

Legitimate Interest Assessment Report

Consideration of interests in both commercial
and direct marketing activities in the absence of
prior express consent

2021 August



Legitimate interest assessment report

As part of its commercialisation and sales process, the company OpenSistemas de la Información Internet S.L., leader of the business group which also includes Neuroons Logic S.L., Neuroons Logic Global Business Ltd., TalentOS Recruitment Services S.L., and the other companies in the group, carries out different commercial and marketing activities with the aim of attracting companies potentially interested in our range of products and services.

For the development of these commercial and marketing activities, **within a framework of relations between companies, the company makes use of the figure of legitimate interest** to approach the first contact by the representatives of companies of which it can be understood that there is a reasonable interest in establishing a commercial approach, when there is no prior express consent from this person.

The use of this figure regulated in the GDPR and clarified in Opinion 06/2014 of the WG29, indicates the advisability of making **use of this figure only after having carried out a weighing up between the legitimate interests of whoever is going to process the personal data (the company), and the interests and fundamental rights of the data subject (the person responsible for the company or professional)**, so that, provided that the latter do not prevail, the processing of personal data can proceed on the basis of this legitimisation.

Thus, **the company acts in accordance with [Article 47 of the GDPR](#)**: *"The legitimate interests of a controller, including those of a controller to to which the personal data may be disclosed, or of a third party, may provide a legal basis for processing, provided that the interests or fundamental rights and freedoms of the data subject are not overriding, taking into account the reasonable expectations of data subjects based on their relationship with the controller [...] The processing of personal data for direct marketing purposes may be considered to be carried out on the basis of a legitimate interest".*

And likewise, respecting the established in the Spanish LOPDGDD, which includes several instances in which the processing may be carried out on the basis of legitimate interest for: processing of contact data of individual entrepreneurs, liberal professionals, Public Administrations, and subjects of private law in which there is a legitimate interest; and **in compliance with the established in the 2003 EC Directive on Privacy and Electronic Communications Regulations (PECR)**, which complements the general data protection regime and establishes more specific privacy rights on marketing communications by electronic means, cold calls, text messages, and other e-mails; **before executing a commercial contact plan based on the figure of legitimate interest, the company prepares this analysis on the applicability of legitimate interest in the commercial strategies it develops.**

In this regard, the **factors to be considered when conducting the legitimate interest weighing test** will include:

- The nature and source of the legitimate interest.
- Whether the data processing is necessary for the exercise of a fundamental right, is otherwise in the public interest or benefits from the recognition of the community concerned.
- The impact on the data subject and his or her reasonable expectations as to what will happen to his or her data.
- The nature of the data and the way in which they are processed.
- Additional safeguards that could limit undue impact on the data subject, such as data minimisation, privacy protection technologies, increased transparency, general and unconditional right to opt-out, and other rights applicable in each case, such as data portability.

The present **Suitability or Legitimate Interest Assessment Report**, based on the three-part test (purpose test, necessity test and balance test), and with the additional measures to prevent or correct potential damage (anticipation protocol and correction protocol), includes the analysis of the applicability of the legitimate interest that the company claims in the performance of its commercial and marketing activity, for cases in which there is no initial express acceptance statement from the individuals for the commercial approach by means of the use of their professional data.

PART 1.- Purpose test

Why do you want to process the data?

In order to **develop customer attraction and fidelisation strategies within a *business to business* commercialisation model**, the company makes commercial approaches towards persons in charge of companies, of whom it can be understood that there is a reasonable predisposition to accept this commercial approach.

What benefits are expected from the processing?

Through the commercial activities and marketing strategies that will be carried out, the company expects to reasonably increase its sales volume and, at the same time, increase the database of target contacts potentially interested in the products and services offered by the company. In order **to nurture our network of contacts, identify potential synergies with other companies and/or develop relationships with future customers**, the company will have to process personal data that are of a professional nature.

Would any third party benefit from the processing?

No third parties outside the group companies would benefit from the processing of personal data carried out from the business activity.

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Are there wider public benefits for the processing?

There are no direct wider public benefits for the processing of personal data in the company's commercial activity.

How important are the benefits that have been identified?

As a certified innovative company, the company develops different R&D projects for its clients, deploying its operations in different countries.

As a result of the innovation processes that the company develops for its clients, there is a **direct relationship between the incorporation of technology in processes and the improvement of industrial activity**. These industrial advances and the transformation processes of companies are critical for the improvement of industries, which in turn have an impact on progress as a society. Therefore, the company as a supplier of software and technology to other companies ultimately contributes to the **benefit that society as a whole, or end users, obtain from these improvements**.

Considering certified innovative companies as part of the strategic fabric of industries, it is reasonable to estimate that the company develops an activity whose **final benefit justifies the business to business commercial activity** that we carry out when contacting potential clients, for the performance of which it is necessary to process the data of the persons responsible for these companies.

What would be the impact if the processing could not go ahead?

If the processing of personal data of a professional nature for commercial purposes could not continue, within the framework of business-to-business relationship management, **the company would find it difficult to operate internationally the main means of attracting potential customers in several countries at the same time, and therefore would not be able to develop the marketing processes it has established for its international growth strategy**. As a consequence, the company would not be able to achieve its annual sales targets and its sales volume would be severely affected. All of which would ultimately lead to a reduction in turnover forecasts and, ultimately, to a possible reduction in the workforce.

Are there any specific data protection rules that apply to the processing being complied with?

The company complies with all the requirements stipulated in current data protection legislation, specifically with regard to the European GDPR, the Spanish LOPDGDD, the PECR on electronic communications, and the European Opinion 06/2014 on the appropriate use of legitimate interest.

In addition, all the digital tools that the company uses for the development of its commercial and marketing work assure its customers in their legal policy and in their terms and conditions of contract to comply with the legislation of the General Data Protection Regulation and other current regulations.

Are other applicable regulations being complied with?

The company has carried out internal data protection compliance processes, and ensures that it **fully complies with the standards set by current legislation**, being fully responsible for data processing, guaranteeing the exercise of all rights associated with the regulation and respecting the guidelines of the regulations that complement the GDPR.

Does the company comply with our industry guidelines or industry codes of practice?

As part of its commercial work, **the company complies with the usual industry standards**, respecting common customs and practices in the type of *business to business* commercial approach it undertakes. By targeting exclusively contacts within a *business-to-business* framework, and having previously carried out an analysis of the suitability of the sector of activity of the company to which the approach is intended, it is reasonable to consider that there may be a potential interest on their part in learning about our range of products and services. In doing so, the company will tend to **consider at all times the suitability of the contact person and the companies it is approaching**, respecting any industry guidelines, codes, usage or customs.

Are there any other ethical issues that apply to the processing?

There are no other ethical issues applicable to the processing of personal data of a professional nature that need to be taken into account in the company's commercial activity, given that publicly available professional data will be processed.

However, the use of the data will always be carried out with respect for the standards of cordiality and common sense, as well as for the professional customs and practices that must be taken into account when making contact.

PART 2.- Necessity Test

How does this processing help to achieve the intended purpose?

The data processing is necessary for the commercial goal of the company because **the commercial approach activity can only be developed on the basis of direct contact with the data subject through his or her professional contact details.**

Is the intended processing proportionate to its purpose?

The contact with potential customers is exclusively addressed to persons holding positions of responsibility in their companies. Therefore, only personal data that are directly related to the persons in the performance of their professional role will be collected and processed. In this sense, there is a clear **alignment between the purpose pursued, the nature of the data that are used and the processing that is done with them**, being limited exclusively to those professional data that are publicly available. Furthermore, the processing of this data will be carried out with the same provisions as those already implemented by the company with respect to other types of personal data. Therefore, we understand that **the processing is proportionate to the purpose pursued.**

Can the same purpose be achieved without the processing?

Due to the circumstances resulting from the COVID19 crisis and, due to the use of the Internet and new technologies in the work environment, the context of relations between companies has shifted from a physical face-to-face basis to a **digital face-to-face basis**.

On the other hand, due to the **international nature of the operations that the company carries out in different countries**, it is necessary to have data that allows telematic and/or remote activity, using the means, technologies and tools available to achieve the development of relations within a **framework of de-geolocation**.

For this reason, all of the company's operations which, due to their nature, can be carried out telematically, are channelled as a priority through online means, either synchronously or asynchronously. This prioritisation of digital operations includes commercial and marketing activities. Therefore, **the company will use electronic, digital or telephonic means to make commercial contact, for which the processing of professional data of individuals will be an essential requirement**.

Can the same purpose be achieved by processing less data?

The data subject to processing refers exclusively to data that the individual has voluntarily made available in publicly accessible sources, such as: public registers, professional lists, digital platforms, professional social networks, etc.

The data processing to be carried out by means of the figure of legitimate interest applies exclusively to the following data:

- Name.
- Company, firm or organisation to which you belong.
- Sector of activity to which your company belongs.
- Professional e-mail address.
- Telephone number for professional use.
- Public social profile.

Given that all the data subject to processing will be related to the professional dimension of the persons and, given that the aim of the commercial approach is to establish a potential relationship between companies, **the company considers it necessary to process such data specifically** in order to target the commercial activity more effectively, and also in a way that is more appropriate to the interest of the other party.

Can the same purpose be achieved by processing the data in a less intrusive way?

The formula used to carry out the commercial and marketing approach will always respect the **channels publicly available to the person at a professional level**, and always **within working hours**, so we understand that there is a reasonably low degree of intrusion.

However, the internal action protocol foreseen for commercial and marketing approaches prioritises the first contact by those means in which the person is not approached in a way that could lead to an interruption of their work activities. On the other hand, **the commercial approach will be prioritised through other channels in which the person's response can be asynchronous.**

This type of approach makes the first contact with the person more cautious and reinforces its **non-intrusive nature.**

PART 3.- Balance test

Nature of personal data

The target leads to be contacted in the commercial work are professionals directly involved in the business organisation to which the sales approach is intended to be generated, and represent relevant decision-making positions within their company.

Under no circumstances will the company use data that has not been **previously published by the user** and/or is not **publicly available** on portals, platforms, registers or publicly accessible lists.

Therefore, **the nature of the personal data used will be of a professional nature only.**

Reasonable expectations

The company has reasonable **expectations of acceptance of the business approach** by the targeted person, given that the way in which the company uses the personal data is proportionate to the intended purpose, it has a minimal impact on the privacy of the user and the latter would not be surprised, or would not object, to the use of their professional data for a *business-to-business* business approach. In addition, the company ensures before establishing contact that there is a relationship of potential interest in the products and services we offer, and/or in the existence of potential synergies that may arise between companies.

Therefore, we understand that the **weighting of interests is sufficiently balanced** given that all commercial relations generated will have been previously identified as potential interests and will be directed towards professionals with positions of responsibility in the companies.

Likely impact

For the development of commercial activity and *business to business* marketing, the company may use the services of database providers, acquiring the internal commitment to obtain written confirmation or guarantee from these providers (or that it is stipulated in their contracting policy), regarding the public availability of all the data they provide, as well as their compliance with the GDPR and other legislation applicable to the processing of personal data.

Therefore, the company expects to **commercially impact only professionals who have voluntarily made their contact details available in publicly accessible sources.**

The software provider the company is currently working with to carry out commercial and marketing activities is [Zymlify](#), an automation, CRM and database curation tool, which ensures the identification of potential matches of interest among professionals and company positions with our product and service offerings.

Therefore, the company expects to commercially impact only professionals belonging to companies that have shown some kind of previous interest in our products and services offer, or can be reasonably understood by the nature of that company, that may be interested in generating a connection with our company.

PART 4.- Measures

However, in order to guarantee the prevalence of people's rights, the company has established an **internal action protocol to generate these commercial approaches in a balanced and responsible manner and to avoid any harm to people's fundamental rights and interests.**

This includes a series of **preventive measures** any potential action that could lead to a harmful result (anticipation protocol) and a series of **corrective measures** any action that could lead to any type of harm (correction protocol).

Anticipation protocol

As a measure to anticipate any potential action that could trigger a harmful outcome in the commercial contact when using personal user data, the following pattern is established within the **company's internal processes:**

- ❑ Check that the legitimate interests route is the most appropriate way to justify the commercial or marketing action we want to take.
- ❑ Understand our responsibility to protect the interests of the person to whom we are making a commercial approach, even if we are approaching another company.
- ❑ Carry out a written legitimate interests assessment, and keep a record of it to ensure that we can justify the reasons for our decision if clarification is needed.
- ❑ Set out the relevant legitimate interests we consider we have as a company.
- ❑ Check that the data processing is necessary, and that there is no less intrusive way to achieve the same result.
- ❑ Conduct an initial balancing of interests test to ensure that the interests of the individual do not override our legitimate interests.
- ❑ Ensure to not have received an explicit indication from the user that they are not interested in the commercial approach.
- ❑ Only use individuals' data in ways that they would reasonably expect.

- ❑ Consider safeguards to reduce the impact of potential harm when making commercial contact.
- ❑ Ensure an opt-out option at all times.
- ❑ Consider not making commercial contact in this way where our assessment of legitimate interests identifies a significant privacy impact.
- ❑ Keep our legitimate interests assessment under review and update it whenever circumstances change.
- ❑ Include information about our legitimate interests in our privacy information, and in all channels where we disclose data use in the legal notice.
- ❑ Request express consent as soon as possible for individuals to expressly validate or override the company's use of their personal data.

Correction protocol

As a measure to correct **any action that has resulted in a harmful outcome in the commercial contact**, or is approaching a harmful outcome even though it has not yet been concluded, the following pattern is established within the company's internal processes:

- ❑ Clearly inform in our legal notice of the use that will be made of personal data, as well as the third parties with whom this data may be shared, to ensure that individuals are well informed at all times and with full transparency of the scope of the use of their personal data.
- ❑ Request express consent as soon as possible for individuals to expressly validate or override the company's use of their personal data.
- ❑ Inform individuals upon request about the source from which their professional personal data has been obtained.
- ❑ To terminate the business relationship as soon as we are expressly informed that the person does not wish to continue the business relationship with our company.

- ❑ Terminate the business relationship if it can be reasonably understood from the person's attitude towards our company that he/she does not wish to continue the business relationship, even if he/she has not expressly communicated this wish. In order to assess this, we will take into account the compilation of common sense indications, as well as the uses and customs of professional relations, taking into account in particular that the person does not respond to our attempts at communication, regardless of the channel used.
- ❑ Remove from all the company's databases the contact of the person who has expressly requested their right to exclusion by any means of communication that is kept open directly with the commercial team (email, telephone call, private chat on social networks, etc.).
- ❑ Remove from all company databases and immediately inform our database providers of those users who inform us that their professional personal data is no longer available in any public source because they requested its removal. In this case, given that the contact was initiated by error, inaccuracy or outdated data of the individuals, the company will apologise to the user, break off the business relationship that was initiated, remove their data from our databases and notify the data providers of this fact so that they can correct this information as well.

PART 5.- Conclusion

FIRST.- That based on the above assessment, and after establishing balancing measures in internal processes to guarantee the prevalence of the interests of individuals, the company understands that the **legitimate interest** put forward to generate commercial or marketing approaches aimed at the heads of other companies **does not infringe the interests of the individuals to whom such approaches are generated.**

SECOND.- That the **reasons** for which it is understood that the interests of the persons concerned have not been infringed are mainly the following:

- The approach is carried out safeguarding the commitments previously described in the **internal protocols** of anticipation and correction.
- The approach is made using personal data as would reasonably be expected and for the sole purpose of **establishing relations between companies.**
- The approach is made on the basis of the predisposition of these individuals to business-to-business contacts due to the **role they occupy in their companies.**
- The approach is made after having identified a prior match that indicates the reasonable existence of an **interest on both sides** in establishing business-to-business contact.
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