ARTICLE 29 DATA PROTECTION WORKING PARTY

Recommendation on the Standard Application form for Approval of Processor Binding Corporate Rules for the Transfer of Personal Data

Adopted on 11 April 2018

Standard Application for Approval of Binding Corporate Rules for Processors

PART 1: APPLICANT INFORMATION

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1. STRUCTURE AND CONTACT DETAILS OF THE GROUP OF UNDERTAKINGS OR GROUP OF ENTERPRISES ENGAGED IN A JOINT ECONOMIC ACTIVITY (THE GROUP)

Name of the Group and location of its headquarters (ultimate parent company):

Does the Group have its headquarters in the EEA?

☐ Yes

☐ 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 from which BCRs for Processors will be used:

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, types of data subjects concerned, (for instance human resources, customers, …), anticipated types of processing and its purposes

- 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 and contact details 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 SUPERVISORY AUTHORITY (BCR LEAD)

Please explain which should be the BCR Lead, 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 PAPER[1]

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

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INTERNAL BINDING NATURE[2]

Binding within the entities of the Group acting as internal subprocessors[3]

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 or intra-group agreements between the members of the Group
- [ ] Unilateral declarations or undertakings made or given by the parent company which are binding on the other members of the Group (that is only possible if the BCR member taking responsibility and liability is located in a Member State that recognizes Unilateral declarations or undertakings as binding and if this BCR member is legally able to bind the other members subject to BCRs);
- [ ] Other means (only if the Group demonstrates how the binding character of the BCRs is achieved), 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

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[1] Working Document setting up a table with the elements and principles to be found in Processor Binding Corporate Rules, WP257, adopted on 6 February 2018.
[2] See Section 1.1 and 1.2 WP 257
[3] See Section 1.2 (i) WP 257

Binding upon the employees[4]

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.

-Individual and separate agreement/undertaking with sanctions

- Work employment contract with sanctions

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

- 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 with sanctions

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

- Other means (but the group must properly explain how the BCRs are made binding on employees)

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.

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[4] See Section 1.2 (ii) WP257

EXTERNALLY BINDING NATURE

Binding upon external subprocessors processing the data

Please confirm that a written contract or other legal act under Union or Member State law is put in place with external subprocessors which states that adequate protection is provided according to Articles 28, 29, 32, 45, 46, 47 of the GDPR and which ensures that the external subprocessors will have to respect the same data protection obligations as are imposed on the Group members according to the Service Agreements concluded with data controllers and Sections 1.3, 1.4, 3 and 6 of WP257[5].

How do such contracts or other legal acts under Union or Member State law 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 informed specific or general written authorization of the data controller[6]

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 controller[7]. 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 declarations[8].

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 controllers[9]

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

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[5]   See Section 6.1 (vii) WP257
[6]   See Section 6.1 (vii) WP257
[7]   See Section 2.3 WP 257
[8]   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 absence 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.
[9]   See Section 1.4 WP 257

Legal claim or actions

Explain how you meet the obligations according to the requirements of Article 47.2.e, 77, 79, 82, as further specified in paragraph 1.3 of WP257[10]

Please confirm that the controller established on the territory of a Member State (e.g. 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.

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 in the EU 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 Processors[11]

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 WP257:

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[10]   1.3 WP 257 provides that the BCRs must grant rights to data subjects to enforce BCRs as third party beneficiaries against the processor either when the requirements at stake are specifically directed to processors in accordance with the GDPR or 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 of by operation of law, in which case the data subject can enforce its rights against such entity.

[11]   See Section 1.8 WP257

5. EFFECTIVENESS[12]

It is important to show how the BCR for Processors in place within your Group are brought to life in practice, 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)[13]

- 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 handling[14]

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:

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[12]   See Section 2 WP257
[13]   See Section 2.1 WP257
[14]   See Section 2.2 WP257

Verification of compliance[15]

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 data protection officers (DPO) or appropriate staff[16]

Please confirm that a network of DPOs or 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 DPOs or privacy officers functions:

- Internal structure:

- Role and responsibilities:

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[15]   See Section 2.3 WP 257
[16] See Section 2.4 WP 257

6. COOPERATION WITH SAs[17]

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

Do you confirm that you will permit the relevant SAs 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 relevant Supervisory authorities relating to the interpretation and the application of your BCR for Processors?

7. COOPERATION WITH DATA CONTROLLERS[18]

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?

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[17] See Section 3.1 WP257
[18] See Section 3.2 WP 257

8. DESCRIPTION OF PROCESSING AND DATA FLOWS[19]

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 and type of processing

- Extent of the transfers within the Group that are covered by the BCR for Processors, including a description and contact details 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 CHANGES[20]

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[19]   See Section 4.1 WP257

[20]   See Section 5.1 WP257

Please confirm and explain how your BCR for Processors allow for informing other parts of the Group, the concerned Supervisory Authorities via the competent SA under Article 64 (i.e. the BCR Lead) and data controllers of any changes to the BCR for Processors and/or the list of BCR members (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 SAFEGUARDS[21]

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

- Transparency, fairness and lawfulness (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)

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

- Security

- Data subjects' rights (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.)

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[21] See Section 6 of WP257

10. ACCOUNTABILITY AND OTHER TOOLS[22]

-Please confirm and specify how BCR members will make available to the controller all information necessary to demonstrate compliance with their obligations as provided by Article 28-3-h (including through audits, and information of the controller if an instruction infringes the GDPR or other Union or Member State data protection provisions)

-Please confirm that the BCR members will maintain a record of all categories of processing activities carried out on behalf of each controller as provided by Article 30-2 GDPR

-Please specify how BCR members will assist the controller in implementing appropriate technical and organisational measures to comply with data protection principles and facilitate compliance with requirements set out by BCRs in practice (e.g. data protection by design, data protection by default)

Please provide supporting documents where appropriate with respect to the information requested above

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[22] See Section 6.1.2 WP257

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).