DUTCH DATA PROTECTION AUTHORITY - BCR APPROVAL DECISION

# DECISION APPROVING CONTROLLER BINDING CORPORATE RULES OF ASML

The Autoriteit Persoonsgegevens,

Pursuant to the request by **ASML Netherlands B.V.** on behalf of the **ASML Holding N.V.**, received on **18-01-2017**, for approval of their binding corporate rules 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 judgment of the Court of Justice of the European Union Data Protection Commissioner v. Facebook Ireland Ltd and Maximillian 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) of the EU General Data Protection Regulation 2016/679 (GDPR), provides that the competent Supervisory 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 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 rev01,[1] the Controller BCRs application of **ASML** 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, *in this case the Belgian and Italian SAs*. 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 Controller BCRs of **ASML** comply with the requirements set out by Article 47(1) of the 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 Intra-Group Agreement *(Intra-Group Agreement on Binding Corporate Rules; Application form, section 5; BCRs art. 1.4);*
   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 *(Application form, section 5; Article 18.6 of the BCRs);*
   iii) Fulfil the requirements laid down in Article 47(2) of the 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 in *Article 1.1 of the BCRs and Annex 2 to the BCRs;*
      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 *Articles 2.2, 3, 4.2, 4.5 of the BCRs and Annex 3 to the BCRs;*
      c) the legally binding nature, both internally and externally, of the Controller BCRs is recognized in *Article 1.4 of the BCRs*;
      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,

[1] Endorsed by the EDPB on 25 May 2018.

and the requirements in respect of onward transfers to bodies not bound by the binding corporate rules are detailed in *Articles 2, 3, 4, 5, 6, 8 and 11 of the BCRs;*

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 supervisory authority 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 binding corporate rules which are set forth in *Articles 1.2 and 18 of the BCRs;*

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 A*rticle 18 of the BCRs;*

g) how the information on the binding corporate rules, 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 *Articles 1.5 and 6.1 of the BCRs;*

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 *Article 13 of the BCRs;*

i) the complaint procedures are specified in *Article 17 of the BCRs;*

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 A*rticle 16 of the BCRs*. 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 **ASML Holding N.V.,** as well as to the data privacy organization) 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 *Articles 13.1(v) and 21 of the BCRs*;

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 *Articles 14.2, 14.3, 14.4, 16.4 and 16.5 of the BCRs*. 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 *Articles 16.4 and 16.5 of the BCRs;*

m) the mechanisms for reporting, upon request, 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 *Articles 14.4, 20 and Annex 1 (Definition of Transfer Impact Assessment) of the BCRs*;

n) finally, provide for an appropriate data protection training to personnel having permanent or regular access to personal data (*Article 15 of the BCRs*).

7. The EDPB provided its **Opinion 12/2025** in accordance with Article 64(1)(f) of the GDPR. The Autoriteit Persoonsgegevens took utmost account of this opinion.

**DECIDES AS FOLLOWING:**

1. The Autoriteit Persoonsgegevens approves the Controller BCRs of **ASML** 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) GDPR. For the avoidance of doubt, the Autoriteit Persoonsgegevens 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.

2. The approved BCRs 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 BCRs of **ASML** are not respected.

4. Annex 1 forms an integral part of this decision and shall be considered a binding appendix thereto.

The Hague, 12 June 2025
Yours sincerely,

Autoriteit Persoonsgegevens
On its behalf,

Director Strategy and International Affairs

## Legal remedy

If you do not agree with this decision, you can submit a notice of objection.[2] The notice of objection must be signed and dated, include the name and address of the person submitting it and should entail a description of the decision against which the objection is being lodged and the grounds on which it is based. You must do this within six weeks after this decision is taken by addressing it to the Autoriteit Persoonsgegevens and submitting the notice via PO Box 93374, 2509 AJ The Hague, The Netherlands.[3]

It is also possible to submit a notice of objection via our web form on the website, see https://www.autoriteitpersoonsgegevens.nl/over-de-autoriteit-persoonsgegevens/bezwaar-maken .

Please note that submitting a notice of objection will not automatically suspend the effect of this decision.

[2] The Dutch General Administrative Act applies to this procedure.
[3] Article 6:7 in conjunction with article 6:8 (1) of the Dutch General Administrative Act.

## ANNEX TO THE DECISION

The Controller BCRs of **ASML** that are hereby approved cover the following:

a. Scope.
*The BCRs for Business Partner Data address the processing of personal data of business partners and other individuals by ASML that are: (i) subject to EEA data protection laws (or were subject to EEA Data Protection Laws prior to the transfer to a group company), and (ii) are transferred to a group company in a third country (article 1.1 of the BCRs).*
*The BCRs for Employee Data address the processing of employee data by ASML that are: (i) subject to EEA data protection laws (or were subject to EEA Data protection laws prior to the transfer to a group company), and (ii) are transferred to a group company in a third country (article 1.1. of the BCRs).*

b. EEA countries from which transfers are to be made:
*Belgium, France, Germany, Ireland, Italy and The Netherlands*

c. Third countries to which transfers are to be made:
*Canada, China, Israel, Japan, Republic of Korea, Malaysia, Singapore, Taiwan, the United Kingdom, and the United States of America*

d. Purposes of the transfer:
The purposes are detailed in *Annex 3 to the BCRs.*
They include the following:
*BCRs for Business Partner Data:*
- *Business communication*
- *Customer assessment and acceptance*
- *Concluding and executing agreements*
- *Monitoring and investigating compliance*
- *Website and/or mobile app usage*
- *Compliance with law*
- *Protecting health, safety, security and ensuring integrity*
- *Business process execution and internal management*

*BCRs for Employee Data:*
- *Managing Workforce*
- *Workforce Analytics*
- *Communications, Facilities and Emergencies*
- *Business Operations*

- *Monitoring*
- *Compliance*

e. Categories of data subjects concerned by the transfer:
   - *Customers, Business Partners, Suppliers, Stakeholders, Users, Attendees and other Individuals*
   - *Employees (past and present) and Dependents*

   Those categories are specified in *Annex 3 to the BCRs*.

f. Categories of personal data transferred:
   *BCRs for Business Partner Data:*
   - *Personal details of customers and prospects,*
   - *Personal details of vendors, service providers, suppliers, payees and intermediaries, legal services data*
   - *Interaction data*
   - *Website, tools, systems and app data*
   - *Advertising, marketing and public relations data,*
   - *Accounts and records data, data relating to customers, vendors, service providers, suppliers, payees, and intermediaries, legal services data*
   - *Data relating to mergers, ventures and acquisitions*

   *BCRs for Employee Data:*
   - *Contact details and general personal data*
   - *Government-issued data and documentation required under immigration laws*
   - *Internal data*
   - *Recruitment data*
   - *Employment data*
   - *Compensation and benefits data*
   - *Performance data*
   - *Management records*
   - *Website, tools, systems, apps data*

   Those categories are specified in *Annex 3 to the BCRs.*