

# Editorial

## BCRs go mainstream

Given the current flurry of activity at the UK Information Commissioner's Office (ICO), one could be forgiven for missing some of the action. From publicising its brand new enforcement powers to dealing with the overwhelming number of security breaches reported, the UK data protection regulator is keeping itself busy. All this against the background of an imminent set of new e-privacy rules and the prospect of a revised EU data protection directive. However, whilst in the middle of this activity, the ICO has managed to find time to authorise three sets of Binding Corporate Rules so far this year and quite a few other authorisations are in the pipeline. That is great news and a relief for those companies that are investing in the development of a global privacy programme that meets the EU regulators' high standards, but this development is also very telling in many other respects.

For starters, the recent BCR approvals demonstrate that despite so many distractions, the European data protection authorities continue to be committed to their international outreach work. That is of course entirely consistent with the efforts around global privacy standards – led by the Spanish authority in the past couple of years – and their latest focus on USA-headquartered internet companies. The adoption and implementation across jurisdictions of coherent and sound privacy standards has been the main driver behind these initiatives, so it is not surprising that the Article 29 Working Party remains keen to find an effective way of making BCR an attractive proposition for multinationals.

Something that is very interesting in this regard is that despite the fact that the size of the most recent BCR-approved companies – JP Morgan, BP and IMS Health – suggests that BCR is for large corporates, the opposite is also true. In other words, start ups and small companies are perfectly capable of jumping over the BCR bar set by the authorities as long as their commitment to privacy is a credible one. In fact, whilst a large multinational corporation may need to deploy considerable resources to roll out a BCR programme, a fast-growing but smaller company seeking to manage their privacy practices consistently and responsibly may find it a lot easier to put in place such a programme and demonstrate its effectiveness to the regulators.

It is beyond doubt that forward-thinking organisations are feeling more comfortable than ever about taking the BCR route. BCR is changing from being 'next year's project' to becoming this year's privacy programme. If anything, this highlights an emergent challenge for the data protection authorities. Early pro-BCR regulators, like the UK ICO, are now at risk of becoming a victim of their own success.

Finding the time to manage as a lead authority an ever growing number of BCR applications could be an issue at a time when resources are scarce. This is not to say that the data protection authorities are not trying their best to be efficient in their approach, but if BCR is set to grow as a model for global privacy management, regulators should be looking at ways of becoming more hands off.

At the risk of drawing comparisons with the Safe Harbor model, one approach that the Article 29 Working Party should be considering is self-certification. Let's face it, whilst as a concept BCR makes a lot of sense from a compliance and management perspective, the actual authorisation process is perceived as excessively bureaucratic and has put off prospective candidates. That's a real shame and the opportunity loss from a practical data protection point of view regrettable. So whilst the ongoing work by the Article 29 Working Party and developments like 'mutual recognition' are helpful, it is time to think ahead and brainstorm alternative ways of recognising the commitment of organisations to BCR.

Regulators want organisations to be accountable for their acts and organisations want recognition for their efforts to do things properly. So here's the good news: in the context of BCR, both can be achieved with little upfront regulatory scrutiny. If it is true that BCR is becoming a mainstream mechanism to manage personal information on a global basis and provide an adequate level of protection, let's allow organisations following that route to be accountable by letting them publicise and honour their commitment.

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