



Recommendation 1/2012 on the Standard Application form for Approval of Binding Corporate Rules for the Transfer of Personal Data for Processing Activities

Adopted on 17 September 2012

This Working Party was set up under Article 29 of Directive 95/46/EC. It is an independent European advisory body on data protection and privacy. Its tasks are described in Article 30 of Directive 95/46/EC and Article 15 of Directive 2002/58/EC.

The secretariat is provided by Directorate C (Fundamental Rights and Union Citizenship) of the European Commission, Directorate General Justice, B-1049 Brussels, Belgium, Office No MO-59 02/013.

Website: http://ec.europa.eu/justice/data-protection/index_en.htm

Standard Application for Approval of Binding Corporate Rules for Processors

PART 1: APPLICANT INFORMATION

1. STRUCTURE AND CONTACT DETAILS OF THE GROUP

Name of the Group and location of its headquarters (ultimate parent company):	
Does the Group have its headquarters in the EEA?	
<input type="checkbox"/>	Yes
<input type="checkbox"/>	No

Name and location of the applicant:		
Identification number (if any):		
Legal nature of the applicant (corporation, partnership, etc.):		
Description of position of the applicant within the Group: (e.g. headquarters of the Group in the EEA, or, if the Group does not have its headquarters in the EEA, the member of the Group inside the EEA with delegated data protection responsibilities)		
Name and/or function of contact person (note: the contact person may change, you may indicate a function rather than the name of a specific person):		
Address:		
Country:		
Phone number:	Fax:	E-Mail:

EEA Member States for which approval of the BCR for Processors is sought:

2. SHORT DESCRIPTION OF PROCESSING AND DATA FLOWS

Please, indicate the following:

- Expected nature of the data covered by BCR, and in particular, if they apply to one category of data or to more than one category (for instance human resources, customers,...)

- Anticipated purposes of data transfers for processing activities

- Do the BCR only apply to transfers from the EEA, or do they apply to all transfers for processing activities between members of the Group?

- Please specify from which country most of the data are transferred outside the EEA for processing activities:

- Extent of the transfers within the Group that are covered by the BCR; including a description of any Group members in the EEA or outside EEA to which personal data may be transferred for processing activities

3. DETERMINATION OF THE LEAD DATA PROTECTION AUTHORITY (DPA)

Please explain which should be the lead DPA, based on the following criteria:

- Location of the Group's EEA headquarters

- If the Group is not headquartered in the EEA, the location in the EEA of the Group entity with delegated data protection responsibilities

- The location of the company which is best placed (in terms of management function, administrative burden, etc.) to deal with the application and to enforce the binding corporate rules in the Group

- EEA Member States from which most of the transfers outside the EEA will take place

PART 2: BACKGROUND PAPER¹

4. BINDING NATURE OF THE BINDING CORPORATE RULES (BCR) FOR PROCESSORS

INTERNAL BINDING NATURE²

Binding within the entities of the Group acting as internal subprocessors³

How are the BCR for processors made binding upon the members of the Group?

- Measures or rules that are legally binding on all members of the Group
- Contracts between the members of the Group⁴
- Unilateral declarations or undertakings made or given by the parent company which are binding on the other members of the Group
- Incorporation of other regulatory measures (e.g. obligations contained in statutory codes within a defined legal framework)
- Incorporation of the BCR within the general business principles of a Group backed by appropriate policies, audits and sanctions
- Other (please specify)

Please explain how the mechanisms you indicated above are legally binding on the members of the Group in the sense that they can be enforced by other members of the Group (esp. headquarters):

Does the internally binding effect of your BCR for Processors extend to the whole Group? (If some Group members should be exempted, specify how and why?)

Please confirm that any use of subprocessors (internal) is only done after prior information to data controllers and with their prior written consent

¹ Working Document Transfers of personal data to third countries: Applying Article 26(2) of the EU Data Protection Directive to Binding Corporate Rules for International Data Transfers. Adopted on June 3, 2003.

² See Section 1.2 WP195

³ See Section 1.2 (i) WP195

⁴ See also footnote 11

Binding upon the employees⁵

Your Group may take some or all of the following steps to ensure that the BCR for Processors are binding on employees, but there may be other steps. Please, give details below.

- Work employment contract

- Collective agreements (approved by workers committee/another body)

- Employees must sign or attest to have read the BCR for Processors or related ethics guidelines in which the BCR for Processors are incorporated

- BCR for Processors have been incorporated in relevant company policies

- Disciplinary sanctions for failing to comply with relevant company policies, including dismissal for violation

Please provide a summary supported by extracts from policies and procedures or confidentiality agreements as appropriate to explain how the BCR for Processors are binding upon employees.

⁵ See Section 1.2 (ii) WP195

EXTERNALLY BINDING NATURE

Binding upon external subprocessors processing the data

Please confirm that written agreement are concluded with external subprocessors which state that adequate protection is provided according to Articles 16, 17, 25 and 26 of the Directive 95/46/EC and which ensure that the external subprocessors will have to respect the same obligations as are imposed on the Group members according to the Service Agreements concluded with the data controllers and Sections 1.3, 1.4, 3 and 6 of WP195⁶.

How do such contracts address the consequences of non compliance? Please specify the sanctions imposed on subprocessors for failure to comply

Please confirm that any use of subprocessors (external) is only done after prior information to data controllers and with their prior written consent⁷

Please confirm that subprocessors accept to submit their data processing facilities for audit, at the request of a data controller, of the processing activities relating to that controller⁸. Please describe the system.

How are the rules binding externally for the benefit of individuals (third party beneficiary rights) or how do you intend to create such rights? For example you might have created some third party beneficiary rights in contracts or unilateral declarations⁹.

Please provide a summary supported by extracts from the agreement signed with data controllers as appropriate to explain how the BCR for Processors are made binding towards data controllers¹⁰

Please confirm that data controllers' rights shall cover the judicial remedies and the right to receive compensation

⁶ See Section 6.1 (vii) WP195

⁷ See Section 6.1 (vi) WP195

⁸ See Section 2.3 WP195

⁹ You must be fully aware of the fact that according to civil law of some jurisdictions (e.g. Italy or Spain) unilateral declarations or unilateral undertakings do not have a binding effect. In the lack of a specific legislative provision on bindingness of such declarations, only a contract with third party beneficiary clauses between the members of the Group may give proof of bindingness.

¹⁰ See Section 1.4 WP195

Legal claim or actions

Explain how you meet the obligations according to the requirement of paragraph 1.3 of WP195¹¹

Please confirm that the EEA headquarters of the Group, the Group member of the Processor with delegated data protection responsibilities in the EEA or the EEA exporter processor (e.g., the EEA contracting party with the controller), has made appropriate arrangements to enable itself to remedy the acts and to pay compensation, for any damages suffered either by a data subject or a data controller, resulting from the breach, by any member of the Group or by any external subprocessor, of the BCR for Processors and explain how this is ensured. If no member of the Group is established in the EEA, please confirm that the headquarters of the Group will take this liability.

Please confirm that the burden of proof with regard to an alleged breach of the rules caused either by a Group member or by an external subprocessor will rest with the member of the Group that have accepted to endorse liability for breaches caused by non EEA members of the group or by subprocessors, regardless of where the claim originates.

Easy access to BCR for Processors¹²

Please confirm that your BCR for Processors are annexed to the Service Agreements signed with data controllers, or that reference to it is made with a possibility of electronic access:

Please confirm that your BCR for Processors are published on the website of the Group of processor in a way easily accessible to data subjects, or at least that a document is published and contains all the information as required in Section 1.8 of WP195:

¹¹ 1.3 WP195: “*The BCR must grant rights to data subjects to enforce the BCR as third-party beneficiaries in case the data subject is not able to bring a claim against the data controller because the data controller has factually disappeared or ceased to exist in law or has become insolvent, unless any successor entity has assumed the entire legal obligations of the data controller by contract or by operation of law, in which case the data subject can enforce its rights against such entity. (...)*

Data subjects shall be entitled to lodge a complaint before the DPA or Courts competent for the EEA Controller. If this is not possible for the reasons stated above, the data subject may take action before the DPA or the court competent for the EEA entity of the processor at the origin of the transfer or the EEA headquarters of the Processor, the EEA Member with delegated data protection responsibilities of the Processor. If those situations are not applicable, the data subjects shall be entitled to lodge a complaint to the court of his place of residence. If more favourable solutions for the data subject exist according to national law, then they would be applicable.”EEAEEA

¹² See Section 1.8 WP195

5. EFFECTIVENESS¹³

It is important to show how the BCR for Processors in place within your Group are brought to life in practise, in particular in non EEA countries where data will be transferred for processing activities on the basis of the BCR for Processors, as this will be significant in assessing the adequacy of the safeguards.

Training and awareness raising (employees)

- Special training programs

- Employees are tested on BCR for Processors and data protection

- BCR for Processors are communicated to all employees on paper or online

- Review and approval by senior officers of the company

- How are employees trained to identify the data protection implications of their work, i.e. to identify that the relevant privacy policies are applicable to their activities and to react accordingly? (This applies whether these employees are or not based in the EEA)

Internal complaint handling¹⁴

Do the BCR for Processors contain an internal complaint handling system to (i) communicate claims or requests without delay to data controllers, and to (ii) handle complaints instead of a data controller when the latter has disappeared factually, has ceased to exist in law or became insolvent, or when it has been agreed with a data controller that the Group will handle claims and requests from data subjects?

Please describe the system for handling complaints:

¹³ See Section 2 WP195

¹⁴ See Section 2.2 WP195

Verification of compliance¹⁵

What verification mechanisms do your Group have in place to audit each Group members' compliance with your BCR for Processors? (e.g., an audit programme, compliance programme, etc)? Please specify:

Please explain how your verification or compliance programme functions within the Group (e.g., information as to the recipients of any audit reports and their position within the structure of the Group).

Do the BCR for Processors provide for the use of:

- | | |
|---|-------------------------|
| - Data Protection Officer? | Choose by clicking here |
| - internal auditors? | Choose by clicking here |
| - external auditors? | Choose by clicking here |
| - a combination of both internal and external auditors? | Choose by clicking here |
| - verification by an internal compliance department? | Choose by clicking here |

Do your BCR for Processors mention if the verification mechanisms are clearly set out in...

- | | |
|--|-------------------------|
| - a document containing your data protection standards | Choose by clicking here |
| - other internal procedure documents and audits? | Choose by clicking here |

Network of privacy officers¹⁶

Please confirm that appropriate staff (such as a network of privacy officers) is appointed with top management support to oversee and ensure compliance with the BCR for Processors:

Please explain how your network of privacy officers functions:

- Internal structure:

- Role and responsibilities:

¹⁵ See Section 2.3 WP195

¹⁶ See Section 2.4 WP195

6. COOPERATION WITH DPAs¹⁷

Please, specify how your BCR for Processors deal with the issues of cooperation with DPAs:

Do you confirm that you will permit the DPAs competent for the relevant data controllers to audit your compliance?

Do you confirm that the Group as a whole and each members of the Group will abide by the advice of the competent authorities relating to the interpretation and the application of your BCR for Processors?

7. COOPERATION WITH DATA CONTROLLERS¹⁸

Please specify how your BCR for Processors deal with the duty of cooperation with data controllers?

Do you confirm that you will submit your data processing facilities to data controller (or to an inspection body composed of independent members, selected by the data controller) which requested it for audits of the processing activities relating to them?

¹⁷ See Section 3.1 WP195

¹⁸ See Section 3.2 WP195

8. DESCRIPTION OF PROCESSING AND DATA FLOWS¹⁹

Please indicate the following:

- Expected nature of the data covered by the BCR for Processors, e.g. HR data, and in particular, if they apply to one category of data or to more than one category

- What is the nature of the personal data being transferred for processing activities?

- In broad terms what is the extent of the flow of data?

- Purposes for which the data covered by the BCR for Processors are transferred to third countries

- Extent of the transfers within the Group that are covered by the BCR for Processors, including a description of any Group members in the EEA or outside the EEA to which personal data may be transferred for processing activities

Do the BCR only apply to transfers for processing activities from the EEA, or do they apply to all transfers for processing activities between members of the Group? Please specify:

8. MECHANISMS FOR REPORTING AND RECORDING CHANGES²⁰

¹⁹ See Section 4.1 WP195

²⁰ See Section 5.1 WP195

Explain how your BCR for Processors allow for informing other parts of the Group, the relevant Data Protection Authorities and data controllers of any significant changes to the BCR for Processors that would in principle have an effect on the authorisation (summary):

Please confirm that you have put in place a system to record any changes to your BCR for Processors.

Please confirm that where a change affects the processing conditions, data controllers are informed in a timely fashion that data controllers have the possibility to object to the changes or terminate the contract before the modification is made

9. DATA PROTECTION SAFEGUARDS²¹

Please, specify with reference to your BCR for Processors how and where the following issues are addressed with supporting documentation where appropriate:

- Transparency and fairness to data subjects (e.g., general duty to help and assist the controller)

- Purpose limitation (e.g., duty to process personal data only on behalf of data controllers and in compliance with their instructions and to return the data to the data controller at the end of the contract)

- Ensuring data quality (e.g., general duty to help and assist the controller)

- Security and information to data controllers about any security breach

- Individual's rights of access, rectification, objection to processing (e.g., general duty to help and assist the controller)

- Subprocessing within the Group

- Restrictions on onward transfers to external subprocessors

- Other (e.g. protection of children, etc.)

²¹ See Section 6 of WP195



ANNEX 1:
COPY OF THE FORMAL BINDING CORPORATE RULES
FOR PROCESSORS

Please attach a copy of your BCR for Processors. Note that this does not include any ancillary documentation that you would like to submit (e.g. specific privacy policies and rules).