**BALANCING TEST: THE DATA CONTROLLER’S LEGITIMATE INTERESTS AS A LEGAL BASIS FOR PROCESSING PERSONAL DATA**

The EU’s General Data Protection Regulation (GDPR, EU 2016/679)

*The lawful basis for processing personal data may be the legitimate interests of the data controller or a third party. If you choose to rely on legitimate interests, you are taking on extra responsibility for considering and protecting the rights and freedoms of the individuals whose data you are processing. Interests are more likely to be legitimate when there is a relevant and appropriate relationship between the data controller and the individuals who can be, for example, customers, students or employees. The data controller must carry out a balancing test to ensure that individuals’ rights and interests do not override the data controller’s legitimate interests to process their data.*

*The balancing test is documented by filling out this form. Please complete all the sections.*

**Description of processing**

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| **List the categories and types of personal data that you will process** |  |
| **Purpose/purposes of processing personal data** |  |
| **Where will personal data be stored (system/records)? Who will process personal data?** Provide the name or other identifier of a possible research project. |  |
| **Other information** (for example, will you be processing personal data relating to children?) |  |

**Balancing test**

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| **1. Is legitimate interests the most appropriate basis for processing personal data? If yes, please specify (or describe why the appropriate legal basis is not, for example, contract or consent).**  If yes, go to section 2. |  |
| **2. Are all the basic requirements met for the data controller’s interests to be considered legitimate? Demonstrate compliance with the following basic requirements:**   * The interest must be legal (in compliance with EU or national law). * The interest must be clearly stated so that its balance with the data subjects’ rights and interests can be assessed. * The interest must represent a genuine and direct need; it cannot be speculative.   If all the requirements are met, go to section 3. |  |
| **3. Could the same result be achieved in a way that is less intrusive?**  If this is not possible, go to section 4. |  |
| **4. Assess the impact of processing[[1]](#footnote-1)**  **A. Answer the following questions to determine whether the interests of a data controller or a third party override data subjects’ rights and interests:**   * Describe the interests of the data controller or a third party. * What benefit would the processing of personal data provide? * What harm could come from not processing the personal data?   **B. Assess the impact of processing on data subjects:**   * Describe the nature of the personal data to be processed. * How would personal data be processed (such as large-scale processing, aggregation, data mining, profiling, publication)? * How would the processing activities impact data subjects? * Could data subjects reasonably expect this type of processing to take place? * Would it be likely that data subjects would object to the processing or at least find it questionable?   **C. Assess the position of data subjects:**   * What is the relationship between the data controller and data subjects? * Are you planning to process children’s personal data? * Are data subjects in an otherwise vulnerable position?   If the rights and interests of data subjects do not outweigh the data controller’s legitimate interests, go to section 5. |  |
| **5. Additional safeguards**  The result of the balancing test depend on an overall assessment: the greater the impact of processing on data subjects, the more safeguards must be put in place to protect data. The safeguards must significantly and reliably reduce any risks or potentially negative impacts of processing.  **What safeguards have been and/or will be put in place to mitigate risks?** Possible additional safeguards include:   * technical and organisational measures that ensure data will not be used to make decisions concerning data subjects or for other purposes (functional separation); * anonymisation or pseudonymisation; * the encryption of personal data. |  |
| **6. Informing data subjects of processing and their right to object Assess whether the following requirements are met[[2]](#footnote-2):**  A. Data subjects have been informed of their right to object to the processing of their personal data no later when they are contacted for the first time.  B. Information about the right to object was presented clearly and separately from other communications.  C. Data subjects are able to opt of receiving direct marketing.  D. If necessary, it is possible to determine whether there is a compelling and justified reason for processing personal data, which overrides the rights and interests of data subjects or is necessary for the establishment, exercise or defence of legal claims. |  |

**Overall assessment**

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| Based on the balancing test, legitimate interests [can be used/cannot be used] as the lawful basis for processing the types of personal data referred to above. |

Place:   
Date:  
Person who conducted the balancing test:

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Signature of the person who conducted the balancing test

Place:   
Date:  
Data protection officer:

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Signature of the data protection officer

1. SECTION 4. CONSIDER THE FOLLOWING POINTS WHEN YOU CONDUCT THE ASSESSMENT: As set out in the GDPR and the instructions provided by data protection authorities, a data controller’s interests may be considered legitimate if the processing of personal data is necessary for exercising a fundamental right. In addition, the processing must be a proportionate means of achieving a legitimate aim. Interests may also be considered legitimate if processing almost falls under a different condition (such as the “contract” condition). It also makes a difference whether EU or national legislation or other regulations acknowledge the data controller's legitimate interests to process personal data.

   When you are assessing the impacts of processing on data subjects, you must consider both concrete and potential impacts, such as any future decision, actions or circumstances where processing may lead to discrimination against an individual as well as the risk of causing distress or upset. It is also important to consider the likelihood and severity of the impact on the rights and freedoms of data subjects.

   The data protection authorities have emphasised that the compensating controls or measures that can be put in place to protect data (such as assessing the balance between lawful data access and privacy, openness and transparency) support the use of legitimate interests as the legal basis for processing. If there may be an imbalance between the interests of the data controller and data subjects, the situation must be carefully assessed and any further measures that could be taken to reduce any potentially negative impacts of processing must be identified. [↑](#footnote-ref-1)
2. SECTION 6. CONSIDER THE FOLLOWING POINTS WHEN YOU CONDUCT THE ASSESSMENT: When the processing of personal data is based on public or legitimate interests, data subjects have the right to object to the processing of their data at any time. Data subjects must be informed of this right no later than when they are contacted for the first time. The information must be presented clearly and separately from other communications.

   If data subjects object to the processing of their data, the necessity of processing must be re-evaluated. As a rule, their personal data can no longer be processed unless:

   * you are able to demonstrate that there is a compelling and justified reason for the processing, which overrides the rights and interests of data subjects (such as a task in the public interest that requires scientific or historical research or the compilation of statistics); or
   * the processing is necessary for the establishment, exercise or defence of legal claims.

   Personal data may not be used for direct marketing purposes after an objection has been filed. [↑](#footnote-ref-2)