

Interest Balancing Test Assessment regarding data processing for the purpose of the exercise of legal claims

1 Legitimate interest of the controller or a third party:

- **Controller’s interest:**
Exercise of legal claims in connection with the individual passenger car rental agreement concluded based on the MOL LIMO car sharing service.
- **Justification of the legitimacy of the interest:**
The exercise of legal claims arising in connection with the agreement is obviously legitimate, since this is why civil law rules provide for the enforceability of contracts before court, as well as the possibility to take legal action based on contracts.
- **The legitimate interest is sufficiently explicit:**
The legitimate interest is sufficiently explicit, as it clearly specifies the contract related to which the controller intends to process the data for the purpose of exercising legal claims. Thereby the controller avoids wording that is too general. However, the diversity of possible legal claims does not allow for any further restriction to the scope of the concept.
- **The legitimate interest is real and current:**
The legal interest is real since the controller’s activity comprises the provision of the service for which the rental agreement is made. As the conclusion or violation of a contract creates actual rights and obligations, the claim for proving and enforcing them is also real. In terms of the right itself, the exercise of the claim is subject to the limitation period, so the interest described above will definitely persist as long as there is a real chance for taking legal action. This means that, by linking the term of data processing to the limitation period, the interest will necessarily be current as well.
- **The interest of a third party affected by processing or the interest of society:**
Normally no third-party interest or no interest of a part of society is affected by the data processing.

As described above, the legitimate interest exists, so the question of necessity is to be examined next.

2 The necessity of processing

- **It must be presented in a clear and straightforward way that processing is strictly necessary and adequate for fulfilment of the interest:**
It is essential for the exercise of claims arising in connection with the agreement to keep personal data until the end of the limitation period. These data are not only adequate but also indispensable for the exercise of claims arising in connection with the contract and for the settlement of disputes, since without them, neither the enforcement of the agreements, nor the taking of legal action or the furnishing of evidence would be possible. By way of example, it is not actually possible to submit a claim without the client’s name and address, since the court would dismiss such a claim without examination on the merits. The data subject’s contact details support the enforceability of the performance of the agreement,

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since in the possible case of non-performance, a responsible contracting party should first attempt to make the client perform, and take further legal action only after that.

Any other personal data required for the use of the service is necessary for the purpose of identifying the client and his/her behaviour while using the service. These are essential for furnishing evidence in the course of the exercise of legal claims, as without them, it would be impossible to prove the behaviour the client showed during the use of the service, the client’s authorisation to drive a car or that the controller has verified the authorisation to drive. Accordingly, necessity and adequacy for the fulfilment of the interest can be established for each data processed.

- **Examination as to whether the interest could be fulfilled by any alternative solution which is less restrictive to the individual:**

Taking into consideration that the personal data contained in the agreement are restricted to the scope of data, which is strictly necessary for the performance of the agreement and the exercisability of legal claims arising in connection with the agreement, no alternative, less restrictive means is available for the controller to ensure the exercisability of the legal claims related to the agreement. Anonymisation would make it impossible to establish who concluded the agreement concerned. Also, the restriction of the scope of personal data, i.e. the deletion of some, would either render identification of the party impossible or lead to the loss of content in the claim to be exercised, which would in turn mean that the enforcement of performance and the taking of legal action, as well as the furnishing of evidence, would be impossible. The processing of GPS data for the passenger car and the details of the driving licence are also needed for the actual possibility of enforcing legal claims, since in any legal dispute that may arise in connection with these, these data are strictly necessary for furnishing evidence.

As demonstrated above, processing is also necessary, so we can continue with the examination of the aspects of proportionality.

3 Balancing test on the proportionality of interests

3.1 Examination of the nature of interests

- **Nature of the controller’s legitimate interest:**

The controller carries out processing in order to ensure the enforceability of legal claims arising in connection with the agreement. Although this specific processing is not explicitly required by law, all the data concerned can be crucial between the parties or in court proceedings. Consequently, this processing is justified as it enables a behaviour required or accepted by law, and as such, it can be regarded as other legitimate interest.

- **Type of the controller’s legitimate interest:**

The data controller’s legitimate interest is twofold. On the one hand, it is uncertain whether any exercisable legal claim arises in connection with the agreement, while on the other hand, it is overriding and compelling, since when it does, in the absence of processing, the controller would be deprived of the fundamental right of turning to court, and the possibility

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of meeting the requisite burden of proof. Furthermore, it would also be unable to claim performance of the agreement in the case of any breach of contract.

- **The data subject's interest:**

The processing affects the data subject's right to informational self-determination, which is ultimately derived from the fundamental human right to human dignity. However, the right to human dignity enjoys absolute, non-limitable protection in conjunction with the right to life. Apart from that, based on the standard practice of the Constitutional Court, rights derived from human dignity, as in our case, the right to informational self-determination, may be restricted in terms of disposition over personal data provided that the principles of necessity and proportionality are observed.

- **Nature of the data:**

The processing does not extend to any special category of personal data as defined in Article 9 of the GDPR, in particular, it does not comprise any personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, biometric data, data concerning health or data concerning sex life or sexual orientation. However, the location data may affect a natural person sensitively, so it can be regarded as sensitive data. The sensitivity factor is, however, reduced by the fact that it only concerns movements in the vehicle and it is restricted to the time that the service is being used.

3.2 Assessment of the impacts of processing

- **Impacts of processing beneficial and not beneficial to the data subject**

As long as a legal relationship between the data subject and the controller exists, processing has an explicitly positive impact on the data subject, since as a result, the controller is able to provide a service in his/her interest, improving his/her situation. During this time, processing has basically no negative impact on the data subject, although the recording of the GPS data of the vehicle may affect him/her sensitively. After termination of the agreement, it is also conceivable that the data subject would not welcome any further processing. Nevertheless, such negative feelings on the part of the data subject will most probably not amount to a feeling of vulnerability or being watched, since processing does not intervene with the natural person's privacy to an extent that would make that possible. Consequently, processing cannot be regarded as an intrusive interference with the natural person or his/her rights.

- **The data subject's status:**

The data subject can be regarded as a member of a vulnerable group, since as a user of the service provided by the controller, he/she qualifies as a consumer.

- **The controller's status:**

MOL Nyrt. is a member of the MOL Group, which is active in 30 countries with 25 thousand employees, and is based in Budapest. The MOL Group is a major group of companies in Central and Eastern Europe. Accordingly, it can be established that the controller has significant economic power, so it is in a more favourable position than that of the data subject.

- **Relationship between the data subject and the controller:**

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The controller has a rental agreement with the data subject, which is typically realised on a temporary basis. Thus, the data subject is in an actual relationship with the controller. However, the processing also extends to cases where the contractual relationship has already been terminated, so no legal relationship between the data subject and the controller exists any longer.

- **Impact of the processing on the data subject, in light of his/her relationship to the controller:**

While a contractual relationship between the data subject and the controller exists, it is not probable that the realisation of processing could be objected against from the data subject's point of view, since all the data are strictly necessary for the provision and use of the service. In this scope, the controller does not use its dominant position against the data subject, and it does not force him/her to a vulnerable position. When, however, the contractual relationship between the data subject and the controller no longer exists, the data subject may have complaints because of the processing carried out, although it does not cause any harm or intrusive interference with his/her rights.

- **The data subject's reasonable expectations**

At the time of contract conclusion and in this context, the data subject may and should reasonably expect that the controller will keep the data necessary for the provision and use of the service for the duration of the service.

With regard to processing after the termination of the contract, the data subject may still reasonably expect that the data are kept until the end of the limitation period, for the purpose of use for the exercise of a potential legal claim, with consideration to his/her former contractual relationship with the controller. This is particularly true in our case, since the controller informs the data subject in the GTC accordingly.

- **The means of processing:**

In accordance with the principles of data minimisation and purpose limitation, the processing is restricted to the scope of data which is strictly necessary for the conclusion of the contract and for furnishing evidence with regard to that. Furthermore, apart from storage and use for evidence purposes, the processing of personal data does not extend to any other processing; in particular, the controller does not couple the data subject's personal data with any other data. Neither does the controller disclose the data to the public, as their accessibility is strictly limited to those employees who need to know the personal data for the completion of their work. This may include the legal representative (legal counsel) if there is a need to take legal action. As a result, the impacts of processing are fully foreseeable and predictable. Moreover, after termination of the legal relationship, the personal data are archived, which ensures a further level of protection.

- **Information provided to the data subject on processing:**

Already upon contract conclusion, the data subject receives comprehensive, clear and easily understandable information on the scope of personal data to be processed during the use of the service and after termination of the agreement, the legal ground, means, duration of processing, his/her rights related to the processing, and on who at the controller can access the data processed.

3.3 Other security measures

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- **Keeping data for a limited time:**

In accordance with the principle of purpose limitation, the controller only processes the data subject's personal data as long as it is necessary for the exercise of claims. After the lapse of the 5-year limitation period starting from the termination of the agreement, personal data are no longer processed. Furthermore, the controller archives the data specified on page 23 of the GTC in item (a) 7 days after the deletion of the user account at the data subject's request, and the GPS data of the passenger car 7 days after the termination of the relevant individual rental agreement.

- **Restriction on data access:**

Accessibility of the data subject's personal data is strictly limited to those employees who need to know the personal data for the completion of their work. This may include the legal representative if there is a need to take legal action. With this, data access is restricted to the extent possible.

- **Other security measures:**

The controller protects the data by measures proportional with the risks of processing in particular against unauthorised access, alteration, forwarding, disclosure, deletion or destruction, as well as accidental destruction and damage, and inaccessibility arising out of a change in the technology used. In the framework of this, it stores personal details in a password-protected and/or encrypted data base. In the framework of protection proportional with risk, the data controller protects data with firewalls, anti-virus software, encryption mechanisms, content filtering and other technological and process solutions. It continuously monitors personal data breaches.

4 Outcome of the interest balancing test and its documentation

A legitimate interest exists

For any kind of dispute or issue arising in connection with the agreement, the processing and storage of the personal data necessary for the contract conclusion and those generated while the service is being used play a key role in provability, both in court proceedings and out of court. In court proceedings, the furnishing of evidence to the facts presented is expressly required by law, while the exercise of claims is a behaviour clearly recognised by law, which is evident from the fact that a possibility for that is given. Consequently, the controller's interest is legitimate. It can also be concluded from the above discussion that the interest is sufficiently explicit, real and current, so the further examination of necessity is justified.

The processing is necessary

It is essential for the exercise of claims arising in connection with the agreement to keep personal data until the end of the limitation period. These data are not only adequate but also indispensable for the exercise of claims arising in connection with the contract, since without them, neither the enforcement of the agreements, nor the taking of legal action or the furnishing of evidence would be possible. An example is the data required for the submission of a claim, or the data subject's contact details, which support the enforceability of the performance of the agreement, since first it should be attempted to make the client

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perform, and further legal action may only be taken after that. Any other personal data required for the use of the service is necessary for the purpose of identifying the client and his/her behaviour while using the service. These are essential for furnishing evidence as necessary for the actual exercise of claims, as without them, it would be impossible to prove the behaviour the client showed during the use of the service, his/her authorisation to drive a car or that the controller has verified the authorisation to drive. Accordingly, necessity and adequacy for the fulfilment of the interest can be established for each data processed. Taking into consideration that the personal data contained in the agreement are restricted to the scope of data which is strictly necessary for the performance of the agreement and the exercisability of legal claims arising in connection with the agreement, and no alternative, less restrictive means is available to controller to ensure the exercisability of the legal claims related to the agreement.

Anonymisation would make it impossible to establish who concluded the agreement concerned. Also, the restriction of the scope of personal data, i.e. the deletion of some, would either render identification of the party impossible or lead to the loss of content in the claim to be exercised, which would in turn mean that the enforcement of performance and the taking of legal action, as well as the furnishing of evidence, would be impossible. The processing of GPS data for the passenger car and the details of the driving licence are also needed for the actual possibility of enforcing legal claims, since in any legal dispute that may arise in connection with these, these data are strictly necessary for furnishing evidence. Accordingly, the requirement of necessity is also met, so the examination of proportionality is justified.

The processing represents proportional limitation to the data subject's rights

Examination of the nature of interests

With regard to the nature of the interest, it can be stated that although processing limits the data subject's right to informational self-determination in regard to his/her personal data, this right is not absolute and non-limitable, so the limitation is admissible if processing is necessary and proportional. On the controller's part, regarding the nature of interest, other legitimate interest exists that, when tested for proportionality, can be regarded as weaker than the exercise of the fundamental right and the public interest, but that overrides the culturally or socially recognised interest. In this respect, the nature of the interest tips the balance for admissibility because it is essential for the exercise of claims. However, it cannot be stated with absolute certainty but only with high probability that it will be needed in the future. In summary, the scale of proportionality does not show any significant shift to either direction. Nevertheless, it supports the admissibility of processing that no special categories of data are affected. The fact that the processing also concerns sensitive data does not influence proportionality in any way, since it is balanced in this respect. Although the location data is sensitive information, the sensitivity factor is reduced by the fact that it only concerns movements in the vehicle and it is restricted to the time while the service is being used. As a result, this aspect has no impact on proportionality.

Impact assessment of the processing

The total of positive and negative impacts exerted on the data subject slightly tips the balance of the proportionality standard towards the admissibility of processing, because the data subject benefits from the realisation of processing. On the other hand, the

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processing may have some moderate negative emotional impact on the data subject, which slightly shifts the proportionality standard towards primacy of the data subject’s rights. However, the processing does not result in intrusive interference with the data subject’s rights, which supports the admissibility of processing. The data subject’s status as a consumer, i.e. the member of a vulnerable group, and the controller’s significant economic power speak against processing. Nevertheless, this is nearly balanced by the fact that the controller does not exploit its dominant position in any way in terms of the processing, which does not lead to vulnerability or the feeling of being watched, as it does not intervene in the natural person’s privacy to an extent that would make this possible. As a further argument for processing, there is an actual relationship between the parties. This is further supported by the circumstance that, already at the time of the collection of data, the data subject can reasonably expect the processing concerned, and also that, due to the means of processing, the impacts of processing are fully predictable. Taking everything into consideration, the standard of proportionality is significantly shifted towards the admissibility of processing. As a further factor supporting the proportionality of the limitation to the right, the controller provides the data subject with comprehensive, clear and easily understandable information on the scope of personal data to be processed, the legal ground, means, duration of processing, the data subject’s rights related to the processing, and the scope of persons who can access the personal data.

Other security measures

Proportionality is further enhanced by two security measures: that the data are kept for a limited time, and that access to the data is restricted. In addition, the controller protects the data with special security measures which are proportional to the risks of processing. In the framework of this, it stores personal details in a password-protected and/or encrypted data base. Furthermore, the data are protected with firewalls, anti-virus software, encryption mechanisms, content filtering and other technological and process solutions. It continuously monitors personal data breaches.

Based on the above discussion, as a result of the Interest Balancing Test Assessment, it can be established the data subject’s right is not overriding as compared to the controller’s legitimate interest, and the processing realises a necessary and proportionate restriction regarding the data subject.