



International Chamber of Commerce
The world business organization

Department of Policy and Business Practices

Commission on E-Business, IT & Telecoms

Task Force on Privacy and Protection of Personal Data

Standard Application for Approval of Binding Corporate Rules for the Transfer of Personal Data outside the EU (to be used in all EU Member States)

Introduction and Instructions

The EU Data Protection Directive 95/46/EC allows personal data to be transferred outside the EU only when the transfer provides an “adequate level of protection” for the data. Binding corporate rules (BCRs) are one of the ways in which such an “adequate level of protection” may be demonstrated.

The use of BCRs to provide a legal basis for international data transfers from the EU requires the approval of the European data protection authorities (DPAs) from whose countries the data are to be transferred. The following form is to be filled out by a group of companies seeking approval of BCRs. The form is based on papers issued by the Article 29 Working Party of European data protection authorities (the “Working Party”). It is being submitted to the Working Party in the hope that it will prove useful in furthering acceptance of BCRs as a legal basis for the transfer of personal data outside the EU.

General Instructions

- Only a single copy of the form need be filled out and submitted; this form may be used in all EU Member States.
- Please fill out all entries and submit the form to the lead DPA as determined below.
- You may attach additional pages or annexes if there is insufficient space to complete your responses.
- Please indicate any responses or materials that may be commercially sensitive and should be kept confidential.
- The footnotes indicate the relevant provisions of the Working Party papers WP 74 and WP 108, which contain further clarification of the questions.
- The form may be filled out based on the common criteria for approval identified in the Working Party papers.
- Once you have submitted the form, the lead DPA will contact other DPAs from whom you are seeking approval, and will get back to you with any questions or requests for further information.

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Section 1: Contact Details of the Applicant and of the Group of Companies

- The “Group of companies” which applies for approval of BCRs is a group of commercial entities which stand in an ownership relationship to each other and share a common system of governance. The term is to be interpreted flexibly, and it is not necessary that all entities in the Group be 100% owned by a common parent, as long as there is a common parent entity which can exercise authority over all entities in the Group and ensure compliance with the BCRs.
- If the Group has its headquarters in the EU the form should be filled out and submitted by that EU entity.
- If the Group has its headquarters outside the EU, then the Group should appoint a Group entity located inside the EU as the Group member with “delegated data protection responsibilities”, which should be established in the country of the lead DPA. This is the entity which should then submit the application on behalf of the Group. It will also remain responsible for seeing that non-EU members of the Group comply with the BCRs.
- In Section 1 the applicant should also give a brief description of the scope of the data flows from the EU for which approval is sought.

Section 2: Contact Details of the Responsible Party for Queries

- Please indicate a responsible party to whom queries may be addressed concerning the application.
- This party need not be located in the EU.
- You may indicate a function rather than a specific person.

Section 3: Determination of the Lead Data Protection Authority

- The lead DPA is the authority to which you submit the application, and that will be in charge of coordinating approval of it by other DPAs from countries from which your Group also transfers personal data.
- You should examine the factors listed and explain based on them which DPA should be the lead DPA. The DPAs are not obligated to accept the choice that you make if they believe that another DPA is more suitable to be lead DPA.

Section 4: Binding Nature of the Binding Corporate Rules

- In order for the BCRs to be approved for the transfer of personal data, they must be shown to have legally binding effect both internally (between the Group entities, and on employees and subcontractors) and externally (for the benefit of individuals whose personal data is processed by the Group). These questions elicit the information necessary to determine if your BCRs have such binding effect.
- Regulators in some sectors (such as the financial services industry) may prohibit an entity of the Group in one country from assuming liability for another Group entity in another country. If this is the case for your application, please provide details about this situation in the subsection “Legal claims or actions” and explain any other mechanisms your Group has implemented to ensure that an aggrieved individual can obtain recourse against the Group.



Section 5: Verification of Compliance

- Verification of compliance may be demonstrated by a variety of mechanisms typically implemented by companies, such as a regular audit programme, corporate governance activities, compliance departments, etc. Please respond to the questions based on the verification mechanisms used in your Group.

Section 6: Description of Processing and Data Flows

- In order for the DPAs to approve your application, it is essential that you describe data flows within your Group in a complete yet understandable fashion.

Section 7: Data Protection Safeguards

- In this Section please provide details of how your BCRs address the core data protection safeguards that are necessary to provide an adequate level of protection for the data that are transferred.

Section 8: Mechanisms for Reporting and Recording Changes

- Both the lead DPAs and the Group entities must be informed about any changes to the BCRs. This obligation applies only to changes that significantly affect data protection compliance, and not to mere administrative changes (unless they impact the BCRs). In this section, please describe the mechanisms your Group has implemented for reporting and recording such changes.
- The obligation to report changes applies only to the text of the BCRs themselves, and not to any supporting documentation, unless a change to such documentation would significantly affect compliance with the BCRs.

Annex 1: Copy of the Formal Binding Corporate Rules

- Please attach a copy of your BCRs.
- You do not need to attach any ancillary documentation, this may be submitted separately.



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Standard Application for Approval of Binding Corporate Rules

PART 1: APPLICANT INFORMATION

1. STRUCTURE AND CONTACT DETAILS OF THE GROUP

Does the Group have its headquarters in the EU?

- ☐ Yes
☐ No

If the answer to the above question is "No", then please name the member of the Group inside the EU with delegated data protection responsibilities:

Please give the contact details of the applicant, which is either the headquarters of the Group in the EU, or, if the Group does not have its headquarters in the EU, the member of the Group inside the EU with delegated data protection responsibilities as set forth above

Name of the applicant:

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:

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Legal nature of the applicant (corporation, partnership, etc.):

Registration number (if any):

EU Member States for which approval of the BCRs is sought:

Nature of the international data transfers for which approval is sought:



2. DETERMINATION OF THE LEAD DATA PROTECTION AUTHORITY (DPA)¹

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

- Location of the Group's European Headquarters
- If the Group is not headquartered in the EU, the location in the EU of the Group entity with delegated data protection responsibilities
- Country where most of the decisions in terms of the purposes and the means of the data processing are taken
- EU Member States from which most of the transfers outside the EEA will take place
- Third countries to which data are transferred

¹ See Section 4.1.1.2 WP108. The Data Protection Authority to which you send your application will exercise its discretion in deciding whether it is in fact the most appropriate Data Protection Authority to take the lead. In any event, the Data Protection Authorities may decide among themselves to allocate the application to a Data Protection Authority other than the one to which you applied.



PART 2: BACKGROUND PAPER²

3. BINDING NATURE OF THE BINDING CORPORATE RULES (BCRs)

INTERNAL BINDING NATURE³

Binding within the entities of the Group⁴

How are the BCRs made binding upon the members of the Group?

- ☐ Measures or rules that are legally binding on all 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
- ☐ Incorporation of other regulatory measures (e.g. obligations contained in statutory codes within a defined legal framework)
- ☐ Incorporation of the BCRs 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:

² 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.

³ See Section 3.3.1. WP74 and Section 5 WP108

⁴ See Section 5.3 WP108



Binding upon the employees⁵

Please indicate if the following steps have been taken with regard to the BCRs:

	Y	N
- Employees must sign or attest to have read the BCRs or related ethics guidelines in which the BCRs are incorporated	<input type="checkbox"/>	<input type="checkbox"/>
- Employees are tested on BCRs and data protection	<input type="checkbox"/>	<input type="checkbox"/>
- Disciplinary sanctions, including dismissal, for violations	<input type="checkbox"/>	<input type="checkbox"/>
- BCRs are communicated to all employees on paper or on line	<input type="checkbox"/>	<input type="checkbox"/>
- Review and approval by senior officers of the company	<input type="checkbox"/>	<input type="checkbox"/>
- BCRs have been incorporated in relevant company policies	<input type="checkbox"/>	<input type="checkbox"/>

Do you also have any of the following additional measures in place? If so, please explain

- ☐ Special training programmes
- ☐ Senior staff commitment
- ☐ Other:.....

Please specify what sanctions are imposed on employees for failure to comply with the BCRs:

⁵ See Section 5.8 WP108



Binding upon subcontractors processing the data⁶

Have you taken steps to require subcontractors to apply protections to the processing of personal data (e.g., through the use obligations in your contracts with them) ? If yes, please specify such steps:

How do such contracts address the consequences of non compliance?

Please specify the sanctions imposed on subcontractors for failure to comply

⁶ See Section 5.10 WP108



EXTERNALLY BINDING NATURE⁷

Internal complaint handling⁸

	Y	N
Do the BCRs contain an internal complaint handling system to enforce compliance?	<input type="checkbox"/>	<input type="checkbox"/>

Please describe the system for handling complaints:

Please confirm that the European headquarters of the Group, or that part of the Group with delegated data protection responsibilities in the European Union, has made appropriate arrangements to enable payment of compensation for any damages resulting from the breach, by any part of the Group, of the BCRs.

⁷ See Section 3.3.2 WP74 and Section 5.12 WP108

⁸ See Section 5.3 WP74



Legal claims or actions⁹

Do the BCRs allow individuals to bring claims either in court or before a DPA either in the country of the origin of the transfer, or at the EU headquarters of the European member of the Group with designated data protection responsibilities?

Y N
☐ ☐

If your answer is “no”, please explain:

Please explain how this is accomplished:

⁹ See Sections 5.5 and 5.6 WP74



4. VERIFICATION OF COMPLIANCE¹⁰

What verification mechanisms are included in your BCRs (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 BCRs provide for the use of:

	Y	N
- internal auditors?	<input type="checkbox"/>	<input type="checkbox"/>
- external auditors?	<input type="checkbox"/>	<input type="checkbox"/>
- a combination of both internal and external auditors?	<input type="checkbox"/>	<input type="checkbox"/>
- verification by an internal compliance department?	<input type="checkbox"/>	<input type="checkbox"/>

Do your BCRs mention if the verification mechanisms are clearly set out in...

	Y	N
- a document containing your data protection standards	<input type="checkbox"/>	<input type="checkbox"/>
- other internal procedure documents and audits?	<input type="checkbox"/>	<input type="checkbox"/>

¹⁰ See Section 5.2 WP74 and Section 6 WP108



5. DESCRIPTION OF PROCESSING AND DATA FLOWS¹¹

Please indicate the following:

- Nature of the data covered by the BCRs, and in particular, if they apply to one category of data or to more than one category
- Purposes for which the data covered by the BCRs are processed
- Extent of the transfers within the Group that are covered by the BCRs, including a description of any Group members in the EU or outside the EU to which personal data may be transferred

Do the BCRs only apply to transfers from the EU, or do they apply to all transfers between members of the Group? Please specify

¹¹ See Section 7 WP108



6. DATA PROTECTION SAFEGUARDS¹²

How do your BCRs address the following? Please specify

- Transparency and fairness to data subjects
- Purpose limitation
- Ensuring data quality
- Security
- Individual's rights of access, rectification, objection to processing
- Restrictions on onward transfers
- Restrictions on marketing
- Enforcement rights and mechanisms
- Audit programmes
- Obligations towards Data Protection Authorities

¹² See Section 9 WP108



7. MECHANISMS FOR REPORTING AND RECORDING CHANGES¹³

Explain how your BCRs allow for informing other parts of the Group and the relevant Data Protection Authorities of any changes to the BCRs:

¹³ See Section 9 WP108



ANNEX 1: **COPY OF THE FORMAL BINDING CORPORATE RULES**

Please attach a copy of your BCRs. Note that this does not include any ancillary documentation that you would like to submit.