

Samres AB

Case number:
DI-2019-9129

Date:
2022-09-15

Decision approving Binding Corporate Rules

Decision of the Swedish Authority for Privacy Protection

The Swedish Authority for Privacy Protection approves the the Controller Binding Corporate Rules (Controller BCRs) of the Samres Group (Samres) 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) the EU General Data Protection Regulation 2016/679 (GDPR)¹.

For the avoidance of doubt, the Swedish Authority for Privacy Protection 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.

The approved BCRs will not require any specific authorization from the concerned EEA Data Protection Authorities.

The Swedish Authority for Privacy Protection presupposes that Samres notifies changes to the Controller BCRs to the Swedish Authority for Privacy Protection, which shall in turn forward the information to all concerned EEA Data Protection Authorities.

The decision can be revoked if Samres processes personal data in violation of to the Controller BCRs or to the GDPR.

In accordance with Article 58(2)(j) GDPR, each concerned EEA Data Protection Authority 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 the Samres Group are not respected.

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¹ 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).

Application

Samres has applied for approval by the Swedish Authority for Privacy Protection (IMY) of their Controller BCRs for the transfer of personal data to third countries within the Samres Group.

In accordance with the cooperation procedure as set out in the Working Document WP263 rev01², the Controller BCRs application of the Samres Group was reviewed by IMY, as the competent supervisory authority for the BCRs (BCR Lead) and by one Supervisory Authority (SA) acting as co-reviewer. The application was also reviewed by the concerned SAs to which the BCRs were communicated as part of the cooperation procedure.

Grounds for the decision

Article 47(1) GDPR, provides that IMY shall approve Binding Corporate Rules (BCRs) provided that they meet the requirements set out under this Article.

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.

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.

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

² Working Document Setting Forth a Co-Operation Procedure for the approval of "Binding Corporate Rules" for controllers and processors under the GDPR; adopted by the Article 29 Data Protection Working Party on 11 April 2018; endorsed by the European Data Protection Board (EDPB) on the first plenary meeting 25 May 2018. The Working Party was set up under Article 29 of Directive 95/46/EC. It was an independent European advisory body on data protection and privacy.

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.

The review mentioned above concluded that the Controller BCRs of Samres comply with the requirements set out by Article 47 of the GDPR, as well as the Working Document WP256 rev.01³.

The EDPB provided its opinion 23/2022 in accordance with Article 64(1)(f) regarding the Controller BCRs of Samres and IMY took utmost account of this opinion.

The decision has been taken by the Director General Lena Lindgren Schelin after presentation by the legal advisor Albin Brunskog. In addition, the Director for Legal Affairs David Törngren and the Head of Unit Catharina Fernquist has participated in the final management of this matter.

Lena Lindgren Schelin

How to appeal the decision

If you wish to appeal the decision, you shall write to IMY. You shall indicate in your letter which decision you wish to appeal and the requested change to the decision. The letter shall have reached IMY within three weeks of receipt of the decision, otherwise the appeal is not admissible. IMY will forward the appeal to the Administrative Court in Stockholm (Sw. Förvaltningsrätten i Stockholm) for examination, unless IMY chooses to change the decision in line with your request.

Provided that the appeal does not entail any privacy sensitive personal data or information that could be covered by the obligation of professional secrecy, you can e-mail the appeal to IMY. The contact details can be found on the first page of the decision.

³ Working Document setting up a table with the elements and principles to be found in Binding Corporate Rules; Adopted by the Article 29 Data Protection Working Party on 28 November 2017; Last Revised and Adopted on 6 February 2018; endorsed by the European Data Protection Board (EDPB) on the first plenary meeting 25 May 2018.

Annexes to the decision

BCR-C – Application

Annex 1: BCR-C, which includes

Appendix 1 – Company Structure and Contact Information

Appendix 2 – Material Scope and Transfers

Appendix 3 – Training Program

Appendix 4 – Excerpts from the GDPR

Annex 2: Undertaking

WP256 rev.01 referential