

Global Data Privacy and Security Team

Data Transfers At A Glance: Binding Corporate Rules

The EU Data Protection Directive 95/46/EC (the “Directive”) creates the legal framework for the national data protection laws in each EU member state. The Directive states that personal data may only be transferred to countries outside the EU when an adequate level of protection is guaranteed. Few exemptions apply. The most notable exemptions are where explicit consent is obtained from a data subject or in direct business cases with the data subject. The laws of the United States are not considered by the European Union as providing an adequate level of data protection. As a result, if a company intends to transfer personal information into the United States they must take one of the following steps to achieve the “adequacy” status required by the Directive:

- Safe Harbor Certification
- EU Model Contracts for Data Transfer
- Binding Corporate Rules

The following provides background concerning the approved Binding Corporate Rules (“BCR”) procedure. BCR are authority approved privacy rules and standards allowing multinational groups of companies to transfer personal data within their group also to affiliates outside of the EU. For being considered for approval a company’s privacy policy has to demonstrate it ensures an adequate level of data protection and respective safeguards as stipulated by EU law. BCR are an internal tool only and do not allow for any data transfers outside of the corporate group.

5 steps any company has to pass when obtaining BCR approval:

1 Designate the lead EU data protection authority (DPA), i.e. the authority which will be handling the EU co-operation procedure amongst the other European DPAs.

2 Draft and submit individual BCR which meet the required safeguards.

3 Lead authority will start the EU cooperation procedure by circulating the draft BCR to the relevant DPA, i.e. of those countries from where entities of the group transfer personal data to entities located outside of the EU.

4 EU co-operation procedure is closed after the countries under mutual recognition have acknowledged of receipt of the BCR and those which are not under mutual recognition have considered that the BCR provide sufficient safeguards.

At the moment, 21 countries are part of the mutual recognition procedure.¹

5 When the draft BCR have been considered as final by all concerned DPA, the company shall request authorisation of transfers on the basis of the adopted BCR by each national DPA.

¹ Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, France, Germany, Iceland, Ireland, Italy, Latvia, Liechtenstein, Luxembourg, Malta, the Netherlands, Norway, Slovakia, Slovenia, Spain, and the United Kingdom.

For more Information
Contact:

David A. Zetoony

Partner

david.zetoony@bryancave.com

1155 F Street, N.W.

Washington, D.C. 20004

phone: 202 508 6000

Jana Fuchs

Associate

jana.fuchs@bryancave.com

Hanseatic Trade Center

Am Sandtorkai 77

20457 Hamburg, Germany

phone: +49 (0) 40 30 33 16 136