

SPANISH DATA PROTECTION AGENCY DECISION APPROVING THE BINDING CORPORATE RULES OF THE IBERDROLA GROUP

RECITALS

One.— IBERDROLA S.A, an entity located in Spain, as the parent entity of the group of companies belonging to the IBERDROLA Group, in accordance with Articles 47 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 relating to the protection of natural persons with regard to the processing of personal data and to the free circulation of these data, and repealing the Directive 95/46/EC (General Data Protection Regulation, or GDPR) and 41.2 of Organic Law 3/2018, of December 5, on Data Protection and Guarantee of Digital Rights (LOPDPGDD), has submitted to the Spanish Data Protection Agency (AEPD), through its legal representative, a request for the approval of binding corporate rules (BCR) for the transfer of data to entities of the IBERDROLA Group established in third countries.

Two.— The IBERDROLA Group provided the following documents:

1. Controller Binding corporate rules (BCR) of the IBERDROLA Group.
2. BCR WP 264- BCR (Application form)
3. BCR WP 256- (Working document setting up a table with the elements and principles to be found in Binding Corporate Rules)
4. Intragroup agreement.
5. Annex I: List of entities
6. Annex II: Personal data protection training
7. Annex III: Claims handling procedure
8. Annex IV: BCR audit procedure
9. Annex V: IBERDROLA'S privacy team
10. Annex VI: Cooperation procedure with the supervisory authorities
11. Annex VII: Binding corporate rules updating procedure

Three.— The AEPD has processed the application for the approval of the BCR of the IBERDROLA Group as competent authority and two supervisory authorities of the EEA acting as co-reviewers. The application was also reviewed by the supervisory authorities of the EEA countries to which the BCR were communicated as part of the cooperation procedure, pursuant to the provisions of document WP 263 rev.01 of the Working Group setup under Article 29 of Directive 95/46/EC, and ratified by the European Data Protection Board (hereinafter EDPB, or Board).

Four.- On 8 December 2020, the European Data Protection Board issued an opinion pursuant the provisions of Article 64(1)(f) GDPR.

LEGAL GROUNDS:

One.— The GDPR in its recital 110 states that ” *A group of undertakings, or a group of enterprises engaged in a joint economic activity, should be able to make use of approved binding corporate rules for its international transfers from the Union to organisations within the same group of undertakings, or group of enterprises engaged in a joint economic activity, provided that such corporate rules include all essential principles and enforceable rights to ensure appropriate safeguards for transfers or categories of transfers of personal data*”.

Article 4 defines the binding corporate rules as ” *personal data protection policies which are adhered to by a controller or processor established on the territory of a Member State for transfers or a set of transfers of personal data to a controller or processor in one or more third countries within a group of undertakings, or group of enterprises engaged in a joint economic activity.*”

Two.— Article 47 of the GDPR regulates the binding corporate rules, by providing:

- “1. *The competent supervisory authority shall approve binding corporate rules in accordance with the consistency mechanism set out in Article 63, provided that they:*
- (a) are legally binding and apply to and are enforced by every member concerned of the group of undertakings, or group of enterprises engaged in a joint economic activity, including their employees;*
 - (b) expressly confer enforceable rights on data subjects with regard to the processing of their personal data; and*
 - (c) fulfil the requirements laid down in paragraph 2.*
2. *The binding corporate rules referred to in paragraph 1 shall specify at least:*
- (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;*
 - (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;*
 - (c) their legally binding nature, both internally and externally;*
 - (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;

(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;

(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;

(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;

(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;

(i) the complaint procedures;

(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;

(k) the mechanisms for reporting and recording changes to the rules and reporting those changes to the supervisory authority;

(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);

(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; and
n) the appropriate data protection training to personnel having permanent or regular access to personal data.”

Three.— The IBERDROLA Group constitutes a group of undertakings, as defined in article 4.19 of the GDPR “*Controlling undertaking and its controlled undertakings*”, as reflected in the structure of the business group included in the BCR.

Four.— Upon studying the BCR in the cooperation procedure established in document WP 263rev. 01, they meet the requirements established in Article 47.2 of the GDPR as set out in Annex I of the decision, on which the EDPB has issued its opinion.

Five.- Pursuant to the coherence mechanism, the European Data Protection Board issued its opinion 28/2020 on the draft decision of the Spanish Data Protection Agency on 8 December 2020, regarding the Controller Binding Corporate Rules of IBERDROLA Group, in accordance with Article 64.1.f of the GDPR.

In its view, the European Data Protection Board states that the binding corporate rules of the IBERDROLA Group have been reviewed in accordance with the procedures established by the Board. Likewise, the data protection supervisory authorities of the European Economic Area assembled within the EDPB have concluded that the binding corporate rules of the IBERDROLA Group contain all the elements required in article 47 of the GDPR and document WP256 rev01, as set out in the draft decision prepared by the AEPD as the competent authority, and that it is included in Annex I of this document, stating its compliance with the aforementioned binding corporate rules.

Six. — Article 46 of the RGPD establishes that in the absence of a decision of the European Commission pursuant to article 45 (3), the controller may transfer personal data to a third country or an international organisation only if the controller has provided appropriate safeguards, and on condition that enforceable data subject rights and effective legal remedies for data subjects are available, which may be

provided for, without requiring any specific authorisation from a supervisory authority by binding corporate rules in accordance with Article 47.

Seven.- The Spanish Data Protection Agency is competent to issue this decision, in accordance with the provisions of articles 58.3.h) of the GDPR and 47 of the LOPDPGDD.

Eight. Annex I is an integral part of the present decision.

Having regard to the aforementioned precepts and others of general application, the Director of the Spanish Data Protection Agency,

RULES:

One.— To approve the binding corporate rules (BCR) of the IBERDROLA Group for international transfers of personal data within the IBERDROLA Group in the terms and as set out in Annex I of this decision.

Two.— Henceforth, international data transfers under the BCR of the IBERDROLA Group shall not need any subsequent authorisation by the European data protection authorities. However, under Article 58.2.j) of the General Data Protection Regulation, each supervisory authority shall be entitled to order the suspension of data flows to a recipient located in a third country when the BCRs of the IBERDROLA Group are not complied with.

Three.— The IBERDROLA Group shall notify the Spanish Data Protection Agency of any modification of the binding corporate standards, in accordance with the procedure for updating the BCR referred to in Section 13 and Annex VII of the BCR.

Four.- This decision is issued and notified to data subjects involved in the procedure, in compliance with the mandate of Article 26.1 of Law 39/2015, of 1 October, of the Common Administrative Procedure of the Public Administrations.

Five.- This decision is notified to the European Data Protection Board, according to Article 70.1 (y) of the GDPR, in order to record it in the Register of Decisions taken within the framework of the consistency mechanism.

Six.- Pursuant to article 50 of Organic Law 3/2018 of 5 December on the Protection of Personal Data and the Guarantee of Digital Rights, this decision shall be made public once it has been notified to the interested parties.

Against this decision, which exhausts the administrative procedure in the terms of Article 114 of Law 39/2015, an optional appeal for reinstatement according to Article 123 and following of the same legal text, may be filed before this Spanish Data Protection Agency, within a month, from the day after its notice, or may be directly challenged before the Chamber for Contentious Administrative Proceedings of the National Court, pursuant to the provisions of Article 25 and in the Additional Provision number four of Law 29/1998, of 13 July, on Contentious Administrative Law, within a period of two months from the day following the notice of this act, pursuant to the provisions of Article 46.1 of the aforementioned legal text.

ANNEX I TO THE SPANISH DATA PROTECTION AGENCY DECISION APPROVING THE BINDING CORPORATE RULES OF THE IBERDROLA GROUP

- 1.** Having regard to Article 47(1) of the EU General Data Protection Regulation 2016/679 (GDPR), the Spanish Data Protection Authority shall approve Binding Corporate Rules (BCR) provided that they meet the requirements set out under this Article.

Whereas:

- 2.** In accordance with the cooperation procedure as set out in the Working Document WP263.rev.01, the Controller BCRs application of Iberdrola were reviewed by the Spanish Data Protection Authority, as the competent Authority for the BCRs (BCR Lead) and two SAs acting as co-reviewers. The application was also reviewed by the supervisory authorities of the EEA countries to which the BCR were communicated as part of the cooperation procedure.
- 3.** The review concluded that the Controller BCR of Iberdrola 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 BCR:
 - i)** Are legally binding and contain a clear duty for each participating member of the Group including their employees to respect the BCR all of which is set forth in the Group's Intra-Group Agreement passed by all the companies affiliated to the BCR.
 - ii)** Expressly confer enforceable third party beneficiary rights to data subjects with regard to the processing of their personal data as part of the BCR in Section 5 of the BCR which establishes: "The Group Companies shall guarantee data subjects the exercise of the rights to apply these BCR as third-party beneficiaries";
 - iii)** Fulfil the requirements laid down in Article 47(2):
 - a)** The structure and contact details of the group of undertakings and each of its members are described in **Annex I**.
 - b)** The data transfers or set of transfers, including the categories of personal data, the type of processing and its purposes, the categories of data subjects affected and the identification of the third country or countries are detailed in **Section 2 of the BCR**.

- c) The legally binding nature of the BCR, both internally and externally, is recognised in the introduction and **Section 2.2 of the BCRs and in the Intra-Group Agreement.**
- 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 are detailed in **Section 3 of the BCR.**
- e) The measures aimed at guaranteeing data security and the requirements regarding subsequent transfers to bodies not bound by the binding corporate rules are specified in **Section 3.11 of the BCR.**
- f) 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, 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 of the GDPR, and to obtain redress and, where appropriate, compensation for a breach of the binding corporate rules are set forth in **Section 4 of the BCR.**
- g) 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 of the Group not established in the Union, as well as the exemption of the controller or the processor 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 are specified in **Section 12 of the BCR.**
- h) The way in which information about binding corporate rules is provided to data subjects is detailed in **Section 5 of the BCR.**
- i) The tasks of any data protection officer designated in accordance with Article 37 of the GDPR or any other person or entity in charge of the monitoring compliance with the binding corporate rules within the group of undertakings, as well as monitoring training, complaint-handling and the claim procedures are included in **Section 9 and Annex V of the BCR.**
- j) The claim procedure is detailed in **Section 7 and Annex III of the BCR.**
- k) The mechanisms established within the group of undertakings to verify compliance with the binding corporate rules are detailed in **Section 8 and in Annex IV of the BCR.** Such mechanisms shall include data protection audits and systems for ensuring corrective actions to protect the rights of data subjects. The results of such verification must be reported to the Data

Protection Officer, as well as to the Group Management, and shall be available upon request from the competent data protection authority.

- l) The mechanisms for reporting and recording changes to the rules and reporting those changes to the supervisory authority are described in **Section 13 and Annex VII of the BCR.**
 - m) The cooperation mechanism with the supervisory authority to ensure compliance by any member of the group of undertakings, in particular by making available to the supervisory authority the results of verifications is detailed in **Sections 8 and 10 and in Annex IV of the BCRs.**
 - n) 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 are set forth in **Section 11 of the BCR.**
 - o) The appropriate training in data protection for personnel who have permanent or regular access to personal data is included in **Section 6 and in Annex II of the BCR.**
4. The EDPB provided its opinion 28/2020 in accordance with Article 64(1)(f). The Spanish Data Protection Authority took utmost account of this opinion.

DECIDES AS FOLLOWING:

- 5. The Controller BCR of IBERDROLA Group 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 Controller BCR of IBERDROLA Group.
- 6. 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.

7. 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.
8. The approved BCRs will not require any specific authorisation from the concerned supervisory authorities.
9. In accordance with Article 58.2.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 Controller BCR of IBERDROLA Group are not respected.

The Controller BCR of IBERDROLA Group that are hereby approved cover the following:

- a. Scope: Only members of IBERDROLA acting as Controller and Processor, that are legally bound by the BCRs (**Section 2.2 of the BCR**).
- b. EEA countries from which transfers are to be made transference: Spain, France, Portugal, Italy, Greece, Belgium, Hungary, Bulgaria, Romania, Ireland, Luxembourg, Poland, Cyprus and Netherlands (**Annex I of the BCR**).
- c. Third countries to which transfers are to be made transference: United Kingdom, EEUU, Canada, México, Brazil, Costa Rica, South Africa, Saudi Arabia (**Annex I of the BCR**).
- d. Categories of personal data transferred: (**Section 2.1 of the BCR**);
 - **Candidates:** Identifying and curricular data about candidates for a job or internship, which register in the IBERDROLA Group employment portal.
 - **Employees:** Personal data of employees obtained as a consequence of the employment relationship, in the process of

formalising the relationship and during the period in which it is maintained.

- **Suppliers:** Identifying data, personal and professional characteristics, commercial information, economic data and data relating to transactions of goods and services of suppliers.
- **Volunteers:** Identifying data.
- **Event Attendees:** Identifying data.
- **Participants in master's degree scholarships competitions and beneficiaries thereof:** Identifying, academic and professional data of participants in applications for master's degree scholarships.

e. Purposes of the transfer: **(specified in Section 2.1 of the BCR);**

- **Candidates:** for a job in the IBERDROLA Group in order to allow its participation in possible recruitment for staff or student interns processes. His or her personal data may be transferred to any company of the Group, even outside the EEA, that has an interest in his or her profile, leading to an international transfer of data.
- **Employees:** These data may be communicated to Group companies, including those outside the EEA, for internal filling of vacancies, for the management of the employment relationship, in compliance with service contracts and for the management and organisation of teams. All these international transfers are necessary for the management and fulfilment of the employment relationship with the employee. Customer, supplier and contact person management: Maintenance of the contractual relationship, monitoring and management of purchasing and procurement services.
- **Suppliers:** With the aim of carrying out a global management of suppliers. These data are communicated to the Group companies, including those outside the EEA. The international transfer is carried out as a consequence of the use of a common database for all the companies of the Iberdrola Group.
- **Volunteers:** Identifying data from volunteers for the management of Iberdrola's volunteer programme and related activities. These data are communicated to IBERDROLA Group companies, including those outside the EEA, that offer a volunteer action. The international transfer is carried out by IBERDROLA, S.A., which is responsible for processing the IBERDROLA Group's personal volunteer data included in a global

file, and by other Group companies established in the EEA, which are responsible for processing the volunteer data.

- **Participants in master's degree scholarships competitions and beneficiaries thereof:** In order to manage and award the scholarships. The information provided by the applicant is incorporated into a database to which the subholding company of the Group that calls the scholarship for which the application has been made will have access. Iberdrola, S.A. also has access to this personal data as the entity in charge of the overall internal administrative management of the IBERDROLA Group's scholarships.
- **Event Attendees:** These data will be communicated to other companies of the IBERDROLA Group for internal administrative purposes. The international transfer is carried out by IBERDROLA, S.A. and by other Group Companies established in the EEA as data controllers of the processing of the event attendee's data.