

*Courtesy Non-Official Translation of National Decision BCR Controller*

Vaduz, 23 July 2024

Az: 103.1.6 / 2021-15441

DECISION APPROVING CONTROLLER BINDING CORPORATE RULES OF  
IVOCLAR VIVADENT GROUP

The «Data Protection Authority of the Principality of Liechtenstein»,

Pursuant to the request by Ivoclar Vivadent AG, received on 11 January 2022, for approval of their binding corporate rules for controller (Binding Corporate Rules (BCRs), BCR-C);

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 judgment of the Court of Justice of the European Union *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;

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 (hereinafter “the Recommendations 1/2022”);

makes the following observations:

1. Article 47(1) GDPR, provides that the Data Protection Authority 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 EEA 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 BCR-Cs. 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 rev01<sup>1</sup>, the Controller BCRs application of Ivoclar Vivadent Group was reviewed by the Data Protection Authority, as the competent supervisory authority for the BCRs (BCR Lead) according to Art. 56 GDPR and by two Supervisory Authorities (SA) acting as co-reviewers. The application was also reviewed by the concerned SAs to which the BCR-Cs were communicated as part of the cooperation procedure.
6. The review concluded that the Controller BCRs of Ivoclar Vivadent Group comply with the requirements set out by Article 47(1) GDPR as well as the Recommendations 1/2022 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 Inter-Group Agreement (see Application Form 5, BCR 3, 7,); and dedicated clauses in employment contracts (see Application Form 5 and BCR 3);
  - ii) Expressly confer enforceable third-party beneficiary rights to data subjects with regard to the processing of their personal data as part of the BCR-Cs (see BCR 18 and Inter-Group Agreement 2.2);
  - iii) Fulfil the requirements laid down in Article 47(2) GDPR:
    - a) The structure and contact details of the group of undertakings and each of its members are described in the Application form of the Recommendations 1/2022 that was provided as part of the file review and Annex 1;
    - 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 BCR 3 (Annex 2);

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<sup>1</sup> Endorsed by the EDPB on 25 May 2018.

- c) the legally binding nature, both internally and externally, of the Controller BCRs is recognized in BCR 2, 3 and Inter-Group Agreement;
- 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 binding corporate rules are detailed in BCR 6, 8.2, 10, 24.2.1;
- 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 Art. 22 GDPR, the right to lodge a complaint with the competent supervisory authority and before the competent courts of the Member States in accordance with Article 79 GDPR, and to obtain redress and, where appropriate, compensation for a breach of the binding corporate rules which are set forth in BCR 14, 18;
- f) the acceptance by the controller or processor established on the territory of a Member State of its liability for any breaches of the binding corporate rules 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 BCR 19;
- g) how the information on the binding corporate rules, in particular on the provisions referred to in points (d), (e) and (f) of this paragraph are provided to the data subjects in addition to Articles 13 and 14 GDPR, is specified in BCR 26;
- h) the tasks of any data protection officer designated in accordance with Article 37 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 BCR 22;
- i) the complaint procedures are specified in BCR 15 - 17;
- j) the mechanisms put in place within the group of undertakings for ensuring the monitoring of compliance with the binding corporate rules are detailed in BCR 21 and Annex 4. 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 Ivoclar Vivadent AG headquarters, as well as to the management of the audited entity) and are available upon request to the competent supervisory authority;

- k) the mechanisms for reporting and recording changes to the rules and reporting those changes to the supervisory authorities are specified in BCR 25;
  - 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 BCR23. The obligation to make available to the supervisory authority the results of the monitoring of the measures referred to in point (j) above is specified in BCR 21;
  - m) the mechanisms for reporting to the competent supervisory authority 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 BCR 24;
  - n) finally, provide for an appropriate data protection training to personnel having permanent or regular access to personal data (BCR 20 and Annex 3)).
7. The EDPB provided its opinion 13/2024 in accordance with Article 64(1)(f) GDPR. The Data Protection Authority took utmost account of this opinion.

DECIDES AS FOLLOWING:

1. The Data Protection Authority approves the Controller BCRs of Ivoclar Vivadent Group in the current version as of 18 March 2024 providing appropriate safeguards for the transfer of personal data in accordance with Article 46(1) and (2) (b) and Article 47(1) and (2) GDPR. For the avoidance of doubt, the Data Protection Authority 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 EEA cannot be ensured.
2. The approved BCR-Cs will not require any specific authorization from the concerned SAs.
3. In accordance with Article 58(2)(j) 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 organization whenever the appropriate safeguards envisaged by the Controller BCR-Cs of Ivoclar Vivadent Group are not respected.

ANNEX TO THE DRAFT DECISION

The Controller BCRs of Ivoclar Vivadent Group that are hereby approved cover the following:

- a. **Scope:** all transfers and processing within the Ivoclar Vivadent Group
- b. **EEA countries from which transfers are to be made:** Austria, Denmark, Finland, France, Germany, Italy, Liechtenstein, The Netherlands, Poland, Spain and Sweden.
- c. **Third countries to which transfers are to be made:**

- d. Purposes of the transfer:** The purposes are detailed in BCR 2 and Annex 2. They include the following: *General Business* including provision of products and services, restructuring, mergers and acquisitions as well as activities related to business development; *Human Resources* including acquisition accompanying the employee lifecycle, providing compensation and benefits solutions; *Payroll*; *Crime detection and prevention*; *Compliance with the law and regulatory obligations* including legal and compliance advice and trainings; *Compliance processes* including third party screening, whistleblower management, risk assessment program; risk management and maintaining relevant certifications; *Sales* including provision of account insights; *Marketing and public relations*; Customer complaints; *Accounts and records* including inbound and outbound payments and records of the Group's business activities, assessment of business performance, financial reporting, annual accounts, audits; *Technology* including maintenance of user devices, monitoring of corporate resources; software development, application management, support and network architecture; *Product management* including the release and sales of products and keep product lifecycle process documentation; *Products/Services* including renewals service to external customers, data verification and ensuring that renewals payments are made and customer service.
- e. Categories of data subjects concerned by the transfer:** Those categories are specified in BCR 3 and Annex 2. They include: job applicants, employees including agency workers, temporary workers and volunteers and onsite contractors, employees' family members, vendors, suppliers, consultants, contractors, administrators of public databases, customers, clients, service providers, agents, website, app and service users, prospects, leads, visitors to premises, any other individuals from time to time, public authorities and law enforcing agencies.
- f. Categories of personal data transferred:** Those categories are specified in Annex 2 of the BCRs.

#### APPLICATION DOCUMENTS

The attached documents are part of the approval decision:

1. Ivoclar Vivadent Group BCR-C Application Form
2. Ivoclar Vivadent Group Reference Table 06.2023
3. Ivoclar Vivadent Group BCR-C
4. Ivoclar Vivadent Group Annex 1 List of the companies of the Ivoclar Vivadent Group
5. Ivoclar Vivadent Group Annex 2 List of Data Processing
6. Ivoclar Vivadent Group Annex 3 Training Concept
7. Ivoclar Vivadent Group Annex 4 Privacy Policy Audit Concept
8. Ivoclar Vivadent Group Agreement for the compliance with the Ivoclar Vivadent Privacy Policy – Binding Corporate Rules for Controllers (BCR-C) (Inter-Group Agreement)