

 APPROVAL OF BINDING CORPORATE RULES - Processors - (BCR - P) of the Luxoft Group
Your request of 10 July 2018

Attachments:

1. binding company rules (processors) of the Luxoft Group together with appendices in German and English language
2. application for approval of the binding corporate rules (processors) of the Luxoft Group together with attachments in German and English language
- 3 Opinion 08/2021 on the draft decision of the Baden-Wurtemberg Supervisory Authority regarding the Controller Binding Corporate Rules of Luxoft Group, Adopted on 16 February 2021

Dear Sirs,

I.

1. the BCRs of Luxoft Group attached in the Annexes to this notice provide for appropriate safeguards for the transfer of personal data pursuant to Article 46(1), (2)(b) and Article 47(1) and (2) of the General Data Protection Regulation (EU) 2016/679 (GDPR) and are hereby approved by the State Commissioner for Data Protection and Freedom of Information of Baden-Württemberg.
2. an administrative fee in the amount of 1236 EURO is set for this decision. Decisive for this is number 2.2.6 of the regulation of the State Commissioner for Data Protection and Freedom of Information Baden-Württemberg on the setting of fee rates for public services in the area of responsibility of the State Commissioner.

Please pay this amount **with the booking reference <please leave space for 13-digit booking reference> to the** Landesoberkasse Baden-Württemberg (IBAN: DE02 6005 0101 7495 5301 02, BIC: SOLADEST600) no later than eight weeks after receipt of this notification.

II. Ancillary provisions and notes

The approval of these BCRs only constitutes a guarantee within the meaning of Art. 46 (2) lit. b in conjunction with Art. 47 DS-GVO for the transfer of personal data. Art. 47 of the GDPR for the transfer of personal data only if both the transferring and the receiving company of the Luxoft Group have effectively joined the Intragroup Agreement and process personal data as (sub)processor for a controller not belonging to the group.

2. the approved BCRs do not require specific approval by the supervisory authorities concerned.

3. before making use of the BCR, it is the data exporter's responsibility to assess, where appropriate with the help of the data importer, whether the level of protection required by EU law is respected in the third country of destination concerned, in order to determine whether the safeguards offered by the BCR can be respected in practice, taking into account possible interference with fundamental rights by the third country's legislation. If this is not the case, the Luxoft Group should consider whether it can take additional measures to ensure a substantially equivalent level of protection as in the EU.

4. if a substantially equivalent level of protection as provided for in the EU cannot be ensured by Luxoft Group despite the implementation of complementary measures, personal data cannot be lawfully transferred to a third country on the basis of these BCR. Therefore, such transfer is prohibited unless the conditions of another transfer instrument of Chapter 5 of the GDPR are met (e.g. Art. 49 GDPR). To the extent that this is not the case, the transfer of personal data must be suspended or terminated. The second sentence of the second subparagraph of Article 49(1) of the GDPR obliges the controller to inform the supervisory authority of transfers of personal data to a third country based on the second subparagraph of Article 49(1) of the GDPR.

5. if Luxoft Group intends to make a transfer of personal data to a third country that cannot be based on these BCRs or any other transfer instrument under Chapter 5 of the GDPR, it must notify the competent data protection supervisory authority in advance so that it can assess whether the planned transfer should be suspended or prohibited in order to ensure an adequate level of protection.

(6) Pursuant to Article 58(2)(j) of the GDPR, and without prejudice to this authorisation, each supervisory authority concerned retains the power to order the suspension of data transfers to a recipient in a third country or to an international organisation if the adequate safeguards provided for in the BCRs of the Luxoft Group are not complied with.

III. justification

1. on the basis of the requirements set out in this notice and taking into account Article 47(1) of the GDPR, the approval of the binding corporate rules by the State Commissioner for Data Protection and Freedom of Information of Baden-Württemberg has been made in consideration of the following reasons:

2. in accordance with the cooperation procedure described in Working Document WP263.rev.01¹, the BCR-C of Luxoft Group have been examined by the State Commissioner for Data Protection and Freedom of Information of Baden-Württemberg as the competent data protection supervisory authority and by the Romanian Data Protection Authority as co-investigator. The application for authorisation was examined by the supervisory authorities of the European Economic Area in accordance with the authorisation procedure established by the European Data Protection Supervision Authority (EDSA).

3 The audit showed that the BCR-P of Luxoft Group comply with the requirements of Article 47(1) of the GDPR as well as working document WP257.rev.01,²and in particular that BCR

(i) are legally binding and contain a clear obligation for each participating member of the Luxoft Group, including its employees, to comply with the binding corporate rules adopted by all Luxoft Group companies;

(ii) expressly grant data subjects enforceable third party rights in relation to the processing of their personal data under point 13 of the BCR and the intra-group agreement;

(iii) comply with the requirements of Article 47(2) as follows:

a) the structure of the Group and the contact details of the individual companies of the Luxoft Group are given in Annex 2 of the BCR;

(b) the nature of the data transfers, including the categories of personal data, the nature of the processing and its purposes, the type of data subjects and the identification of the third country or countries concerned are listed in Annex 1 to the BCR;

c) the legally binding nature of the internal and external relationship results from point 4 of the BCR;

¹ Working Document Setting Forth a Co-Operation Procedure for the approval of "Binding Corporate Rules" for controllers and processors under the GDPR.

² Working document providing an overview of the components and principles of binding internal rules on data protection (BCR).

- (d) the application of general data protection principles, in particular lawfulness, fairness and transparency, purpose limitation, data minimisation and accuracy, limited retention periods, data protection by design and by default, security and confidentiality, processing of special categories of personal data and accountability, is governed by points 4 and 6 of the BCR;
- (e) the rights of data subjects in relation to processing and the means to exercise those rights, including the right of access, the right not to be subject to a decision based solely on automated processing, including profiling under Article 22 GDPR, and the right to lodge a complaint with the competent supervisory authority and before the competent courts of the Member States under Article 79 GDPR and to obtain judicial remedies and, where appropriate, compensation for any breach of the binding corporate rules on data protection, are guaranteed in points 12 and 13 of the BCR;
- (f) the requirements relating to onward transfers to internal or external sub-processors, are contained in point 6.6 of the BCR;
- (g) the assumption of liability for breaches of the BCR by a relevant company not established in the EU and the exemption from such liability where it is shown that the company is not responsible for the event giving rise to the damage is set out in point 13 of the BCR;
- (h) how the information on the BCR will be provided to data subjects in addition to Articles 13 and 14 of the GDPR is set out in paragraphs 12.6 of the BCR;
- (i) define the tasks of the Data Protection Officer, who shall be responsible for monitoring compliance with the BCR in Luxoft Group companies, as well as for monitoring, training and handling complaints in accordance with point 9 of the BCR;
- (j) describe the complaints procedures set out in Annex 6 to the BCR;
- k) the procedures or mechanisms within Luxoft Group for verifying compliance with the BCR are defined. These mechanisms include data protection audits and methods to ensure corrective actions to protect the rights of data subjects. The results of this review shall be communicated to the Data Protection Officer referred to in point (i) and to the Management Board and shall be made available upon request to the competent supervisory authority in accordance with point 8 and Annex 4 of the BCR;
- (l) the mechanisms for reporting and recording changes to the rules and for reporting those changes to the supervisory authorities are set out in paragraph 15 of the BCR;
- (m) describe the mechanism for cooperation with supervisory authorities to ensure that Luxoft Group complies with these requirements, in particular by making available to the relevant supervisory authority the results of the reviews of the measures referred to in point 8 of the BCR;

n) the processes for reporting to the relevant supervisory authority any legal requirements to which Luxoft Group companies are subject in a third country and which are likely to have a material adverse effect on the guarantees are described in section 10 of the BCR;

(o) appropriate data protection training for staff with continuous or regular access to personal data is described in point 7 of the BCR.

4. the EDSA delivered its opinion 08/21 under Article 64(1)(f) on 16.2.2021. The State Commissioner for Data Protection and Freedom of Information of Baden-Württemberg has taken this opinion into account.

5 Point 2.2.6 of the Annex to the Regulation of the State Commissioner for Data Protection and Freedom of Information of Baden-Württemberg on the setting of fee rates for public services in the area of responsibility of the State Commissioner provides for a framework fee of 200 to 10,000 EURO for the examination and approval of binding internal regulations pursuant to Article 47 of the GDPR. Taking into account the actual expenditure and on the basis of a flat rate per working hour of EUR 51 in the intermediate service and EUR 79 in the higher service pursuant to No. 2.1 of the Administrative Regulation of the Ministry of Finance on the consideration of administrative costs, in particular when setting fees and other charges for the use of the Land administration, a fee of EUR 1236 had to be set.

IV. Appendix

The BCR of Luxoft Group (Processor), *which are* hereby approved, concern the following:

A. Scope: Only members of the Luxoft Group acting as (sub-) processors for non-group controllers and legally bound by the binding corporate data protection rules.

B. EEA countries from which transfers are to be made: Bulgaria, Cyprus, Denmark, France, FRG, Italy, Luxembourg, Netherlands, Poland, Romania, Sweden. (Annex 2 of the BCR).

C. Third countries to which transfers are to be made: see Annex 2 of the BCR.

D. Purpose of the transfers (specified in Annex 1 of the BCR):

Processing of personal data of employees, applicants, partners (end) customers, potential customers, suppliers, business partners, investors and others), visitors (e.g.

guests or family members of employees or partners), end customers as well as employees and representatives of customers of the Luxoft Group.

E. Categories of data subjects concerned by the transfer (specified in Annex 1 of the BCR):

Employees, applicants, partners ((end) customers, potential customers, suppliers, business partners, investors and others), visitors (e.g. guests or family members of employees or partners), end customers as well as employees and representatives of customers of the Luxoft Group.

F. Categories of personal data transferred (specified in Annex 1 of the BCR)

Name, gender, age, date of birth, marital status, contact details, etc.

V. Remedies:

An action against this decision may be brought before the Stuttgart Administrative Court, Augustenstr. 5, 70178 Stuttgart, within one month of notification.

With kind regards

On behalf of