

# SIAM

## Security Impact Assessment Measures

WP 9

Legal Frameworks –  
Regulative Techniques



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and Society

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respective techniques, strengths and  
flaccidities, and scope

- Train

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## **1. Introduction**

The objective of this report is to give an overview of the judicial framework of the security measures and technology usage at the railway case study in Germany.

Railway transportation is regarded as a highly open transportation system and as is defined as public space. These characteristics ensure a high performance, but also make railway systems highly vulnerable in the matter of security. What was largely accepted as an unpreventable accessory phenomenon becomes in contested in Germany. The security regime is complex and multiple actors have to work under different judicial codes. These different frameworks can limit the usage or implementation of security measures and technologies (SMT) for some actors and create new opportunities for others at the same time. The judicial framework not only consists out of laws, but also involves directives, notes or informal agreements.

To create an assessment support system, it is essential to take these judicial perspectives into account and to analyze the different case studies. Therefore this case study report sets a focus on the everyday usage of SMTs and the experiences of their planners and users.

## **Methods**

This report is part of work package 9 'Legal frameworks – Regulative techniques' and structured along the guidelines provided by Kassel University, which is the work package leader. It contains a short literature review analyzing the existing judicial framework and points out contested issues arising from the framework.

Data is being supplemented by the analyses of documents provided from the case studies.

Furthermore we draw on interviews from previous work packages. . Additional interviews were conducted in the respected field of train traffic operation with policy makers, a railway company, and police forces.

## **2. Short literature review**

Train transportation in Germany is organised in a highly open traffic system. This means that access to the system itself is open and that there is no necessity for a ticket or passing security checks to enter the premises with its sensitive areas such as trains and platforms. However, recently the security of the system is being debated in public, media and politics. There are two major reasons for this. First, attempts of terroristic attacks with explosives have been occurred (Dresden 2003, Koblenz and Dortmund 2006, Bonn 2012). None of the bombs detonated, either due to detection of the bombs (Dresden and Bonn) or because of flawed construction (Koblenz

and Dortmund). Second, an increasing number of violence in the transport system that caused a great coverage by media and attention by the public. Hence the debate that arose is focusing on increased CCTV in the public transportation and both within urban areas and for long-distance services. The railway company, the federal police (BPOL) and the federal ministry of interior (BMI) created a joint task group (Ordnungspartnerschaft) in 2000. Since then they are discussing new concepts and measurements to improve security without transforming the transportation system into a closed system (Antwort auf kleine Anfrage 17/12318. 2013). The successful tracing of the bomb planter at Bonn mainstation with the help of a fastfood restaurant camera and not a police camera enforced the debate about lacking security by state actors and railway companies. Opposed to the security debate stands the matter of data protection and the infringement on the fundamental freedoms, guaranteed in the Grundgesetz (German constitution). The federal data protection officer also criticises in his 22<sup>nd</sup> progress report that due to the bombing attempts the BPOL is allowed to save all CCTV data up to 30 days. He recommends a differentiated saving habit that staggers the storage period in regard to the sensitivity or level of danger of an area. The BPOL and with it the BMI agreed by stating to save CCTV data for 10 days, but in certain cases the BPOL remains with the 30 days rule (Schaar, Peter. 2009). Those certain cases are not defined and are completely up to be defined by the BPOL and thus not transparent. Furthermore are all commitments made by the BMI voluntarily and not binding (Antwort auf kleine Anfrage 17/12318. 2013).

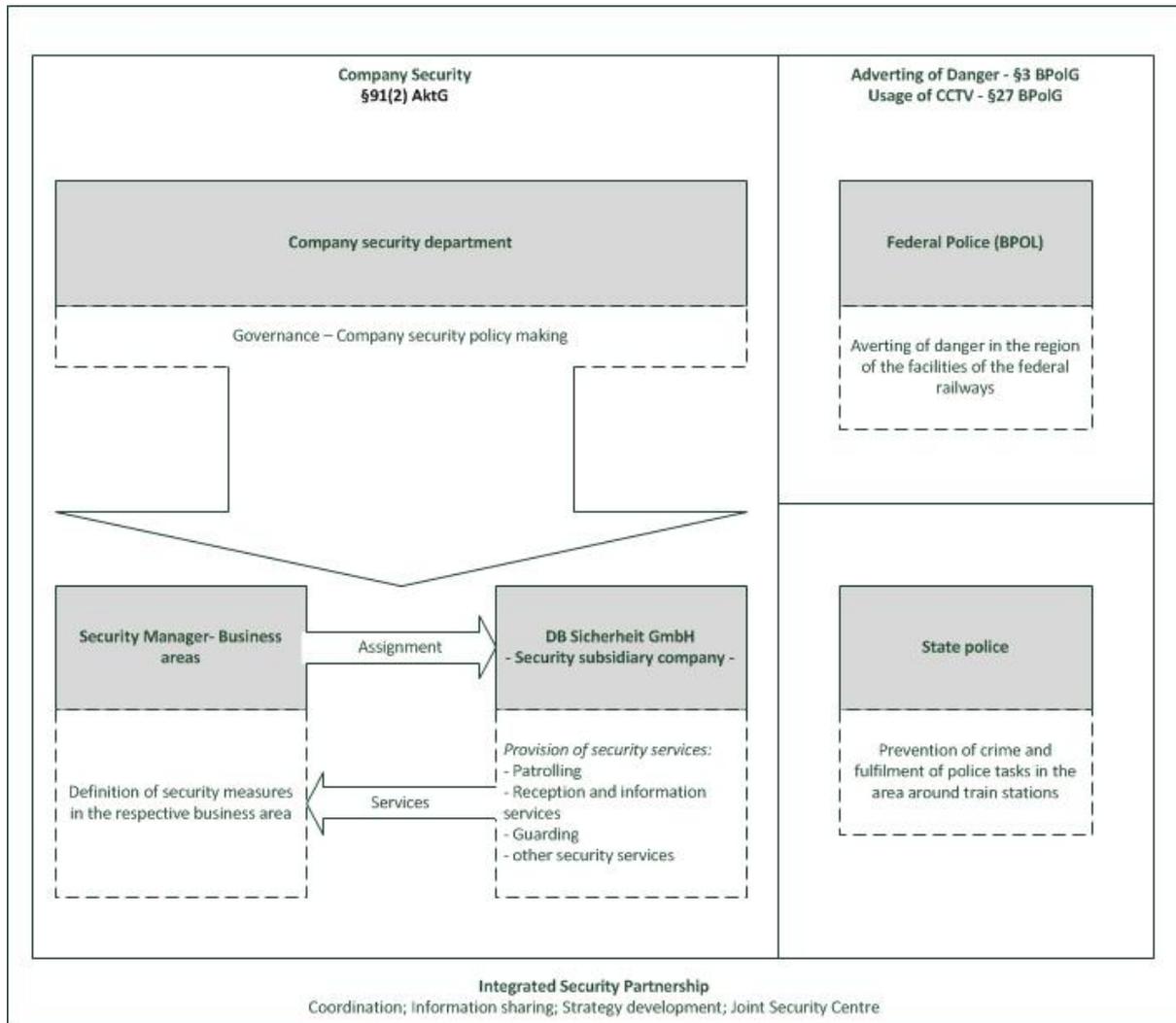


Figure 1: Integrated Security Partnership (TUB, 2013)

### 3. Overview of the legal framework identified by the case study

#### Aktiengesetz (AktG)

The 'Aktengesetz'(German Stock Companies Act) is the legal act that depicts the regulative framework of a stock corporation in Germany. It describes all rights and duties of the bodies of the company. In §91(2) AktG it states that the steering board has the obligation to implement a risk management and an early warning system that will ensure the company's viability. The railway company derived from this legal act all security measurements and the usage of security technologies to ensure the unobstructed business process of train operations.

## **Bürgerliches Gesetzbuch (BGB)**

The BGB, the German civil code, regulates the relationship between equal juristic persons. This can be between two persons or between a person and a company or between companies. However, it is contrary to the public law that regulates the legal relationship between private juristic persons and the state and it regulates the relationship between states. In regard to the case study §903 BGB is the essential one. This paragraph depicts the right of a private person, in this case the company, to exert domestic authority (Hausrecht). Domestic authority gives the rightful owner every right to proceed with his property as wished as long as he is not violating any other law. This includes to prevent people of trespassing the property, to force people to leave the property and in extreme case to use force (§32 StGB). In practice, the trainstation operator can patrol his property and can expel people and decline the transportation for example.

## **Bundespolizeigesetz (BPolG)**

The BPolG regulates the responsibilities, rights, and limitations of the Federal Police of the Federal Republic of Germany. §3 BPolG gives the BPolG the right to patrol the premises of the railway company. The trainstation operator is obliged to provide the BPolG access to the CCTV system to enable the BPolG to fulfil its obligation. This obligation has been identified by the interviewees in §23 BPolG. The further basis on how to process the data is regulated in §27(1)BPolG.

## **4. Overview of the legal Framework identified by the Work package**

**Transferred from: 3. Overview of the legal framework identified by the interviewees**

- Aktiengesetz (AktG)
- Bürgerliches Gesetzbuch (BGB)
- Bundespolizeigesetz (BPolG)

### **Further legal framework**

*Even though our case study partners identified most of the legal framework relevant for the planning and usage of SMTs at the airport, further judicial acts became apparent.*

### **Bundesdatenschutzgesetz (BDSG)**

The 'Bundesdatenschutzgesetz' regulates the data protection laws that are valid, if the federal level is involved. Since the BPOL is involved in the security concept of train traffic premises, the federal data protection law is valid. This fact has been highlighted by the interviewees, because otherwise the railway company would have to coordinate with 16 state data protection laws.

## **5. Further findings**

### **Railway transportation security: over- or under-regulated?**

The interviewed experts explained that the railway companies have quite a free scope of development in the field of security. Since security at the railway sector is not the responsibility of the private companies, but of the state, the company does not feel too much regulative burden. In Germany, security from the point of view of the railway company is only regulated as the obligation of self-protection. This led to a highly free organization of security measurements. Obviously, security is in the interest of the company, thus the security actors founded a permanent security partnership. This partnership ensures constant coordination and counselling of one another. New threats can be discussed and new security strategies developed.

### **Communication of legal requirements**

The railway company is exceeding its legal obligations by communicating its security measurements not only by signage at each station, but also by providing further information through flyers, the internet and a hotline. For the employees it also creates a company newspaper and giving information through the intranet. The company also hosts a security convention each year in Potsdam/Germany in cooperation with the BPOL.

## **Data protection and data protection officer**

The German law (Bundesdatenschutzgesetz; §4) dictates companies with a certain size or a certain number of people being involved in operating with data, to have a company data protection officer (DPA). He is responsible for the data protection of the employees and the obligation to data protection law. The interviews in train operation have shown that the role of the DPA is acknowledged, but a pro-active role is being prevented. The general procedure is to finish the conceptual phase of a measurement and then to incorporate the DPA and the employee representative.

## **Public Affairs Management**

In the interviews, the question about public affairs management and the pressure to pursue stricter security measurements revealed a twofold pressure which is opposed by a strong public affairs management. The interviewees described that security in the railway sector is very much depending on incidents. If the public notice increased violence for example or there are elections soon, then the pressure on the companies grows. A security manager talked about a 'hysteria driven security regime'. However, the company's policy is it to find the middle ground between the minimum action and the hysteria level. It was said that 100% security 'can neither be accomplished nor could be economically funded'. The second kind of pressure is from the European Union that is trying to harmonize common security standards. But especially the railway sector in the EU is highly diverse in its actor structure and system configuration. It was also highlighted that the interviewed railway company 'does not perform lobbying, but knowledge delivering and creating awareness'.

## **Usage and control of used SMTs**

The railway company obtains a crisis centre which operates 24 hours 7 days a week. Within this crisis centre the BPOL has a permanent seat which enables direct cooperation. In the interviews, the example of CCTV in train station was being described, which illustrated the rather arrangement of security measurements and technologies at train stations. The train station operator can install cameras for the safety and security on the basis of domestic authority (§903 BGB). But the local station manager must coordinate this measurement with the headquarters. Furthermore can the BPOL ask the company to install cameras for security reasons on the basis of the BPolG (§27). The interviewee stated either way, both sides cooperate in that matter very well and hardly disagree or work against one another. However, the company decided that the

increased public debate and the demand for further security measures still demand a better control and coordination. Therefore the company upgraded a small division within the security department. Its current status is still in the development phase, but already started working. Its purpose is to evaluate and validate every security measure, process and technology throughout the company. This shall ensure a better effectiveness and ensure validity of SMT usage.

In the regard of CCTV that means that every single camera does have a data sheet which states its location, its purpose and so on. But in practise it happened that a train station manager just set up a camera without consulting the security department. Reasons for that might be vandalism or violence. However, if this new department audits the train station and there is no data sheet for this camera, the camera will be removed immediately. Furthermore does the BDSG demands in §11 a continuously control of the adequate fulfilment of the data protection laws if data is being collected and processed (Antwort auf kleine Anfrage 17/12318. 2013).

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