



Autorité de protection des données
Gegevensbeschermingsautoriteit

General Secretariat

Decision n° 02/2021 of 9 February 2021

Subject: Approval decision of the BDO Processor Binding Corporate Rules by the Belgian Data Protection Authority (DOS-2020-06108)

Having regard to Article 47(1) of the EU General Data Protection Regulation 2016/679 (GDPR), the General Secretariat of the Belgian Data Protection Authority ("General Secretariat") shall approve the Processor Binding Corporate Rules ("BCR-P") submitted by BDO Corporation ("BDO") provided that they meet the requirements set out under this Article.

Having regard to Article 20, §1^{er} 8° of the « Loi du 3 décembre 2017 portant création de l'Autorité de protection des données ».

Whereas:

The Information Commissioner's Office (hereafter "ICO") initially reviewed the BCR-P as the competent Authority for the BCRs (BCRs Lead) before the applicant BDO formally requested for the Belgian Data Protection Authority to become its BCRs Lead instead of the ICO. The request was justified according to the WP 263.rev.01, section 1.2 criteria and accepted by all supervisory authorities on June 19th, 2020 in line with the procedure described in section 2.1 of the WP263.rev.01.

In accordance with the cooperation procedure as set out in the Working Document WP263.rev.01, the BCR-P application of BDO were reviewed by the Belgian Data Protection Authority, as the competent Authority for the BCRs (BCR Lead) and by two SAs acting as co-reviewers. The application was also reviewed by the concerned SAs to which the BCRs were communicated as part of the cooperation procedure.

The review concluded that the BCR-P of BDO comply with the requirements set out by Article 47(1) of the GDPR as well as the Working Document WP256.rev.01 and in particular that the aforementioned BCRs:

- a) Are legally binding and contain a clear duty for each participating member of the Group including their employees to respect the BCRs by:
- contractually binding BDO's affiliates vis-à-vis each other to comply with the BCRs through contractual arrangements which include a "joining agreement" and commitment to abide by the BCRs. See "Introduction" of the BCRs
 - including a duty to respect the BCRs in employee's employment contracts. See "Introduction" of the BCRs
 - including the commitment that each Member including their employees shall respect the instructions from the controller regarding the data processing and the security and confidentiality measures as provided in the Service Agreement. See Rule 2B and Rule 4
- b) Expressly confer enforceable third party beneficiary rights to data subjects with regard to the processing of their personal data as part of the BCRs:
- See BCRs, Section C (Third Party Beneficiary Rights)
- c) Fulfil the requirements laid down in Article 47(2)
- a. the structure and contact details of the group of undertakings, or group of enterprises engaged in a joint economic activity and of each of its members:
 - See BCRs, final paragraph of the "Introduction"
 - b. the data transfers or set of transfers, including the categories of personal data, the type of processing and its purposes, the type of data subjects affected and the identification of the third country or countries in question:
 - See BCRs, final paragraph of the "Introduction"
 - c. legally binding nature, both internally and externally:
 - BCRs, "Introduction", Annex 1, 1A and 1B to the Application Form
 - d. the application of the general data protection principles, in particular purpose limitation, data minimisation, limited storage periods, data quality, data protection by design and by default, legal basis for processing, processing of special categories of personal data, measures to ensure data security, and the requirements in respect of onward transfers to bodies not bound by the binding corporate rules:
 - BCRs, Rules 1A; 1B; 2B; 3; 4A; 4B; 4C; 6; 13A
 - e. the rights of data subjects in regard to processing and the means to exercise those rights, including the right not to be subject to decisions based solely on automated processing, including profiling in accordance with Article 22, the right to lodge a complaint with the competent supervisory authority and before the competent courts of the Member States in accordance with Article 79, and to obtain redress and, where appropriate, compensation for a breach of the binding corporate rules:
 - BCRs, Section C; Rule 5
 - Appendix 1
 - f. the acceptance by the controller or processor established on the territory of a Member State of liability for any breaches of the binding corporate rules by any member concerned not established in the Union; the controller or the processor shall be exempt from that liability, in whole or in part, only if it proves that that member is not responsible for the event giving rise to the damage:
 - BCRs, Section C

- g. how the information on the binding corporate rules, in particular on the provisions referred to in points (d), (e) and (f) of this paragraph is provided to the data subjects in addition to Articles 13 and 14:
 - BCRs, "Introduction"; Rule 2; Section C
- h. the tasks of any data protection officer designated in accordance with Article 37 or any other person or entity in charge of the monitoring compliance with the binding corporate rules within the group of undertakings, or group of enterprises engaged in a joint economic activity, as well as monitoring training and complaint-handling:
 - BCRs, Rule 7A
- i. the complaint procedures:
 - BCRs, Section C; Section 2.5; Rule 10
 - Appendix 3 (Complaint Handling Procedure)
- j. the mechanisms within the group of undertakings, or group of enterprises engaged in a joint economic activity for ensuring the verification of compliance with the binding corporate rules. Such mechanisms shall include data protection audits and methods for ensuring corrective actions to protect the rights of the data subject. Results of such verification should be communicated to the person or entity referred to in point (h) and to the board of the controlling undertaking of a group of undertakings, or of the group of enterprises engaged in a joint economic activity, and should be available upon request to the competent supervisory authority:
 - BCRs, Rule 9, 11
 - Appendix 2 (Audit Protocol)
 - Appendix 4 (cooperation procedure)
- k. the mechanisms for reporting and recording changes to the rules and reporting those changes to the supervisory authority:
 - BCRs, Rule 12
 - Appendix 5 (Updating Procedure)
- l. the cooperation mechanism with the supervisory authority to ensure compliance by any member of the group of undertakings, or group of enterprises engaged in a joint economic activity, in particular by making available to the supervisory authority the results of verifications of the measures referred to in point (j):
 - BCRs, Rules 9; 11
 - Appendix 2- Audit Protocol
 - Appendix 4 – Cooperation Procedure
- m. the mechanisms for reporting to the competent supervisory authority any legal requirements to which a member of the group of undertakings, or group of enterprises engaged in a joint economic activity is subject in a third country which are likely to have a substantial adverse effect on the guarantees provided by the binding corporate rules:
 - BCRs, Rules 1A
- n. the appropriate data protection training to personnel having permanent or regular access to personal data:
 - BCRs, Rules 8

The EDPB provided its opinion 04/2021 in accordance with Article 64(1)(f). The Belgian Data Protection Authority took utmost account of this opinion and communicated to the Board that it will amend the draft decision accordingly.

DECIDES AS FOLLOWING:

1. The BCR-P of BDO provide appropriate safeguards for the transfer of personal data in accordance with Article 46(1),(2f) and Article 47 (1), (2) GDPR and hereby approves the BCR-P of BDO.
2. However, before making use of the BCR it is the responsibility of the data exporter in a Member State, if needed with the help of the data importer, to assess whether the level of protection required by EU law is respected in the third country of destination, including onward transfer situations. This assessment has to be conducted in order to determine if the guarantees provided by BCRs can be complied with in practice, in light of the circumstances of the possible impingement created by the third country legislation with the fundamental rights and the circumstances surrounding the transfer. If this is not the case, the data exporter in a Member State, if needed with the help of the data importer, should assess whether it can provide supplementary measures to ensure an essentially equivalent level of protection as provided in the EU.
3. Where the data exporter in a Member State is not able to take supplementary measures necessary to ensure an essentially equivalent level of protection as provided in the EU, personal data cannot be lawfully transferred to a third country under this BCR. Therefore the data exporter is required to suspend or end the transfer of personal data. In such case if a Group Company envisages to transfer personal data to a third country nevertheless, it must notify the competent supervisory authority beforehand to enable that SA to ascertain whether the proposed transfer should be suspended or prohibited in order to ensure an adequate level of protection.
4. The approved BCRs will not require any specific authorization from the concerned supervisory authorities.
5. In accordance with Article 57.2.j GDPR, each concerned Supervisory Authority maintains the power to order the suspension of data flows to a recipient in a third country or to an international organization whenever the appropriate safeguards envisaged by the BCR-P of BDO are not respected.

David Stevens
Secretary-General

ANNEX TO THE DRAFT DECISION

The BCR-P of BDO that are hereby approved cover the following:

- a. **Scope:** Only members of BDO acting as processors, that are legally bound by the BCRs BDO (BCRs, "Introduction")
- b. **EEA countries from which transfers are to be made:** **Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany Greece, Hungary, Ireland, Italy, Iceland, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden**
- c. **Third countries to which transfers are to be made :** See BCRs, "Introduction"
- d. **Purposes of the transfer :** See BCRs, "Introduction"
- e. **Categories of data subjects concerned by the transfer :**
 - See BCRs, "Introduction"
- f. **Categories of personal data transferred :**
 - See BCRs, "Introduction"