

Overview

A Guide for Binding Corporate Rules

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A Guide for Binding Corporate Rules

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Binding Corporate Rules (“BCRs”) are a data transfer mechanism under the GDPR. They are legally binding and enforceable internal policies, such as a code of conduct, approved by regulators.

BCRs are available in two forms, BCRs for data controllers and BCRs for data processors. BCRs for data processors replace Controller-to-Processor Standard Contractual Clauses in agreements with customers who act as data controllers.

BCRs go beyond facilitating data transfers to non-adequate third countries. They form the structure of a company's global privacy compliance program.

A. What are the benefits of BCRs?

The adoption of BCRs have a wide range of benefits for global organizations including:

- Harmonization of the data protection requirements within a group of companies;
- Long-term cost efficiencies by eliminating negotiation of other data transfer mechanisms;
- Enhanced transparency within the group with respect to dealing with government access requests;
- Competitive advantage in the market for companies that adopt BCRs.

For the most part, the requirements of BCRs overlap with the principles of the GDPR. Therefore, an organization may leverage its GDPR compliance program to implement BCRs.

B. How are BCRs approved?

A company's BCR application is reviewed and approved by EU data protection authorities.

The review process is managed by one EU data protection authority (“Lead Authority”) that coordinates the review on behalf of the other concerned data protection authorities under the GDPR's consistency mechanism. The Lead Authority will review the BCR file of the applicant entity and distribute the file to one or two other data protection authorities that will act as co-reviewers. If there are comments, the Lead Authority will send the comments to the applicant and request revisions to the file.

After the BCR file has been finalized between the Lead Authority and the applicant entity, the Lead Authority will submit the file to the European Data Protection Board (EDPB) for an opinion and will subsequently approve the BCRs if the opinion of the EDPB is positive.

After the GDPR became applicable (May 25, 2018) and the EDPB was established, BCR approvals are published in the EDPB's [“Register of Approved Binding Corporate Rules”](#).

BCRs approved prior to that date are available on the website of the [European Commission](#).

C. Identify the Lead Authority

The initial stage of applying for BCRs involves the identification of the Lead Authority that will be in charge of reviewing the BCR application and coordinating the approval process with other regulators.

The Lead Authority should be selected based on various factors, including:

- Where the group's EU headquarters are located, if any;
- Which entity within the group has delegated data protection responsibilities;
- Which entity is best placed to deal with the application and enforcement of BCRs;

- In which EU Member State most decisions are made regarding purposes and means of processing data; and
- In which EU Member State most transfers are likely to originate.

Post-Brexit, the UK's Information Commissioner's Office (ICO) no longer can be a Lead Authority for BCRs.

D. How to designate an applicant entity?

To apply for BCRs, it will be necessary to identify an entity of the group that is based within the EU and can be the applicant entity.

Typically, the applicant entity can be the group's EU headquarters or, if there are no EU headquarters, the applicant entity can be the entity which is best placed to take on data protection responsibilities.

E. How are BCRs drafted?

BCRs must be drafted using a unique set of documents issued by the European Data Protection Board ("EDPB"). The core BCRs documents are:

- The BCR policy document;
- The BCRs application form; and
- The document demonstrating how BCRs are made binding within the group (e.g., intra-group agreement), including a list of entities bound by the BCRs.

The BCR policy document demonstrates the group's commitment to adopt and implement BCRs within the group. Among others, the BCR policy sets the scope of the BCRs, describes the group structure and the main principles that the group follows with respect to data protection matters, along with a description of the company's data protection oversight, training program, complaints handling procedure, audit program, liability regime and commitment regarding how to handle requests by law enforcement authorities.

The BCR application form should be submitted to regulators for approval with the BCR policy document, the intra-group agreement or similar binding document, and other supporting documentation (e.g., privacy notices, internal governance policies, template data processing agreements).

All contents of the BCRs file should be tailored to the particular corporate group.

F. Are BCRs publicly available?

Yes. A public-facing version of a group's approved BCRs should be available on the company's website.

G. Are BCRs recognized by the GDPR?

Yes. [GDPR Art. 47](#) explicitly references BCRs as a data transfer mechanism. According to this Article, BCRs are legally binding, confer enforceable rights to data subjects and must include at least the following elements:

- The structure and contact details of the group;
- The details of the data transfers;
- Their legally binding nature, both internally and externally;
- The application of the general data protection principles (such as purpose limitation, data minimization, limited storage periods, privacy by design, transparency, legal basis, data security etc.), and the requirements in respect of onward transfers;
- The rights of data subjects and redress available;
- The acceptance of liability for any breaches of the BCRs;
- How BCRs are communicated to data subjects;

- The tasks of the Data Protection Officer, if any;
- The complaint handling procedures;
- The audit procedures available to verify compliance with the BCRs;
- How to report changes to the BCRs to the supervisory authority;
- How to cooperate with the supervisory authority;
- The mechanisms for reporting to the competent supervisory authority any legal requirements to which a member of the group is subject in a third country which are likely to have a substantial adverse effect on the guarantees provided by the binding corporate rules; and
- The data protection training provided to personnel having access to personal data.

H. What is the impact of *Schrems II* on BCRs?

As of the time of writing, EDPB guidance suggests that the *Schrems II* judgment of the Court of Justice of the EU (CJEU) is relevant for transfers of personal data on the basis of BCRs. The precise impact of the *Schrems II* judgment on BCRs is still under discussion.

The EDPB is evaluating the issue and will provide more details as to whether any additional commitments need to be included in the BCRs documents.

In conclusion, BCRs will need to factor the relevant risks for data transfers following the *Schrems II* judgment, but they continue to have a wide range of benefits for global organizations as described above.

For more information on *Schrems II* issues, see [Cross-Border Data Transfer: Schrems II Update](#).

I. Useful Links

The EDPB has endorsed the following documents on BCRs, previously issued by the Article 29 Working Party. These documents are available at:

- [Working Document Setting Forth a Co-Operation Procedure for the approval of “Binding Corporate Rules” for controllers and processors under the GDPR, WP 263 rev.01](#)
- [Recommendation on the Standard Application for Approval of Controller Binding Corporate Rules for the Transfer of Personal Data, WP 264](#)
- [Recommendation on the Standard Application form for Approval of Processor Binding Corporate Rules for the Transfer of Personal Data, WP 265](#)
- [Working Document setting up a table with the elements and principles to be found in \[Controller\] Binding Corporate Rules, WP 256 rev.01](#)
- [Working Document setting up a table with the elements and principles to be found in Processor Binding Corporate Rules, WP 257 rev.01](#)