

Comments regarding Recommendations 1/2022 on the Application for Approval and on the elements and principles to be found in Controller Binding Corporate Rules (Art. 47 GDPR)

Introduction

Floreani Studio Legale Associato welcomes the opportunity to provide a response to the European Data Protection Board's consultation on the drafts Recommendations 1/2022 on the Application for Approval and on the elements and principles to be found in Controller Binding Corporate Rules (Art. 47 GDPR) and invites the EDPB to evaluate the following proposals as well as to clarify the problems highlighted below.

3 ELEMENTS AND PRINCIPLES TO BE FOUND IN BCR-C

1 - BINDING NATURE

1.2 Explanation of how the BCR-C are internally made binding on the BCR members, and on their employees

"The Group will have to explain in its application form how the BCR-C are made binding: (...)

ii. On employees by one or more of:

a) Individual and separate agreement(s) /undertaking with sanctions;

b) Clause in employment contract with a description of applicable sanctions;

c) Collective agreements with sanctions;

d) Internal policies with sanctions; or

e) Other means.

Regarding d) and e) above, the Group should properly demonstrate how those means make the BCR-C binding on the employees" (...)"

Comment: We propose the EDPB to clarify the statement for which that the "Group should properly demonstrate how those means make the BCR-C binding on the employees" in relation the points d) and e).

1.3.1 Creation of third-party beneficiary rights that are enforceable by data subjects

"(...) The Group needs to make sure that third-party beneficiary rights are effectively created to make those commitments binding (see Section 1.2 below)"

Comment: We suggest the EDPB to mention in the Recommendations some further practical solutions and advice on terms under which the Group needs to make sure that third-party beneficiary rights are effectively created to make those commitments binding.

3 - EFFECTIVENESS

3.1 Suitable training programme

“The BCR-C must state that appropriate and up-to-date training on the BCR-C is provided to personnel that have permanent or regular access to personal data, who are involved in the collection of data or in the development of tools used to process personal data.

The training programme, including its materials, has to be developed to a sufficiently elaborate degree before the BCR-C are approved. Training intervals should be specified in the BCR-C. Training should cover, among others, procedures of managing requests for access to personal data by public authorities.

The SAs evaluating the BCR-C may ask for examples and explanations of the training programme during the application procedure”.

Comment: We propose the EDPB to clarify the statement for which that “The training programme, including its materials, has to be developed to a sufficiently elaborate degree before the BCR-C are approved”.

5 - DATA PROTECTION SAFEGUARDS

5.1.1 Description of the data protection principles

“(…). The BCR-C need to establish those principles in a sufficiently elaborated manner that is in line with the content of the principles as provided for in the GDPR provisions”.

Comment: With reference to the highlighted paragraph, we propose the EDPB to specify to avoid interpretative uncertainties the expression “in a sufficiently elaborated” with the use of further practical examples.

8 MECHANISMS FOR REPORTING AND RECORDING CHANGES

8.1 PROCESS FOR UPDATING THE BCR-C

“(…). Any other changes to the BCR-C or to the list of BCR members should be notified once a year to the SAs, via the BCR Lead, with a brief explanation of the reasons for the update. This includes any changes made in order to align the BCR-C with any updated version of these EDPB Recommendations”.

Comment: It is suggested to the EDPB to specify what it should contain in detail the “brief explanation of the reasons for the update”.

We would be grateful for your consideration of our comments and proposals and remain available for any clarification and further information.

Sincerely,

10 January 2023