

Balancing test concerning the processing of personal data through the operation of a CCTV (video surveillance) system

1. Legitimate interest of the controller or of a third party:

- **Interest of the controller:**

MOL Nyrt. uses a CCTV (video surveillance) system for the purpose of protecting human life and physical integrity, guarding hazardous substances, protecting trade, payment and banking secrets, protecting property, as well as for the effective investigation of complaints, where appropriate.

- **Demonstration of the legitimacy of the interest:**

Pursuant to Section 31(1) of Act CXXXIII of 2005 on Security Services and the Activities of Private Investigators (hereinafter referred to as "Security Services Act"), electronic surveillance systems capable of making audio and/or video recordings may be used to protect human life, physical integrity and personal freedom, to guard hazardous substances, as well as to protect trade, payment, banking and securities secrets and property, where the circumstances suggest that the detection of infringements, the catching of perpetrators *in flagrante delicto* or the prevention of unlawful acts is not possible by other means, and such technical means are only used to the strictly necessary extent, and such use does not entail a disproportionate restriction of the right to informational self-determination.

Pursuant to Act CLV of 1997 on Consumer Protection and Act CLXV of 2013 on Complaints and Public Interest Disclosures, companies are required to investigate the merits of any complaints they receive.

Pursuant to Section 1(1) of Act LIV of 2018 on the Protection of Business Secrets, "business secret shall mean any fact, information or other data, or any compilation thereof, which is related to the business activity concerned and is secret – i.e. not generally known by the public, either as a whole or as a combination of its components, or not easily accessible to persons carrying out the economic activity concerned –, and therefore has a monetary value, and the holder of the secret exercises due care in order to keep it secret."

Pursuant to Article 32(1) of the EU General Data Protection Regulation (hereinafter referred to as "GDPR"), Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the controller and the processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk.

- **The legitimate interest is sufficiently specific:**

The legitimate interest is sufficiently specific, as it states precisely that the data processing constituting the subject matter of this balancing test is necessary for the protection of persons and assets located on the controller's premises, the investigation of any suspected incident and for ensuring the lawfulness of complaint handling.

- **The legitimate interest is real and present:**

The legitimate interest is real, as the protection of persons and property, the guarding of hazardous substances, the protection of trade, payment and banking secrets as well as the lawful handling of consumer complaints are real interests to be protected, as also specified by law, and it is the fundamental economic and business interest of the controller to investigate any suspected incidents occurring in its data processing facilities. The legitimate interest is present as the protection of persons and property, the guarding of hazardous substances, the handling of consumer complaints and the investigation of incidents are all based on needs or events that constantly, continuously or usually occur in the normal

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business practice of the controller.

- **Interest of third parties and of society in relation to data processing:**

Some of the objects operated by MOL Nyrt. are considered as “national critical infrastructure components”. National critical infrastructure component means an infrastructure component, designated pursuant to Act CLXVI of 2012 on the Identification, Designation and Protection of Critical Infrastructures and Facilities, the disruption or destruction of which would have a significant impact on Hungary due to the lack of continuous fulfilment of vital societal functions.

Third parties or a part of society may have a specific interest in the data processing; furthermore, in general, the protection of persons and property, the safe storage of hazardous materials and bank secrecy are interests that concern the whole of society, and which, in the wider sense, are related to the efficient detection of crimes and to public security. Social objectives also include the protection of human life, physical integrity and personal freedom, the achievement of which is also promoted by the processing. When handling complaints, the evidentiary procedure serves the interest of consumers as well.

Based on the foregoing, a legitimate interest exists, and now therefore the question of necessity can be assessed.

2. **Necessity of data processing**

- **An explicit and clear demonstration of why data processing is absolutely necessary and adequate to achieve the interest:**

The purposes of recording of surveillance footage using a CCTV (video surveillance) system include the protection of the premises, guarding of hazardous substances, prevention of incidents, mitigation of the impacts or facilitation of the investigation of eventual incidents, catching of perpetrators *in flagranti delicto*, prevention of unlawful acts, protection of human life, physical integrity and personal liberty, protection of trade, payment, banking and securities secrets, protection of property as well as the lawful handling of consumer complaints. The operation of a closed-circuit television (CCTV) system contributes decisively to the achievement of the above purposes, since a significant part of incidents can be prevented if potential perpetrators know that their acts will be captured by a camera, and a large portion of incidents, infringements and complaints can be investigated by viewing the recorded footage.

For each camera installed, MOL Nyrt. has assessed the necessity of data processing taking into account the above purposes.

- **An assessment of whether alternative and, from the viewpoint of the individuals, less restrictive ways are available to achieve the same interest:**

Currently, no other technology or solution is available that would enable the reconstruction of past events in relation to a complaint, an accident or a crime without recording images, and therefore the achievement of these purposes cannot be ensured by using means that are less restrictive of the right of informational self-determination of data subjects. From the point of view of property protection, although it is possible to use only an alarm system, but this would not support the investigation of accidents or complaints, the detection crimes and the identification of perpetrators. The possible anonymisation of recordings and the blurring

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of the faces of data subjects would also make it impossible to identify the persons seen in the recordings, and therefore their fundamental purpose (protection) could not be achieved. Additionally, without storage for a certain period of time, recordings could not be used as evidence or a means to carry out checks.

Based on the foregoing, the processing is necessary for the purposes of the legitimate interest pursued, and now therefore the aspects of proportionality can be assessed.

Proportionality assessment

2.1. An assessment the nature of the interests

- **The nature of the controller's legitimate interest:**

The controller's interest to be protected is a legally protected and socially recognised interest.

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

The legitimate interest of the controller is an overriding and compelling interest because it is of paramount importance, and is a legally recognised interest or a fundamental business or economic interest.

- **Interest of the data subjects:**

Data processing impacts the data subjects' right of publicity (i.e. their right to decide whether or not they want to be recorded and to dispose over recordings made of them, in Hungarian: *képmáshoz való jog*), which is specified as a personality right in the Civil Code, and their right to informational self-determination, which is derived from the fundamental right of right to human dignity. The right to human dignity, together with the right to life, enjoys absolute, i.e. unlimited, protection. Furthermore, based on the settled case-law of the Constitutional Court, certain rights derived from the right to human dignity, such as the right to informational self-determination in this case – and within that, the right to exercise control over one's own personal data – may be limited to the necessary extent and in a proportionate manner.

- **Nature of the data:**

The personal data processed are recordings made by security cameras, i.e. information relating to the image, movements, stays and conduct of data subjects.

The perspective of the cameras is limited to a specific area in accordance with their purpose, and the personal data processed are limited to data that are absolutely necessary for achieving the purpose of protection of persons and property. Personal data are kept only for the minimum period of time necessary to achieve the purpose of the data processing.

2.2. Data Processing Impact Assessment

- **Favourable and unfavourable impacts of data processing on the data subjects:**

Data subjects can particularly benefit from the data processing, because the recorded footage may contribute to the investigation of any accidents or criminal acts suffered by data subjects or the handling of complaints submitted by or against data subjects, and this specific processing activity also serves the personal and financial protection of data subjects. The processing may also have a negative impact on data subjects, because, given that the processing is not based on consent, it may take place against the wishes of the data subjects. It should be noted, however, that the data are processed for the shortest possible time and these negative impacts may be effectively mitigated by limiting access to the data.

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When assessing impacts, it should be noted that **recordings made by electronic surveillance systems are not intended to be used to control visitors and the stored data cannot be used to monitor the activities of visitors.**

- **Situation of the data subjects:**

Data subjects are the visitors entering a specific facility of the controller.

- **Situation of the controller:**

MOL Nyrt. is a member of the Budapest-based MOL Group, which has 25,000 employees in 30 countries. MOL Group is one of the major corporate groups in Central and Eastern Europe. In the light of the foregoing, it can be concluded that the controller has a significant economic power.

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

Depending on the purpose of the visit, the controller and the data subjects may have various kinds of relationships: it is also possible that there is no legal relationship between them, or their legal relationship is indirect.

- **The impact of processing on the data subjects in the light of their relationship with the controller:**

The processing affects and/or restricts the data subjects' right to informational self-determination and their right of publicity. Processing is mostly performed based on an unequal legal relationship. However, the processing can have positive impacts on data subjects, due to which the making of video recordings and the storage of footage recorded by security cameras may be necessary for the data subjects as well. This includes the protection of persons and property and complaint handling, which are legally protected and socially accepted interests. Additionally, the interest in protecting human life and physical integrity is a public interest.

- **Reasonable expectations of the data subjects:**

At the time of data collection, the data subjects should and must reasonably expect that their personal data will be processed based on a legitimate interest since the controller provides appropriate prior information to data subjects before the processing.

- **Means of data processing:**

Implementing the principles of data minimisation and purpose limitation, processing is limited to the scope of data that are absolutely necessary to achieve the purpose. For each camera, the necessity and proportionality of the same was examined by the controller prior to the installation thereof. The CCTV system does not record sounds.

Furthermore, the processing of personal data does not include any additional processing activities other than collection, storage and use of data as evidence; in addition, the controller shall not disclose such data, and shall make them accessible only to those employees who need to know such personal data to be able to perform their job duties.

A CCTV map sketch has been created for each object which represents the approximate locations of and areas monitored by the cameras. The CCTV map is available at each object's security services. Therefore, the impacts of data processing are fully foreseeable and predictable.

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- **Informing data subjects about the processing:**

At the start of data collection, the controller provides full, clear and comprehensible information to the data subjects about the scope of the personal data processed, the legal basis for processing, the means and duration of the processing, as well as the rights of the data subjects related to the processing.

2.3. Other safeguards

- **Storage of personal data for a limited period of time:**

Implementing the principle of purpose limitation, the controller only processes the personal data of data subjects as long as this is necessary to achieve the purpose, or where this is permitted by law.

Where recordings are not used, the controller will store recordings for 3, 30 or 60 days of the recording date, in accordance with those set out in the Privacy Notice.

- **Restricting access to data:**

The personal data concerned are made accessible strictly to those employees who need to know such data to be able to perform their job duties. In addition to these employees, investigating authorities, authorities dealing with administrative offences, prosecutor's offices, courts, national security services or, in the case of international legal assistance, foreign authorities may have access to the data, where applicable. Recordings may only be provided to the authorities specified herein.

The storage media on which recordings are stored are located in a secure room with limited access and furnished with an alarm. Access to the recordings is limited by an electronic access control system. Any access to the digital recorders is logged.

3. Outcome and documentation of the balancing test

A legitimate interest exists

The protection of persons and property in the controller's data processing facilities is an interest that cannot only be considered as an interest of the controller, since the protection of human life and physical integrity is also a significant social interest; consequently, the controller's legitimate interest in lawful complaints handling is a legally recognised interest aimed to protect consumers. Furthermore, it is a fundamental interest of the controller to use the recordings as evidence, where necessary. It is a fundamental business and economic interest of the controller to investigate any suspected incidents and the processing is also important for the protection of property. Therefore, taking into account the fact that the pursuit of the aforementioned interests takes place in accordance with the applicable legislation, it can be clearly established that the controller's interest is real and legitimate. Based on the foregoing, it can be stated that a sufficiently concrete, real and present legitimate interest exists, and it is correct therefore now to assess the necessity of the processing.

Data processing is necessary

The purposes pursued by the processing, i.e. protection of persons and property, lawful handling of complaints and investigation of suspected incidents, require technical measures that are suitable for identifying a person and his or her acts. Visual images are essential for obtaining the most accurate possible information, and consequently, they are not only appropriate, but also essential to achieve the interest of the controller. Furthermore, no other alternative and less restrictive means are available to the controller to achieve its legitimate

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interest. The possible anonymisation of recordings and the blurring of the faces of data subjects would make it impossible to identify the persons in the recordings, and therefore the fundamental purpose of protection could not be achieved. Additionally, without storage for a certain period of time, recordings could not be used as evidence or to carry out checks. Based on the foregoing, the data processing is necessary, and it is correct therefore now to assess proportionality.

Data processing imposes a proportionate limitation to the data subjects' rights

An assessment the nature of the interests

With regard to the nature of the interests, it can be stated that, although data processing limits the data subjects' right to informational self-determination in relation to their personal data, it is not an absolute and unlimited right, and therefore the processing of personal data is permissible when such processing is necessary and proportional. Given that it can be established, based on the foregoing, that data processing is necessary, now proportionality must be assessed.

When assessing proportionality, the controller's legally recognised interest in the protection of persons and property may be weaker than the enforcement of fundamental rights; however, it can be considered to be stronger than any "other legitimate interest" or "culturally or socially recognised interest".

The interest of the controller to have evidence in the case of a consumer complaint may also be understood as a public interest, since, in this context, the legitimate interest of the controller coincides with the consumers' legitimate interest in complaints handling. Also in this case, it can be stated that the controller's interest is weaker than the enforcement of fundamental rights; however, it can be considered to be stronger than any "other legitimate interest" or "culturally or socially recognised interest".

The controller's interest in investigating incidents and in proving any unlawful acts is to be considered as "other legitimate interest".

Considering the nature of the interest, the balance of proportionality leans in favour of permissibility, in view of the fact that it is vital to ensure security in the controller's data processing facilities. It is absolutely certain that the data processed might be needed subsequently; practice also shows that security requires the later use of recordings made by security cameras, thus the balance leans in favour of permissibility of the data processing.

Assessment of the impacts of data processing

Certain negative impacts of the data processing on the data subjects shift the balance towards prohibition, since the controller has a significant economic power and therefore a dominant position. Considering, however, the aforementioned positive impacts of the processing on data subjects and the fact that data subjects can expect such processing as early as the time when data are collected, and furthermore, that due to the means of data processing, the impacts of the data processing activities concerned are completely predictable, the balance of proportionality does not lean either in favour of or against the data processing.

The proportionality of the restriction of data subjects' rights, however, is also proven by the fact that the controller provides full, clear and comprehensible information to the data subjects about the scope of the personal data processed, the legal basis for processing, the means and duration of the processing and the rights of the data subjects related to the processing, as well as that these data are kept for the shortest possible time and are accessible only to those persons who need them to carry out their work.

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Other safeguards

Images captured by security cameras are transmitted and recorded in a closed-circuit system and stored in a security room set up specifically for this purpose. Digital recorders and recordings inferred from them are stored in a closed place; storage rooms or cabinets are equipped with a data protection registration ID number. Digital recorders are managed and data are extracted exclusively by the dedicated personnel having a valid code.

On the basis of the above, it can be concluded that the rights of data subjects do not override the legitimate interest of the controller and that the data processing constitutes a necessary and proportionate limitation to the data subjects' rights.