

Opinion of the Board (Art. 64)



Opinion 9/2020 on the draft decision of the Irish Supervisory Authority regarding the Processor Binding Corporate Rules of Reinsurance Group of America

Adopted on 14 April 2020

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The European Data Protection Board

Having regard to Article 63, Article 64 (1)(f) and Article 47 of the Regulation 2016/679/EU of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (hereinafter “GDPR”),

Having regard to the European Economic Area (EEA) Agreement and in particular to Annex XI and Protocol 37 thereof, as amended by the Decision of the EEA joint Committee No 154/2018 of 6 July 2018,

Having regard to Article 10 and Article 22 of its Rules of Procedure of 25 May 2018,

Whereas:

(1) The main role of the European Data Protection Board (hereinafter the EDPB) is to ensure the consistent application of the GDPR throughout the European Economic Area. To this effect, it follows from Article 64(1)(f) GDPR that the EDPB shall issue an opinion where a supervisory authority (SA) aims to approve binding corporate rules (BCRs) within the meaning of Article 47 GDPR.

(2) The EDPB welcomes and acknowledges the efforts the companies make to uphold the GDPR standards in a global environment. Building on the experience under the Directive 95/46/EC the EDPB affirms the important role of BCRs to frame international transfers and its commitment to support the companies in setting-up their BCRs. This opinion aims towards this objective and takes into account that the GDPR strengthened the level of protection, as reflected in the requirements of Article 47 GDPR and, in addition, conferred to the EDPB the task to issue an opinion on the competent supervisory authority’s (BCR Lead) draft decision aiming to approve BCRs. This task of EDPB aims to ensure the consistent application of the GDPR, including by the supervisory authorities, controllers and processors.

(3) Pursuant to Article 46(1) GDPR, in the absence of a decision pursuant to Article 45(3), a controller or processor may transfer personal data to a third country or international organisation only if the controller or processor has provided appropriate safeguards, and on condition that enforceable data subject rights and effective legal remedies for data subjects are available. A group of undertakings or group of enterprises engaged in a joint economic activity may provide such safeguards by the use of legally binding BCRs, which expressly confer enforceable rights on data subjects and fulfil a series of requirements (Article 46 GDPR). The specific requirements listed in the GDPR are the minimum items BCRs shall specify (Article 47(2) GDPR). The BCRs are subject to approval from the competent supervisory authority (“competent SA”), in accordance with the consistency mechanism set out in Article 63 and 64(1)(f) GDPR, provided that the BCRs meet the conditions set out in Article 47 GDPR, together with the requirements set out in the relevant working documents of the Article 29 Working Party¹, endorsed by the EDPB.

¹ The Working Party on the Protection of Individuals with regard to the Processing of Personal Data instituted by Article 29 of Directive 95/46/EC.

(4) WP257 rev.01 of the Article 29 Working Party,² as endorsed by the EDPB, provides for the required elements for BCRs for processors, including the Intra-Company Agreement where applicable, and the application form. WP265 of the Article 29 Working Party, as endorsed by the EDPB, provides for recommendations to the applicants to help them demonstrate how to meet the requirements of article 47 GDPR and WP257 rev01. The EDPB is subject to Regulation 1049/2001 pursuant to article 76(2) GDPR.

(5) Taking into account the specific characteristics of BCRs provided for by Article 47(1) and (2), each application should be addressed individually and is without prejudice to the assessment of any other Binding Corporate Rules. The EDPB recalls that BCRs should be customised to take account of the structure of the group of companies that they apply to, the processing they undertake and the policies and procedures that they have in place to protect personal data.³

(6) The opinion of the EDPB shall be adopted, pursuant to Article 64(3) GDPR in conjunction with Article 10(2) of the EDPB Rules of Procedure, within eight weeks after the Chair has decided that the file is complete. Upon decision of the EDPB Chair, this period may be extended by a further six weeks, taking into account the complexity of the subject matter.

HAS ADOPTED THE FOLLOWING OPINION:

1 SUMMARY OF THE FACTS

1. In accordance with the cooperation procedure as set out in WP263 rev.01, the draft Processor BCRs of Reinsurance Group of America were reviewed by the Irish Data Protection Commission (hereinafter Irish Supervisory Authority) as the BCRs Lead SA.
2. The Irish Supervisory Authority has submitted its draft decision regarding the draft Processor BCRs of Reinsurance Group of America, requesting an opinion of the EDPB pursuant to Article 64(1)(f) GDPR on 18/02/2020. The decision on the completeness of the file was taken on 26/03/2020.

2 ASSESSMENT

3. The EDPB notes that the Reinsurance Group of America has only provided one Intra Group Agreement (IGA), common to both the Controller BCR and Processor BCR. Since Reinsurance Group of America has provided two different sets of BCRs and Annexes, and the IGA makes a clear distinction in its relevant provisions, the EDPB considers that no further documents need to be submitted in this regard.
4. The Reinsurance Group of America draft Processor BCRs apply to processing of personal data carried out, within the group, by members of the Group acting as a Processor on behalf of and under the instructions of a non-RGA Controller and where such personal data originates in the EEA. Concerned

² Article 29 Working Party, Working Document setting up a table with the elements and principles to be found in Binding Corporate Rules, as last revised and adopted on 6 February 2018, WP 257 rev.01.

³ This view was expressed by the Article 29 Working party in Working Document Setting up a framework for the structure of Binding Corporate Rules, adopted on 24 June 2008, WP154.

data subjects include individuals who are parties to or beneficiaries of primary individual or group insurance and pension policies, as well as current and past employees, job applicants, individual consultants, independent contractors and job applicants that RGA may process on behalf of the Controller.

5. The Reinsurance Group of America draft Processor BCRs have been scrutinised according to the procedures set up by the EDPB. The SAs assembled within the EDPB have concluded that the Reinsurance Group of America draft Processor BCRs contain all elements required under Article 47 GDPR and WP257 rev01, in concordance with the draft decision of the Irish Supervisory Authority submitted to the EDPB for an opinion. Therefore, the EDPB does not have any concerns, which need to be addressed.

3 CONCLUSIONS / RECOMMENDATIONS

6. Taking into account the above and the commitments that the group members will undertake by signing Reinsurance Group of America's Intra-Group Agreement on Binding Corporate Rules, the EDPB considers that the draft decision of the Irish Supervisory Authority may be adopted as it is, since those Rules ensure appropriate safeguards to ensure that the level of protection of natural persons guaranteed by this Regulation is not undermined when personal data will be transferred to and processed by the group members based in third countries. Finally, the EDPB also recalls the provisions contained within Article 47(2)(k) GDPR and WP 257 rev.01 providing the conditions under which the applicant may modify or update the BCRs, including updates to the list of BCRs group members.

4 FINAL REMARKS

7. This opinion is addressed to the Irish Supervisory Authority and will be made public pursuant to Article 64(5)(b) GDPR.
8. According to Article 64(7) and (8) GDPR, the Irish Supervisory Authority shall communicate its response to this opinion to the Chair within two weeks after receiving the opinion.
9. Pursuant to Article 70(1)(y) GDPR, the Irish Supervisory Authority shall communicate the final decision to the EDPB for inclusion in the register of decisions which have been subject to the consistency mechanism.

For the European Data Protection Board

The Chair

(Andrea Jelinek)