

**Public consultation 11/2022 on: Recommendations 1/2022 on the Application for Approval and on the elements and principles to be found in Controller Binding Corporate Rules (Art. 47 GDPR)**

**Adopted on 14 November 2022**

*(\*The comments below represent exclusively the personal point of view of the author)*

The Recommendations in question represent a very useful instructions in order to fil in practice the BCRs in accordance with the GDPR.

The instructions are very clear and understandable for the eventual use.

It will be interesting to see in future the real utilization of BCRs because the process in order to finally implement (BCRs) is longer and harder compare to other legal methods like, for example, the Standard Contractual Clauses.

In any case, one of the most important and crucial point and element (in common also with the Standard Contractual Clauses) is the legal system of the third countries. Indeed, the legal system is one of the most important element to assess for the transfer of personal data in third countries. Hypothetically, the transfers can be different (it mainly depends, in fact, on which category of personal data and which sector and scenario exactly are to be transferred abroad - and

which, if any, legal foreign provision could conflict or not with the EU legislation), but the final outcome of the assessment on the foreign legal system (on a specific category of personal data and on specific sector and scenario, regardless who is exactly the group of companies involved) should/shall be the same. So, if for example there is a legislation of a third country that in a specific sector and for specific scenario could represent a conflict with the EU legislation, this should/shall be valid always for anyone (any company) that could be configured in that specific sector and scenario. Therefore, the matter regarding the assessment of a third country legislation is intrinsically “public” in nature and with “*erga omnes*” effects, and should be assessed by Public Institutions instead of private companies. For example, hypothetically, it would be good to have not only a list of third countries with positive adequacy decision issued by the EU Commission but also a list of third countries that, for example, in specific sector or scenario have a legislation in conflict with the EU legislation. This would benefit the certainty of the law in general, the data subjects and consequently all the operators in the market.

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