EDPB Report on Public Consultation: Recommendations 1/2026 on the Application for Approval and on the elements and principles to be found in Processor Binding Corporate Rules (Art. 47 GDPR)

1. Background on the process of the public consultation

This consultation concerns the Draft EDPB Recommendations 1/2026 that is meant to repeal and replace WP257 rev.01 and WP265, while in substance building on it. The consultation took the format of a written consultation (started on 19 January 2026, closed on 2 March 2026) to collect inputs from organisations on possible practical issues of implementation of the update requirements, if any.

The target audience are the groups of undertakings that are using (or intend to use) Binding Corporate Rules ('BCR') as a Tool for transfer for the personal data transfers within the group, as well as the entities, acting as a controller, that are (or intend to) engaging such a Group as their processors.

2. Amount and nature of contributions received

Total number of contributions received: 11.

Link to the page where the contributions are published: Recommendations 1/2026 on the Application for Approval and on the elements and principles to be found in Processor Binding Corporate Rules (Art. 47 GDPR).

Number of contributing entities by category:

Business association	Company	Individual	NGO	Public authority	Consumer organisation	Other
4	2	1	0	1	0	Academic: 2 Other: 1

Total number of contributions received from EU/EEA and third countries:

EU/EEA	Third countries
5	6

3. Main outcomes of the public consultation

Having considered the feedback received, the EDPB **has incorporated** the following elements into the Recommendations 1/2026.

1. It is clarified in the Introduction that in cases where the groups use the BCR-P as their global data protection policy governing processing by all entities, for the sake of completeness, groups should include all entities in the list of BCR members.
2. The obligation to systematically provide the results of the internal audit to the controller has been replaced with the obligation to provide this information on controller's request only. This will also align the BCR-P safeguards on this point to the Standard Contractual Clauses[1] which do not require a systematic communication either.
3. Section 3.2 currently means that communication with the data subjects (including the extent of such communication) depends on the agreement with the controller. However, for the better clarity, the EDPB has amended Section 3.2 by specifying that communication with the data subjects takes place only when agreed with the controller.
4. Considering that the controller shall be able to receive the transfer impact assessment ('TIA') conducted by the group at any time, as well as to use this TIA as a basis of its own TIA in relation to its obligations stemming from the GDPR, the obligation to conduct it "in the agreement with the controller" has been removed.
   Additionally, some envisaged obligations vis-à-vis the controller in the Section 8.1 of the Part 3 "Elements and principles to be found in BCR-P" were revised so as to take into account practical challenges in cases where the group processes personal data on behalf of large number of controllers.
5. For the sake of clarity, the indent iii of the Section 8.2 of the Part 3 "Elements and principles to be found in BCR-P" was amended so as to envisage that as much relevant information as possible on the legally binding request by a public authority under the laws of the country of destination received could be provided to the data exporter and the controller, at regular intervals and "where feasible, annually".
6. The possibility to envisage a "contact tool" was added among other examples of possible contact point, bearing in mind that the data subjects should not be obliged to install specific tools into their devices in order to exercising their rights. Otherwise, such practice would be considered as a limitation (restriction) of the data subjects rights.

The EDPB notes that some contributions **have not been addressed, however the Recommendations 1/2026 does not prevent the group from implementing those in practice where they do not contradict the requirements in the BCR**. In particular it refers to:

1. The suggestion to include the possibility for the group to transfer data from the group entity, acting as a data importer, that is no longer bound by the BCR to another group entity, established in the third country, that is still bound by the BCR. The EDPB notes that the recommendations only specify how personal data, transferred under the BCR, should be treated in case the data importer ceases to be bound by the BCR, i.e. this entity shall delete the personal data in question or return it to the possession of the exporter. This means that the group (e.g. the data exporter / the liable entity), if

[1] https://eur-lex.europa.eu/eli/dec_impl/2021/914/oj.

agreed with the controller, is able to decide where exactly such data should be transferred for the continuation of the processing.

2. Suggestions to add in the Section 3.3.2 of Part 3 “Elements and principles to be found in BCR-P” that “in deciding on an audit, the controller may take into account relevant certifications held by the members of the group”. The current wording of the recommendations does not include any restrictions for the controller in this regard. However, the controller should always be allowed, with regard to the processing activities carried out on his behalf by processors and sub-processors in the group, to conduct an audit which is aimed at assessing whether the commitments set in the BCR are appropriately implemented and are effective.
3. It was also suggested, in case of audits conducted by the controller or by the data exporter, to add a possibility to select the independent auditor jointly by the controller and the group or jointly by the exporter and the importer. The EDPB notes that the wording in Section 3.3.2 of Part 3 “Elements and principles to be found in BCR-P” reflects the wording of the Article 28(3)(h) of the GDPR, i.e. it is up to the controller to choose specific auditor. However, the current wording does not prevent the controller from taking into account the processor’s suggestions, as well as it does not prevent the data exporter from taking into account the data importer’s suggestions.

Further, the EDPB **has not addressed** the comments specified below.

1. Requests to delete the clarification in the Paragraph 6 of the Introduction where it is noted that “BCR-P are, however, not suitable to cover a direct transfer from an external controller covered by the geographical scope of the GDPR to one of the processors members of the BCR-P Group in third countries. For such a transfer, a different transfer tool under Article 46 is required instead”. In this regard, it should be noted that the definition of BCR provided in the Article 4(20) of the GDPR explains that the BCR only cover intra-group transfers, i.e. not transfers from external entities to the group or transfers from the group to external entities. The EDPB also notes that this not a deviation of the previous practice as WP 29 Working Document on the Processor BCR (WP257) did not include any wording that would state otherwise.
2. Request to include the possibility to create third-party beneficiary rights in the processing agreement (Article 28 of the GDPR), not in the BCR. It is worth to note that Article 47(2)(e) GDPR envisages that the BCR shall specify the rights of data subjects in regard to processing and the means to exercise those rights. In addition, BCR (and in particular the commitments related to the data subject rights) should be accessible for the data subjects at any time (contrary to the processing agreement).
3. Contributions regarding complaint handling procedure. First, it was suggested to withdraw the requirement to provide the data subjects with the physical addresses. However, in some Members States (e.g. France) it is mandatory to provide a physical address where data subjects may submit their complaint or request. Moreover, this could be important in cases where the data subjects have no possibility to submit their complaints / requests digitally (e.g. because of their age, health conditions, etc.) However, this does not mean that the group shall provide the physical addresses of each group member. It could be decided to provide an address of one entity where complaints and other requests may be submitted, e.g. of an entity in the EEA with delegated data protection responsibilities.

   It was also suggested to delete the requirement that “while data subjects are encouraged to use the point(s) of contact indicated, this is not mandatory”. The EDPB notes that this requirement refers to the fact that the data subjects should not be required to follow group’s internal complaint handling procedure before submitting the complaint to the SA or the court (in line with Article 77, 79 of the

GDPR). This was also clarified in the Section 3.2 of Part 3 "'Elements and principles to be found in BCR-P" in order to avoid possible misinterpretations (i.e. that the data subjects do not need to submit their complaints to the contact point envisaged but may use any contact point of the group).

4. Contributions regarding internal audits. It was suggested that, in case of audits conducted by the controller, the controller should be obliged to provide in advance the plan of such audit and cover the costs of the audit. It is worth to note that the BCR-P are meant to cover the commitments that are to be applied among the group members, thus the recommendations cannot add obligations for the controllers which are not the members of the group and are not bound by the BCR. Additionally, it was suggested to add restrictions on the controllers right to access the results of the audit or conduct the audit on the grounds of confidentiality (e.g. related to the protection of business secrets). The EDPB notes that this wording would leave a place for a limitation of the right of the controllers to access all information, tools, etc. that is necessary to assess whether personal data is processed within its instruction.

5. Contributions in regard to replacing the references to the controller with the references to the Customer as the latter might be a processor. It is important to notice that the Controller is ultimately responsible for any infringement of the GDPR, including when it comes to using (sub)processors that transfer personal data to the third countries (Art. 24(1) GDPR), and could therefore be held liable even if the transfer is not carried out directly by the controller but rather by a processor on behalf of the controller (e.g. in cases of the processor to sub-processors transfers). Taking this into consideration, the controller always has certain rights towards the group that processes the personal data on its behalf (e.g. a right to access the BCR, to suspend the transfer, to audit the data importer, etc.), as well as, it should be ensured that the group members will have clear obligations towards the controller even if they are established in the country where the GDPR is not applicable. Thus, the suggestion to remove references to the controller cannot be addressed.

   Additionally, it was considered that the group may not be aware of the controller(s) on behalf of which it processes personal data (where the contracting party is a customer, acting as a processor). The EDPB notes that in line with Article 30(2), where necessary, information on the controllers has to be included in the record of processing activities.

6. Contribution to delete the requirement to specify the term "applicable law" (Section 12 of Part 3 "Elements and principles to be found in BCR-P"). The EDPB notes that requirement to specify the term in question comes from the need to ensure transparency and legal clarity. Otherwise, it might be difficult to foresee how specific commitments in the BCR will be implemented in practice, i.e. whether this should happen in accordance with EEA law (applicable to an exporter and throughout the whole chain of processing) or with the third country law (which might differ from the relevant obligation set in EEA law and should first be assessed in order to ensure that e.g. a legal obligation stemming from it could undermine the level of protection the BCR should ensure when personal are transferred to and processed in a third country).

7. It was suggested to reconsider the need for the requirement "if there is a need for reference to a particular provision of the GDPR, it should be quoted in full in the BCR-P" as this adds substantially to the length of the BCR-P, and make them more difficult to read. The EDPB notes that Section 12 of Part 3 "Elements and principles to be found in BCR-P" specifies that "References to GDPR provisions should generally be avoided" which means that the group should not add references to the Articles of the GDPR into the BCR; it should rather describe in the BCR the necessary obligations in line with the GDPR. However, if the group decides to add references to the Articles of the GDPR, those articles should be quoted in full (or wording should be added in an Annex to the BCR). The reason for this requirement is the fact that the GDPR is not applicable to the entities in the third countries (and even not known by their employees) and those entities will have to apply the

provisions of the BCR, therefore the content of the relevant commitments should stem clearly and directly from the BCR.

8. It was suggested to envisage that a cooperation of the group with the supervisory authority means only cooperation with the lead supervisory authority ('Lead SA'). The EDPB notes that role of the Lead SA in the sense of the BCR and its difference from other SA that are competent in sense of competency for the processing covered by the BCR is explained in the paragraph 11 of the Introduction, as well as in footnotes 15 and 16.

The EDPB did not address the contributions where **suggestions are already covered** by the current wording of the Recommendations 1/2026 or the GDPR, e.g. suggestions:

1. to add a reminder that "approval of the BCR-P" does not mean the adequacy of all Group's processing operations (this is already envisaged in par. 13 of the Introduction);
2. to delete a requirement to describe categories of personal data and categories of the data subjects in the material scope of the BCR, as processors may not have an access to personal data. Section 2.1 of Part 3 'Elements and principles to be found in BCR-P' requires to describe the transfer as precisely as possible, thus, depending on the processing activities, material scope could be specified by a general or detailed description of the processing activities in question.
3. to change the obligations to communicate the audit results to the Group's ultimate parent's board and to inform the board of the liable entity taking into account the significance of the findings. The EDPB notes that current wording enables the group decide internally when it is appropriate to inform the ultimate parent's board of the audit results. As for the information to the liable entity, the EDPB is of the opinion that it is important for it to be aware of what it is responsible for and decide whether it should initiate any further steps in regard to those findings. However, the group may decide on practical steps for increasing the effectiveness of the oversight, e.g. add labels / flags marking specific level of non-compliance.
4. on the applicability of the purpose limitation principle to the group, acting as a processor. The EDPB notes that Article 47(2)(d) GDPR requires the BCR to specify "the application of the general data protection principles, in particular purpose limitation". In case of the transfer, this refers to the purpose of the transfer (therefore, such purpose, as provided in Article 5(1)(b) of the GDPR, shall be specified, explicit and legitimate), which is agreed with the controller. This is already stated in Section 5.1.2.
5. to clarify expectations for assessing the third-country law. The Section 5.4.1 of Part 3 "Elements and principles to be found in BCR-P" provides general requirements for the elements to be assessed within the TIA. More details are provided in the Recommendations 1/2020 on measures that supplement transfer tools to ensure compliance with the EU level of protection of personal data. Also, it is worth to note that the EDPB is currently working on a TIA template that is meant to facilitate this exercise by practical insights, including in sense of assessing third-country law.

Contributions which **misinterpreted the content of the document** subject to the public consultation were not taken on board, e.g. contributions related to protection of the children's neurodata and the contributions related to a technical implementation layer to be added to the documents.