



AUTORITEIT PERSOONSGEGEVENS - BCR APPROVAL DECISION

Autoriteit Persoonsgegevens

DECISION APPROVING CONTROLLER BINDING CORPORATE RULES OF SHV

The Autoriteit Persoonsgegevens,

Pursuant to the request by SHV Holdings N.V. (hereafter SHV) on behalf of the group SHV, received on 20th of April 2017, for approval of their Binding Corporate Rules (BCRs) for Controllers;

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 GDPR, provides that the competent supervisory authority shall approve Binding Corporate Rules 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 rev01¹, the Controller BCRs application of SHV was reviewed by the Autoriteit Persoonsgegevens, as the competent supervisory authority for the BCRs (BCR Lead) and by two Supervisory Authorities (SA) acting as co-reviewers. The application was also reviewed by the concerned SAs to which the BCRs were communicated as part of the cooperation procedure. This review was communicated to SHV and they have been given the opportunity to incorporate and comment on this feedback throughout the procedure. This process continues until the BCRs fulfil the requirements set out by Article 47(1) of the GDPR as well as the Working Document WP256 rev01.²
6. The review concluded that the Controller BCRs of SHV fulfil the requirements set out by Article 47(1) of the GDPR as well as the Working Document WP256 rev01³ 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 by entering in an Intra-group agreement *Employee Code: Article 1.5 & Customer Code: Article 1.5 & Application Form: Section 4, Annex I*;
 - 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 *Employee Code: Article 18.4 & Customer Code: Article 18.4 & Application Form: Section 4*;
 - iii) Fulfil the requirements laid down in Article 47(2) of the GDPR:
 - a) The structure and contact details of the group of undertakings and each of its members are described in the Application form WP264 that was provided as part of the file review and *Employee Code: see last page & Customer Code: see last page & Application Form: Annex 3*;
 - 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 are specified in *Employee Code: Article 1.1 & Customer Code: Article 1.1 & Application Form: 7*;

¹ Endorsed by the EDPB on 25 May 2018.

² Endorsed by the EDPB on 25 May 2018.

³ Endorsed by the EDPB on 25 May 2018.



- c) the legally binding nature, both internally and externally, of the Controller BCRs is recognized in *Employee Code: Article 1.5 & Customer Code: Article 1.5 & Application Form: Section 4*;
- 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 are detailed in articles *Employee Code: Articles 1.6, 6.1.1, 7.1, 7.3, 10.1, 16.4, 17, 18.4, 18.5, 18.6, 18.7, 18.8, 20 & Customer Code: 1.6, 6.1, 6.1.1., 7.1, 7.3, 10.1, 16.4, 17, 18.4, 18.5, 18.6, 18.7, 18.8, 20*;
- 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 of the GDPR, 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 which are set forth in *Employee Code: Articles 7.1 – 7.3 and 10.1 Customer Code: Articles 7.1 – 7.3 and 10.1*;
- f) the acceptance by the controller established on the territory of a Member State of its liability for any breaches of the binding corporate rules by any member concerned not established in the Union as well as the exemption from that liability, in whole or in part, only if the concerned party proves that that member is not responsible for the event giving rise to the damage are specified in *Employee Code: Articles 18.5 and 18.6 & Customer Code: Articles 18.5 and 18.6 & Application Form: Section 4*;
- g) how the information on the binding corporate rules, in particular on the provisions referred to in points (d), (e) and (f) of Article 47.2 of the GDPR are provided to the data subjects in addition to Articles 13 and 14 of the GDPR, is specified in *Employee Code: Articles 1.6 and 6.1 & Customer Code: Articles 1.6 and 6.1*;
- h) 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 monitoring the 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 are detailed in *Employee Code: Article 13 & Customer Code Article 14*;
- i) the complaint procedures are specified in *Employee Code: Article 17 & Customer Code: Article 17 & Application Form: Section 5*;



- j) the mechanisms put in place within the group of undertakings for ensuring the monitoring of compliance with the binding corporate rules are detailed in *Employee Code: Article 13 & Customer Code: Article 13*. Such mechanisms include data protection audits and methods for ensuring corrective actions to protect the rights of the data subject. The results of such monitoring are communicated to the person or the entity referred to in point (h) above and to the board of the controlling undertaking of the group of undertakings (in this situation to SHV Holdings N.V. headquarters, as well as to the data privacy organization) and are 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 authorities are specified in *Employee Code: Articles 21.1 and 22.1 & Customer Code: Articles 21.2 and 22.1 & Application Form: Section 8*;
- l) the cooperation mechanism put in place with the supervisory authority to ensure compliance by any member of the group of undertakings is specified in *Employee Code: 16.4 / 18.7 / 18.8 & Customer Code: Articles 16.4 / 18.7 / 18.8*. The obligation to make available to the supervisory authority the results of the monitoring of the measures referred to in point (j) above is specified in *Employee Code: Article 14.2 & Customer Code: Article 14.2*;
- m) the mechanisms for reporting to the competent supervisory authority any legal requirements to which a member of the group of undertakings 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 described in *Employee Code: Article 18.5 & Customer Code: Article 18.5*;
- n) finally, provide for an appropriate data protection training to personnel having permanent or regular access to personal data *Employee Code: Article 15.1 & Customer Code: Article 15.1 & Application Form: Section 5*.

7. The EDPB provided its opinion 25/2023 in accordance with Article 64(1)(f) of the GDPR. The Autoriteit Persoonsgegevens took utmost account of this opinion.

DECIDES AS FOLLOWING:

1. The Autoriteit Persoonsgegevens approves the Controller BCRs of SHV 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 Autoriteit Persoonsgegevens 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. In addition, The Autoriteit Persoonsgegevens underlines the obligation of the applicant to bring the BCR-C in line with Recommendations 1/2022, in its 2023 annual update.

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 SHV are not respected.

The Hague, 23th of November

Yours sincerely,

Autoriteit Persoonsgegevens,

On it's behalf,



Legal remedy

If you do not agree with this decision, you can object against this decision taken by the Autoriteit Persoonsgegevens by lodging a notice of objection.⁴ The notice of objection must be signed and dated, include the name and address of the person submitting it and should entail a description of the decision against which the objection is being lodged and the grounds on which it is based. You must do this within six weeks after this decision is taken by addressing it to the Autoriteit Persoonsgegevens and submitting the notice via PO Box 93374, 2509 AJ The Hague, The Netherlands.⁵ It is also possible to submit a notice of objection via our web form on the website, see <https://www.autoriteitpersoonsgegevens.nl/over-deautoriteit-persoonsgegevens/bezwaar-maken>.

Please note that submitting a notice of objection will not automatically suspend the effect of this decision.

⁴ The Dutch General Administrative Act applies to this procedure.

⁵ Article 6:7 in conjunction with article 6:8 (1) of the Dutch General Administrative Act.



ANNEX I: SUMMARY OF BCR CONTROLLER OF SHV HOLDINGS N.V.

The Controller BCRs of SHV Holdings N.V. that are hereby approved cover the following:

a. Scope:

see Employee Code: Article 1.1 & Customer Code: Article 1.1 & Application Form 7;

b. EEA countries from which transfers are to be made:

Austria, Belgium, Croatia, Czech Republic, Denmark, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Poland, Slovak Republic, Slovenia, Spain and Sweden;

c. Third countries to which transfers are to be made:

see Employee Code: Article 1.1 & Customer Code: Article 1.1 & Annex 2 and 6;

d. Purposes of the transfer:

purposes are detailed in Employee Code: Article 1.1 & Customer Code: Article 1.1 & Application Form: Section 7;

e. Categories of data subjects concerned by the transfer:

categories of data subjects are specified in Employee Code: Article 1.1 & Customer Code: Article 1.1 & Application Form: Section 7;

f. Categories of personal data transferred:

categories of personal data are specified in Employee Code: Article 1.1 & Customer Code: Article 1.1 & Application Form: Section 7.



ANNEX II: DOCUMENTATION FOR EDPB DECISION

1. SHV Privacy Code for CSB;
2. Privacy Code for Employee Data;
3. SHV WP256;
4. SHV WP264 – Including Annexes.