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**CONEVIENCE TRANSLATION**

**Bayerisches Landesamt für  
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Ansbach, 13.10.2022

## Decision approving Binding Corporate Rules of Munich Re Reinsurance Group

The Bayerisches Landesamt für Datenschutzaufsicht (Data Protection Authority of Bavaria for the Private Sector, BayLDA),

Pursuant to the request by Munich Re Reinsurance Group (Munich Re), for approval of their binding corporate rules for controller;

Having regard to Articles 47, 57 and 64 of the Regulation (EU) 2016/679 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 (General Data Protection Regulation or GDPR);

Having regard to the CJEU decision Data Protection Commissioner Maximillian Schrems and Facebook Ireland Ltd, C-311/18 of 16 July 2020;

Having regard to EDPB Recommendations 01/2020 on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data of 18 June 2021;

Makes the following observations:

1. Article 47(1) of the EU General Data Protection Regulation 2016/679 (GDPR), provides that the BayLDA shall approve Binding Corporate Rules (BCRs) provided that they meet the requirements set out under this Article.
2. The implementation and adoption of BCRs by a group of undertakings is intended to provide guarantees to controllers and processors established in the EU as to the protection of personal data that apply uniformly in all third countries and, consequently, independently of the level of protection guaranteed in each third country.
3. Before carrying out any transfer of personal data on the basis of the BCRs to one of the members of the group, it is the responsibility of any 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 in the case of the specific data transfer, including onward transfer situations. This assessment has to be conducted in order to determine whether any legislation or practices of the third country applicable to the to-be-transferred data may impinge on the data importer's and/or the data exporter's ability to comply with their commitments taken in the BCR, taking into account the circumstances surrounding the transfer. In case of such possible impingement, the data exporter in a Member State, if needed with the help of the data importer, should assess whether it can provide supplementary measures in order to exclude such impingement and therefore to nevertheless ensure, for the envisaged transfer at hand, an essentially equivalent level of protection as provided in the EU. Deploying such supplementary measures is the responsibility of the data exporter and remains its responsibility even after approval of the BCRs by the competent Supervisory Authority and as such, they are not assessed by the competent Supervisory Authority as part of the approval process of the BCRs.

4. In any case, where the data exporter in a Member State is not able to implement 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 these BCRs. In the same vein, where the data exporter is made aware of any changes in the relevant third country legislation that undermine the level of data protection required by EU law, the data exporter is required to suspend or end the transfer of personal data at stake to the concerned third countries.
5. In accordance with the cooperation procedure as set out in the Working Document WP263 rev01<sup>1</sup>, the Controller BCRs application of Munich Re first submitted on 6 May 2019 were reviewed by the BayLDA, as the competent supervisory authority (SA) for the BCRs (BCR Lead), pursuant to Article 55 (1) GDPR, Section 40 (1) German Federal Data Protection Act in conjunction with Section 18 (1) Bavarian Data Protection Act, and by two further Supervisory Authorities acting as co-reviewers. The application was also circulated to every EEA SA for further review and comments as part of the cooperation procedure.
6. The review concluded that the Controller BCRs of Munich Re comply with the requirements set out by Article 47 (1) of the GDPR as well as the Working Document WP256 rev01<sup>2</sup> and in particular that the aforementioned BCRs:
  - i) Are legally binding and contain a clear duty for each participating member of the Group including their employees to respect the BCRs
    - (a) by way of binding local guidelines approved by the local Management Board,
    - (b) by way of the Intra Group Agreement (IGA) concluded between the relevant entities in relation to the third party beneficiary rights of individuals (see Annex 1 of the BCRs for a list of the participating entities and Section 1 IGA for the obligation to comply with the BCRs),
    - (c) by communicating the BCRs to all employees in the local unit, and
    - (d) by implementing a specific norm database enabling the company to monitor the status of implementation of norms on a group wide level,
  - ii) 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 Section 3 IGA and Section 18 of the BCRs)
  - iii) Fulfil the requirements laid down in Article 47(2) of the GDPR
    - (a) the structure and contact details of the participating group entities
      - See Annex 1 of the BCRs

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<sup>1</sup> Endorsed by the EDPB on 25 May 2018.

<sup>2</sup> Endorsed by the EDPB on 25 May 2018.

- (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 Section 2 and Annexes 1 and 2 of the BCRs
- (c) their legally binding nature, both internally and externally;
  - See Section 1 of the BCRs
- (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;
  - See Section 4 of the BCRs
- (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;
  - See Sections 14 and 18 of the BCRs
- (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;
  - See Section 13 of the BCRs
- (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;
  - See Section 14 of the BCRs
- (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;
  - See Section 15 of the BCRs
- (i) the complaint procedures;
  - See Sections 16 and 17 of the BCRs
- (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;
  - See Section 22 of the BCRs
- (k) the mechanisms for reporting and recording changes to the rules and reporting those changes to the supervisory authority;
  - See Section 19 of the BCRs
- (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);
  - See Section 23 of the BCRs

- (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
  - See Section 10 of the BCRs
- (n) the appropriate data protection training to personnel having permanent or regular access to personal data.
  - See Section 21 of the BCRs

7. The EDPB provided its opinion 26/2022 in accordance with Article 64(1)(f) of the GDPR. The BayLDA took utmost account of this opinion.

#### DECIDES AS FOLLOWING:

1. The BayLDA approves the Controller BCRs of Munich Re as providing appropriate safeguards for the transfer of personal data in accordance with Article 46 (1) and (2) (b) and Article 47(1) and (2) GDPR. For the avoidance of doubt, the BayLDA recalls that the approval of BCRs does not entail the approval of specific transfers of personal data to be carried out on the basis of the BCRs. Accordingly, the approval of BCRs may not be construed as the approval of transfers to third countries included in the BCRs for which, an essentially equivalent level of protection to that guaranteed within the EU cannot be ensured.
2. The approved BCRs will not require any specific authorization from the concerned SAs.
3. In accordance with Article 58(2)(j) GDPR, each concerned SA 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 Controller BCRs of Munich Re are not respected.

#### ANNEX TO THE DRAFT DECISION

The Controller BCRs of Munich Re that are hereby approved cover the following:

- a. Scope  
Only members of Munich Re acting as Controllers, that are legally bound by the BCRs as per the IGA (see Section 2 and Annex 1 of the BCR and Sections 2 and 3 of the IGA)
- b. EEA countries from which transfers are to be made:  
Germany, Spain, Italy, Ireland, France, Malta, Greece, Cyprus and Poland
- c. Third countries to which transfers are to be made:  
Egypt, Argentina, Australia, Bahrain, Brazil, China, Great Britain, Hong Kong, India, Iraq, Japan, Jordanian, Canada, Colombia, Malaysia, Mexico, Oman, Saudi-Arabia, Switzerland, Singapore, South Africa, South Korea, Taiwan, USA and VAE
- d. Purposes of the transfer:  
See Annex 2 of the BCRs
- e. Categories of data subjects concerned by the transfer:  
See Annex 2 of the BCRs
- f. Categories of personal data transferred:  
See Annex 2 of the BCRs.

## APPLICATION DOCUMENTS

The attached application documents form part of this decision of approval:

1. Munich Re Application for Approval of BCR
2. Munich Re BCR-C final
3. Munich Re BCR Application WP256
4. Munich Re BCR Annex 1 Group Members
5. IGA for Munich Re BCR
6. Munich Re BCR Work Instruction Complaint Handling
7. Munich Re BCR Work Instruction Training
8. Munich Re Audit Concept for BCR
9. Munich Re Web Based Training Exemplary Slides

Kind regards

### **Information on legal remedies**

You have the right to file a claim against this decision at the

**Bavarian Administrative Court in Ansbach,  
Address: Promenade 24 - 28, 91522 Ansbach  
Postal address: Postfach 616, 91511 Ansbach**

### **Notes on the information on legal remedies**

The appeal may be lodged in writing, to the transcript or electronically in a form approved for written form. The filing of an appeal by simple e-mail is not permitted and has no legal effect!

As of 01.01.2022, the group of persons named in Section 55d of the Code of Administrative Procedure (VwGO) (in particular attorneys) must submit complaints electronically as a matter of principle.

By virtue of federal law, a procedural fee will become due in legal proceedings before the administrative courts as a result of the filing of the action.