant proportion.

- c. Insofar as the **visual material** created by way of permanent infrastructure does not comply with lit. b has only been created to the extent necessary or subsequently reduced, any other *processing* is excluded, including the development or training of algorithms; the **service provider** shall take appropriate measures to prevent such other *processing*, including unintentional *processing*.

7 Special regulations for development environments / training of algorithms

- (1) Provided that access to the development environment used for the training of the algorithms is limited to the absolute minimum, **service providers** are entitled to process the **image material** - or a reproduction thereof - within this development environment and exclusively for the development of new algorithms or the optimisation of existing algorithms, without any **unidentifiable rendering**.

For the **services** to operate as sparingly as possible, it is imperative that certain content in the **image material** is automatically recognised. This automatic recognition can be used in different ways, for example, by extracting only relevant image areas in which the

circumstances relevant for further *processing* have been recognised and processing them without further **unidentifiable rendering**, or to recognise content not required for further *processing* and then **render identifiable** (such as faces or car registration plates).

- (2) Under the conditions set out in para. (1) **oppositions** may also be rejected in this respect, which would otherwise be rejected according to 4.3.2 or 4.4.3 of this Code of Conduct would in principle have to be positively decided.
- (3) Supplementary to para. (1) the **service provider** shall select the **image material** required for the purpose of developing or optimising algorithms according to previously defined criteria; in particular, it shall be ensured that the **image material** processed in development environments only comprises a part of the **image material** otherwise processed in the **service**.
- (4) In order to be able to transfer relevant circumstances which only become apparent during the operation of the **service and which have** not already been recorded by the previously defined criteria into the ongoing development, it is permissible that in the case of **unidentifiable rendering** of the **image material** processed in the **service**, this is not only marked for **unidentifiable rendering** but also for (prior) transfer into the development environment. The same applies if, in the course of **unidentifiable rendering**, circumstances and image contents are identified that

could be relevant for the further optimisation and development of the algorithms.

- (5) **The image material** used for the development environment must originate from an **inspection for** which an **announcement was made** in accordance with this code of conduct. Insofar as only an **announcement on a** reduced scale pursuant to 6 Para. (2) lit. a of this Code of Conduct, this does not satisfy the requirements under 7 Para. (5) Sentence 1 of this Code of Conduct.

8 Special provisions concerning opposition, application and appeal procedures

- (1) The procedures must be fair and comprehensible.
- (2) **Affected persons** must be adequately informed about the course of the proceedings. This includes at least an acknowledgement of receipt and a notification of the outcome of the specific proceedings.
- (3) The procedures shall, where relevant, show standard processing times.
- (4) Upon expiry of the communicated standard processing times, the **persons concerned** shall be informed - at least upon request - about the current interim processing status. Notwithstanding this, the **persons concerned** have the right to request an interim status within three (3) months after the confirmation of receipt.

8.1 Procedure regarding the non-compulsory, voluntary right to apply for unidentifiable rendering

- (1) For **data subjects**, the context of the request and the resulting rights must be clearly communicated. In particular, there must be a notice informing data **subjects that** the request does not constitute an *objection in the* sense of the right to object under Article 21 GDPR and - regardless of the specific content of the request - will not be processed by interpretation as an *objection* under Article 21 GDPR.

Service providers are at liberty to process a request for super-mandatory unidentifiable rendering in accordance with Art 21 GDPR in individual cases, insofar as this reinterpretation does not lead to disadvantages for the data **subjects**.

This section is explicitly not intended to limit possibilities and rights under the GDPR; rather, it is intended to prevent **data subjects from being** mistaken about the effects and legal consequences of their actions.

8.2 Complaints procedure

8.2.1 General

- (1) **Persons entitled to complain** can turn to the *private monitoring body* by means of a complaints procedure and allege a specific breach of the obligations of the code of conduct by a **service provider**.
- (2) The appeal procedure is in principle free of costs and fees for those entitled to appeal; however, the *private supervisory authority*

may provide for costs and fees to prevent abuse.

- (3) The costs of maintaining the necessary complaint infrastructure should in principle be borne by the general contributions of the **service providers** subject to the code of conduct in a socialised form. The *private supervisory authority* is at liberty to provide in its procedures that in the case of an established violation, the costs of the specific complaint procedure can be imposed on the **service provider**.
- (4) Further details shall be regulated by the *private monitoring body's* complaints regulations.

8.2.2 Right to appeal, formal requirements

- (1) All *persons concerned* are entitled to lodge a complaint.
- (2) A complaint shall be admissible to the extent that the complaint alleges sufficient facts in its application to make a concrete violation of the rule of conduct sufficiently credible.
- (3) The complaint must be submitted via the forms and communication channels provided by the *private monitoring agency*; the *private monitoring agency* is permitted to require submission via online form and to discard complaints sent by other means without further processing.

9 Declaration of submission

9.1 General

- (1) By submitting the declaration of submission, the **service provider** undertakes to fully implement the requirements of the code of conduct.
- (2) **Service providers are** free to submit only selected **services of** their portfolio to the code of conduct. For this purpose, **service providers shall** clearly identify the **services** covered by the declaration within the framework of the declaration of submission.
- (3) By submitting the declaration of submission, **service providers** accept that compliance with the code of conduct will be monitored and enforced by a *private monitoring body*.
- (4) In the case of a group of companies, **service providers** ensure that in the event of a discrepancy between the competent - legal - entity for the provision of the subjected **services** and the - legal - entity signing the declaration of submission, the necessary powers of representation for submission exist in the external relationship as well as the necessary powers of enforcement in the internal relationship, in particular for the implementation of any orders of the *private supervisory authority*.
- (5) The declaration of submission shall be made to the *private monitoring agency*. Further details shall be determined by the

procedures of the *private monitoring agency*.

9.2 Requirements, entitlement to submit a declaration of submission

- (1) In principle, **service providers are** entitled to submit a declaration of submission.
- (2) **Service providers** must prove that they can pay the costs and fees required for submission.
- (3) Insofar as it is stipulated that the costs of the central joint information point shall be financed by membership fees or specific levies of the **SRIW** (11.3 Para. (2)), the submission of a declaration of submission is only permissible insofar as the corresponding, non-terminated membership in **SRIW** can be proven.
- (4) To the extent that the **service provider** is in default of payment obligations to the **SRIW** or to the *private monitoring agency* relating to the code of conduct, as applicable, the *private monitoring agency* may refuse to further process a declaration of submission until the defaulting claims have been settled.

9.3 Validity of the declaration of submission. Renewal and termination

9.3.1 General validity

- (1) The period of validity of the declaration of submission is finite.
- (2) The period of validity is determined by the *private monitoring body's* procedures.

- (3) The basic period of validity to be determined (9.3 Para. (2)) shall not be less than one (1) year and shall not exceed three (3).

9.3.2 Extension of the declaration of submission

- (1) If a declaration of submission reaches the end of its period of validity, the **service provider** may extend the submission of the **services** by making a new declaration of submission ("**confirmatory declaration of submission**").
- (2) The **service register shall** only list **services** whose submission is valid; the *private monitoring agency's* procedures may provide that, subject to general principles of transparency, **services** may remain listed as long as the process of confirming submission for the services has already begun but not yet been completed.

9.3.3 Termination of submission

- (1) **Service providers** are obliged to submit a **confirmatory declaration of submission for each service** already submitted, unless the **service provider has** previously effectively terminated the submission for affected **services**.
- (2) The termination of the submission shall be declared to the *private monitoring agency*.
- (3) Insofar as it is stipulated that the costs of the central joint information point shall be financed by membership fees or specific levies of the **SRIW** (11.3 Para. (2)), notice of termination of subjection shall also be

given to the **SRIW. SRIW** and the *private monitoring agency* shall inform each other of any notice received.

- (4) The *private monitoring body* shall determine any notice period through its own procedures. The possible period of notice is intended to ensure the independence of the *private supervisory authority* and at the same time not to bind the **service providers** unduly to the declaration of submission. The *private monitoring body* can also provide an appropriate balance, for example, by combining a minimum submission period with a notice period.

9.4 Content and form

- (1) The submission shall be declared in text form.
- (2) The *private monitoring body's* procedures may provide that, in addition to the general declarations, the submission must also contain already auditable information on the implementation of the obligations of the code of conduct.
- (3) The submission or the associated legally binding declaration is made on the basis of a standardised contract to be provided by the *private monitoring body*.

9.5 Costs

- (1) The costs incurred by the processing of the declaration of submission and the continuous *monitoring* of compliance with the code of conduct by the *private monitoring*

body shall be borne by the **service providers**.

- (2) The specific costs shall be determined by a separate contribution order.

10 Monitoring of compliance with the code of conduct by a private monitoring body

10.1 Designation of a *private monitoring body*

- (1) Compliance with the code of conduct is monitored by an independent *private monitoring body*.
- (2) The *private monitoring body* is appointed by the competent body of the **SRIW**.
- (3) The *private monitoring agency* shall ensure through procedures,
 - a. have the necessary expertise to monitor compliance with the obligations of this Code of Conduct,
 - b. The Board of Directors is responsible for ensuring that conflicts of interest are adequately excluded and that decisions are not unduly influenced by conflicts of interest,
 - c. make fair, reasonable and understandable decisions,
 - d. maintain appropriate confidentiality of the information provided to it,
 - e. Provide adequate transparency on the relevant procedures, rights and obligations of both **service providers** and *data subjects*.

- f. in the event of a decision by the *private supervisory authority to the detriment of the service providers*, the **service providers** have a possibility to demand revision of the decision taken.
- (4) The *private monitoring body* shall inform the competent body of the **SRIW** about the experience gained in monitoring compliance and any need for adjustment or clarification of the code of conduct.
- (5) Insofar as recognition of the code of conduct pursuant to Art. 40 of the GDPR is sought, the designated or to be designated *private monitoring body* shall apply for accreditation pursuant to Art. 41 of the GDPR. As long as and to the extent that either the code of conduct is not recognised pursuant to Art. 40 GDPR or the *private monitoring body* is not accredited pursuant to Art. 41 GDPR, neither the *private monitoring body* nor the **services** subject to the code of conduct may give the false impression that the code of conduct guarantees the legal consequences pursuant to Art. 40 GDPR.

10.2 Continuous monitoring

- (1) The *private monitoring body* proactively monitors compliance with the obligations of the code of conduct by the **services** subject to the code of conduct.
- (2) Ongoing proactive review may result from various activities of the *private monitoring agency*, such as collecting information as

part of the submission process, providing a complaints procedure or conducting suspicious activity checks.

- (3) The concrete implementation is governed by the procedures of the *private monitoring body*. Since compliance with a large number of the obligations of the code of conduct can also be seen and checked by those **affected**, the *private monitoring body* is permitted, as far as relevant, to ensure compliance as far as possible by means of an effective complaints procedure; for this purpose, the *private monitoring body* may also make use of information from the central joint information office.
- (4) Any focus on an effective complaints procedure (10.2 Para. (1) and (2)) shall under no circumstances limit the rights of the *private monitoring body* to carry out independent and comprehensive inspections as required.

10.3 Sanctions by the private monitoring body

- (1) Notwithstanding the tasks and powers of the competent data protection supervisory authority and the provisions of Chapter VIII of the GDPR, the *private supervisory authority* may take appropriate action in terms of sanctions and remedies against any **service provider** whose **service** that has been made subject to this code of conduct does not comply with the requirements of this code of conduct or refuses or fails to cooperate adequately with the

private supervisory authority in complying with the requirements of this code of conduct.

- (2) If a **service provider** or its **service** subject to this code of conduct fails to comply with a requirement of the code of conduct, appropriate sanctions and remedies shall be imposed on the **service provider** concerned.

10.3.1 Independent Complaints Board

- (1) To prevent conflicts of interest, the *private monitoring body* may establish an independent complaints body within the *private monitoring body*.
- (2) In the course of processing a complaint, the *private monitoring body shall* document - where applicable through the established complaint panel - the facts established for the complaint processing, the reasoned determination as to whether a violation of the obligations of the code of conduct has occurred, as well as any measures taken together with an explanation as to why these measures are deemed appropriate.
- (3) Further details shall be governed by the procedures of the *private monitoring body*.

10.3.2 Sanctions and other measures

- (1) When determining measures, the *private monitoring body* shall take into account the following criteria in order to maintain the appropriateness of the measures:
 - a. The seriousness of the breach of duty in terms of the potential

impact on the effective protection of personal data processed, including the potential impact on the freedoms and rights of *data subjects*;

- b. The culpability of the service **provider**; such as whether the requirements of the code of conduct were deliberately disregarded or negligently misinterpreted;
 - c. possible repetition of the breach of duty.
- (2) Based on the above criteria, the *private monitoring body shall* determine sanctions and remedies, where applicable, through its complaints panel. The sanctions may be a combination of the following measures:
 - a. Non-public but formal reprimand;
 - b. Public reasoned announcement of the breach of duty;
 - c. Temporary or permanent withdrawal of the validity of the submission of affected **services**;
 - d. Temporary or permanent withdrawal of the validity of the submission of all **services of the service provider**.
- (3) The *private monitoring body* shall demand redress in the event of an identified breach of duty.
- (4) The *private monitoring body* can determine the concrete remedial measures either itself or in dialogue with the **service provider**. In any case, the *private monitoring body* must verify the actual remedy of the

breach of duty within a reasonable period of time to be communicated by the *private monitoring body* in each individual case. Any failure by a **service provider to remedy** a breach of duty is also a breach of duty that can be sanctioned.

- (5) In the event of a serious or systematic breach of duty, the sanction may be supplemented by an appropriate contractual penalty. The contractual penalty shall comprise a maximum of EUR 25,000 per violation.
- (6) Further details are governed by the procedures of the *private monitoring body*.

11 Administration, evaluation and updating of the code of conduct

11.1 Content management

- (1) This code of conduct is developed and administered within the framework of the statutory objectives of Selbstregulierung Informationswirtschaft e.V. ("**SRIW**").
- (2) The **SRIW** will ensure a fair process for the development or update of the Code of Conduct, in particular in line with good practice on transparency and participation options.
- (3) Further rules shall be laid down in the statutes and - if necessary - in further rules of procedure and rules of business.

11.2 Evaluation and updating

- (1) The **SRIW** will ensure that the contents of the Code of Conduct are regularly evaluated and updated as necessary.
- (2) The evaluation should first and foremost ensure that the contents of the code of conduct comply with the legal requirements and their binding interpretation by the competent courts and supervisory authorities. In addition, the effectiveness and operationalisability of the code of conduct are to be evaluated.
- (3) The evaluation report should be published, at least in the form of a summary, as long as no particularly sensitive information, such as business or trade secrets, is involved.
- (4) In addition to the experience of the signatories of the Code of Conduct and the members of the **SRIW**, other relevant sources of information should also be used for the evaluation. Relevant sources of information are in particular:
 - a. Experience of the central joint information point
 - b. Opinions and other publications of the data protection supervisory authorities
 - c. German and European court rulings
 - d. Trade publications
 - e. Field reports and opinions of the *private monitoring body*
 - f. Publications and statements of bodies concerned with the contents of the code of conduct within the

meaning of § 3 UKlaG (Act on injunctions in the event of consumer rights and other infringements)

- (5) Where necessary, the **SRIW** will consult relevant stakeholders as part of the evaluations.
- (6) A comprehensive evaluation should be carried out every three years. Notwithstanding the regular evaluation, the **SRIW is** free to carry out ad-hoc evaluations in the meantime, e.g. in order to carry out time-critical, legally binding updates.

11.3 Special rules on the central joint information point

- (1) The **SRIW shall** establish a central joint information point (4.1.1 Para. (1), (2)).
- (2) The costs of the central joint information point are borne by the signatories of the code of conduct (4.1.1 Para. (3)). As a special arrangement for the statutory purposes of the **SRIW**, it may be stipulated that the associated costs are to be borne by membership fees or specific contributions of the **SRIW**. Further details are set out in the membership fee regulations.
- (3) The central joint information office is independent of the *private monitoring body*; in particular, the central joint information office is not authorised to independently process objections or complaints as well as super-mandatory applications for **unidentifiable rendering**.

- (4) Deviations from 11.3 Para. (3) are permissible insofar as they are expressly regulated and do not negatively influence or even undermine the activities of the *private monitoring body*. Insofar as deviations are regulated, those **affected shall be** informed of the circumstance and the scope in a transparent and comprehensible manner.
- (5) The central joint information point
 - a. provides a search function for **those affected** (4.1.1 Para. (5)), by means of which **data subjects** can determine - without undue obstacles - whether and by which **service** or **service provider image material** is *processed for* a specific address,

In view of the advancing digitalisation and the technical requirements for the provision of the intended added values, the provision of the search function exclusively as an online form shall suffice.

The query of the information required for the search should be reduced to the possible minimum. Supplementary, optional queries remain unaffected by this.

If possible, the search should be made possible without registration, verification of identity or other verification of the information. Notwithstanding the above principle, measures to protect the technical infrastructure and to ensure the provision of otherwise non-public information, including the transmission of *personal data*, to authorised persons are permissible and may even be necessary.

- b. informs **those concerned in** general about the background, risks but also

- the added value of the use of **optical** sensors on the road,
- c. informs **affected persons** about their rights secured by the code of conduct and makes relevant forms centrally accessible,
 - d. informs **data subjects** about the obligations of **service providers** secured by means of this code of conduct,
 - e. makes the driving notices provided by the service provider centrally accessible (4.1.1 Para. (6)),
 - f. shall, in consultation with the *private supervisory authority*, make the **service register** accessible, carry out the activities otherwise assigned to the central joint information point
 - g. shall, in consultation with the *private monitoring body*, inform the *private monitoring body* of circumstances indicating, in particular, systematic or serious breaches of duty by **services** subject to the code of conduct.

12 Entry into force / duration

12.1 Entry into force

- (1) The Code of Conduct and its updates shall enter into force immediately upon resolution by the competent body of the **SRIW**.
- (2) The competent body may, in the decision to be taken, authorise **service providers** **in** respect of all or part of the services to be provided by decision under 12.1 (1) or supplemented by a decision under 12.1 (1).
- (3) Insofar as **service providers** pursuant to 12.1 (2) a transitional period is granted, which could at least temporarily result in deviating implementation of the obligations under this code of conduct, it must be ensured that those **affected can** understand the implementation promised by each **service provider**.
- (4) In the event of recognition of the code of conduct pursuant to Art. 40 of the GDPR, the competent data protection supervisory authority must be informed to an appropriate extent in the event of updates and additions. Changes and additions are also, in addition to 12.1 Para. (1) are subject to the necessary recognition by the competent data protection supervisory authority.

12.2 Duration

- (1) If the number of **service providers** committed to this code of conduct is less than three (3), an ad hoc evaluation shall be carried out. On the basis of the evaluation, the competent body within the **SRIW** **shall** decide on necessary measures, such as amendments to the code of conduct, to promote acceptance by and implementation rate on the part of the **service providers**, or the discontinuation of the code of conduct



selbstregulierung
informationswirtschaft e.V.

About the SRIW

SRIW e.V. was founded in 2011 as an independent, private supervisory body for sector-specific codes of conduct. Since its foundation, the main premise has been to provide the necessary independent structures to establish and administer sector-specific codes of conduct and to ensure their credible and effective monitoring, including a complaints management system. Since then, the SRIW has been successfully involved in the development of codes of conduct, including in the area of data protection, and is also engaged in other forms around the topic of *modern-regulation*.