



ANSPDCP.Registrul Evidenta Decizii Avize Recomandari.0000106.06-12-2023

DECISION APPROVING PROCESSOR BINDING CORPORATE RULES OF OSF GLOBAL SERVICES

The “Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal”,

Pursuant to the request by SC OSF Global Services SRL on behalf of OSF Global Services Inc, received on 14 August 2020, for approval of their binding corporate rules for processor;

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 v Facebook Ireland Ltd and Maximilian Schrems, 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 Romanian Data Protection Authority (ANSPDCP) 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 BCRs, 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 (SA) and, as such, they are not assessed by the competent SA 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 rev.01¹, the Processor BCRs application of OSF Global Services was reviewed by the ANSPDCP, as the competent SA for the BCRs (BCR Lead) and by two SAs 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.
6. The review concluded that the Processor BCRs of OSF Global Services comply with the requirements set out by Article 47(1) of the GDPR as well as the Working Document WP257 rev.01² 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 (Section 1 and Section 3.3 of the BCR Policy);
 - 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 (Section 6.1.A and Section 6.1.B of the BCR Policy);
 - iii. Fulfil the requirements laid down in Article 47(2) of the GDPR:

¹ Endorsed by the EDPB on 25 May 2018.

² Endorsed by the EDPB on 25 May 2018.

- a) The structure and contact details of the group of undertakings and each of its members are described in the application form WP265 that was provided as part of the file review and the BCR Policy, Section 3 and Annex 2;
- 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 the BCR Policy, Section 3 and Section 5;
- c) the legally binding nature, both internally and externally, of the Processor BCRs is recognized in the Master Services Agreement and in Section 1, Section 3.1, Section 3.3, Section 6.1.a) of the BCR Policy and Annex 2;
- 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 BCRs are detailed in the BCR Policy at Section 4, Section 5, Section 6.1.a), Section 8, Section 10, Section 12 and in Annex 7;
- 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 SA 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 BCRs which are set forth the BCR Policy, Section 6 and in Annex 5 and Annex 6;
- f) the acceptance by the controller or processor established on the territory of a Member State of its liability for any breaches of the BCRs 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 the BCR Policy, Section 5.1, Section 6.1, Section 6.4, Section 7 point C, Section 8.3;
- g) how the information on the BCRs, 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 the BCR Policy, at Section 3.1, Section 3.3, Section 5, Section 6.3;

- 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 as well as monitoring training and complaint-handling are detailed the BCR Policy, Section 8.1, Section 9.1, Section 13, Section 14, Section 15, Section 16 and in Annex 1 and Annex 1.1;
- i) the complaint procedures are specified in the BCR Policy, Section 6.2 and in Annex 6;
- j) the mechanisms put in place within the group of undertakings for ensuring the monitoring of compliance with the BCRs are detailed in the BCR Policy Section 9 and in Annex 8. 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 OSF Global Services Inc.) and are available upon request to the supervisory authority;
- k) the mechanisms for reporting and recording changes to the rules and reporting those changes to the supervisory authority are specified in the BCR Policy, Section 17;
- 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 the BCR Policy, Section 5.1, Section 5.2 and Section 16. The obligation to make available to the SA the results of the monitoring of the measures referred to in point (j) above is specified in the BCR Policy, Section 5.2 and in Annex 8;
- m) the mechanisms for reporting to the competent SA 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 the BCR Policy, Section 6.5;
- n) finally, provide for an appropriate data protection training to personnel having permanent or regular access to personal data as specified in the BCR Policy, Section 8.1.

7. The EDPB provided its Opinion 26/2023 in accordance with Article 64(1)(f) of the GDPR. ANSPDCP took utmost account of this opinion.

DECIDES AS FOLLOWING:

1. The Processor BCRs of OSF Global Services Inc. provide appropriate safeguards for the transfer of personal data in accordance with Article 46(1) and (2) (b) and Article 47(1) and (2) of the GDPR and hereby ANSPDCP approves the Processor BCRs of OSF Global Services Inc.
2. However, before making use of the BCRs, it is the responsibility of the 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, including onward transfer situations. This assessment has to be conducted in order to determine if the guarantees provided by BCRs can be complied with in practice, in light of the circumstances of the possible impingement created by the third country legislation with the fundamental rights and the circumstances surrounding the transfer. If this is not the case, the data exporter in a Member State, if needed with the help of the data importer, should assess whether it can provide supplementary measures to ensure an essentially equivalent level of protection as provided in the EU.
3. 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 this BCRs. Therefore, the data exporter is required to suspend or end the transfer of personal data.
4. The approved BCRs will not require any specific authorization from the concerned SAs.
5. In accordance with Article 58(2)(j) of the 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 organisation whenever the appropriate safeguards envisaged by the Processor BCRs of OSF Global Services Inc. are not respected.

PRESIDENT,

Ancuța Gianina OPRE

ANNEX TO THE DECISION

The Processor BCRs of OSF Global Services Inc. that are hereby approved cover the following:

- a. **Scope.** The Processor BCRs of OSF Global Services Inc. is to govern cross-border transfers of Personal Data to and between OSF Entities and to third-party Sub-Processors (in accordance with written agreements with any such third-party sub-processors) when acting as Processor and/or Sub-Processor on behalf and under the instructions of a Customer (Section 3.1).
- b. **EEA countries from which transfers are to be made:** France, Germany, Portugal, Romania, Spain (Annex 3).
- c. **Third countries to which transfers are to be made:** Canada, Ukraine, United States, United Kingdom, Colombia, Brazil, Turkey, Australia, New Zealand, Japan, Hong Kong, India (Annex 3).
- d. **Purposes of the transfer:** The purposes are detailed in the BCR Policy, Section 3.1.
- e. **Categories of data subjects concerned by the transfer:** Those categories are specified in the BCR Policy, Section 3.1. Categories of Data Subjects to which the Personal Data relates: Customers or prospective Customers; Employees, representatives or other personnel having a contractual relation with the Customer or prospective Customer; Customers 'clients - individuals or prospective Customers 'clients-individuals.
- f. **Categories of personal data transferred:** Those categories are specified in BCR Policy, Section 3.1. The following categories of Personal Data are processed:
 - Identification data of Customer's representatives and contact persons: name, surname, company, department, title, position, business email & phone, business address;
 - Identification data of Customer's clients -individuals: personal email address, work email address, name, surname, name of employer, client profile picture, work phone number, personal phone number, work location, personal address, user name, password, orders from e-commerce website, credit card information, gender, age, financial data, national ID data, IP location, native language, known languages, browser user agent, Facebook ID, Google ID, user generated content: social media content, messages, work related tracking data, geolocation tracking data.