

Europe: WP29's BSPR document a 'massive contribution' to global data protection

By Asta Puraite



The Article 29 Working Party (WP29) adopted – on 6 June 2012 – a Working Document 02/2012 (WP195), which describes the conditions for Binding Corporate Rules (BCRs) for data processors or Binding Safe Processor Rules (BSPRs). The document contains a checklist of the requirements and provisions that must be met in the BSPR applications and presented to data regulators. BSPRs are internal, legally binding, codes of conduct regarding data privacy and security, and aim to guarantee clients of data processors that data transfers are adequately framed and protected according to EU data protection laws.

'The Article 29 Working Party will continue its work on BCRs for processors by developing a European coordination procedure, similar to the existing procedure for BCRs for data controllers and by drafting an EU application form', read a WP29 statement. 'The working document aims to meet the expectations of companies acting as data processors by giving them the possibility to make use of BCRs in the context of international transfers of personal data, for example in the context of outsourcing activities or cloud computing. The new initiative is based on the success of the BCRs for controllers, companies' expectations and the proposal to explicitly include BCRs for controllers as well as processors in the future legislative framework of the European Union'.

The checklist for BSPRs includes provisions on the liability for breaches of the BSPR and complaint handling process, among others. The document also establishes a duty for the group to have regular data protection audits and to disclose the results of the audit to data regulators upon request.

"Following the European Commission's endorsement of BCR for processors in the proposed EU Data Protection Regulation, the EU data protection authorities have now given their definitive and public backing to a concept that is set to make a massive contribution to the protection of personal data throughout the world", said Eduardo Ustaran, Partner at Field Fisher Waterhouse LLP. "This is the clearest sign to date that [they] are a viable option for global providers of data processing services. The benefits of BSPRs are obvious. [Firstly,] the official approval of a set of BSPRs will automatically grant the service provider the status of 'safe processor' which will, in turn, allow its clients to overcome the data transfers limitations under EU data protection law. [Secondly,] BSPRs replace the need for inflexible and onerous data transfers agreements. [Finally,] BSPRs can be tailored to the data protection practices of the service provider - they are a form of self-regulation." The document for BSPRs states that companies should also have privacy officers overseeing and ensuring compliance with the rules. Section 6, on Data Protection Safeguards, provides a description of the privacy principles, including the rules on transfers or onward transfers out of the EU.

In particular, the WP29 document states that processors and sub-processors must comply with the security and organisational measures which at least meet the requirements of the data controller's applicable law and any existing particular measures specified in the Service Agreement. Data processors and sub-processors must further immediately inform the data controller of any security breach.

"Suppliers of data processing services all around the world have been clearly told what it takes to be a safe recipient of data in their role as service providers", said Ustaran. "Whilst pure contractual solutions will remain as a mechanism to legitimise the engagement of global data service providers, the prospect of getting an upfront approval by the EU regulators is likely to become a much more appealing way forward. As with the current proposal for a new EU data protection framework, the success of BSPRs in realising their potential depends on how realistic the relevant obligations and compliance expectations are. Fortunately, if the criteria for BSPRs approval set out by the Article 29 Working Party is anything to go by, the success of BSPRs is well within reach of any responsible data processing services provider."

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This article appeared in the 28 June 2012 issue of Privacy This Week, DataGuidance