



AUTORITEIT PERSOONSGEGEVENS - BCR APPROVAL DECISION

Autoriteit Persoonsgegevens

DECISION APPROVING CONTROLLER BINDING CORPORATE RULES OF AMERICAN EXPRESS GLOBAL BUSINESS TRAVEL

The Autoriteit Persoonsgegevens,

Pursuant to the request by GBT III B.V. on behalf of the group American Express Global Business Travel, received on 11 November 2019 for approval of their binding corporate rules (BCRs) for controller;

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 Court of Justice of the European Union (CJEU) decision Data Protection Commissioner Maximillian Schrems and Facebook Ireland Ltd, 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;

Having regard to EDPB 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) of 20 June 2023;

Makes the following observations:

1. Article 47(1) of the GDPR, stipulates that the competent supervisory authority shall approve Binding Corporate Rules 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 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

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 rev01¹, the Controller BCRs application of American Express Global Business Travel was reviewed by the Autoriteit Persoonsgegevens, as the competent supervisory authority for the BCRs (BCR Lead) and by two Supervisory Authorities (SA) 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. This review was communicated to American Express Global Business Travel and they have been given the opportunity to incorporate and comment on this feedback throughout the procedure. This process continues until the BCRs fulfil the requirements set out by Article 47(1) of the GDPR as well as the Working Document WP256 rev01.²
6. The review concluded that the Controller BCRs of American Express Global Business Travel fulfil the requirements set out by Article 47(1) of the GDPR as well as the Working Document WP256 rev01³ 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 (8. *Intra-Group Agreement* and 9. *Board resolutions*);
 - 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 (*GPR - Rights for individuals under EU law; GPR - Questions, complaints or concerns (page 13 f.); GPR - Enforcement and liability. Supporting Documents: 8. Intra-Group Agreement Clause 4 and 9. Board Resolution*);

¹ Endorsed by the EDPB on 25 May 2018.

² The WP256 rev.01 and WP264 are superseded by the EDPB Recommendation 1/2022. However, since the BCR-C of American Express Global Business Travel had already reached the stage of a "consolidated draft" in accordance with 2.4 of WP 263 rev.01 at the time of publication of the Recommendations, it can be assessed under the previous framework, subject to the EDPB adopting its opinion by the end of 2023 (paragraph 13 of the Recommendations).

³ Endorsed by the EDPB on 25 May 2018.