



# BSA SUBMISSION ON THE EUROPEAN DATA PROTECTION BOARD'S DRAFT RECOMMENDATIONS ON BINDING CORPORATE RULES FOR PROCESSORS

## *Response to the Public Consultation*

2 March 2026

BSA is the global trade association of the enterprise software industry, representing companies<sup>1</sup> that are leaders in artificial intelligence, cybersecurity, cloud computing, and other cutting-edge technologies. We work in over 20 markets in the US, Europe, and Asia, advocating for policies that build trust in technology so that every industry sector and the public can benefit from innovation.

BSA welcomes the European Data Protection Board's (EDPB) public consultation on the draft Recommendations 1/2026 on the application for approval and on the elements and principles to be found in Processor Binding Corporate Rules under Article 47 GDPR (draft Recommendations).

Binding Corporate Rules (BCRs) remain a critical international transfer mechanism for global enterprise software providers, particularly in light of increasingly complex data flows and the need for high-standard compliance solutions.

Several BSA members have obtained, or are in the process of obtaining, approval of BCRs for processors (BCR-Ps) from lead supervisory authorities across the EEA. This submission therefore draws on direct operational experience with the BCR-P application process, as well as on the practical reliance placed on approved BCR-Ps by both processors and their external controller customers.

In this submission, BSA focuses on a limited number of aspects of the draft Recommendations that raise **practical and legal concerns** for processors that have invested significantly in BCR-Ps as a "gold standard" transfer tool. In particular, BSA addresses the proposed **scope of application of BCR-Ps** in relation to initial

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<sup>1</sup> BSA's members include: Adobe, Akamai, Alteryx, Amadeus, Asana, Atlassian, Autodesk, Bentley Systems, Box, Cisco, Cloudflare, Cohere, Dassault Systemes, Databricks, Docusign, Dropbox, Elastic, EY, Graphisoft, HubSpot, IBM, Informatica, Kyndryl, MathWorks, Microsoft, Notion, Okta, OpenAI, Oracle, PagerDuty, Palo Alto Networks, Rubrik, Salesforce, SAP, ServiceNow, Shopify Inc., Siemens Industry Software Inc., Trend Micro, TriNet, Workday, Zendesk, and Zoom Communications Inc.

transfers from controllers to processors, which risks introducing disproportionate administrative complexity without corresponding data protection benefits.

BSA offers these comments with the aim of supporting the EDPB’s objectives of ensuring robust protection for data subjects while promoting legal certainty, proportionality, and effective implementation in practice.

## 1. Scope of Processor Binding Corporate Rules (Section 1.2)

BSA has significant concerns about the approach taken in Section 1.2 of the draft Recommendations regarding the scope of BCR-Ps. In particular, paragraph 6 of the draft Recommendations clarifies that BCR-Ps may be relied upon only for international transfers occurring between members of the same corporate group, acting as processors or internal sub-processors, and explicitly excludes initial transfers of personal data from an external controller from an EEA country to a processor that is a member of the BCR-Ps group located in a third country.

### 1.1. Departure from established regulatory practice

This restrictive interpretation represents a departure from the long-standing position of EU data protection authorities, including [guidance adopted by the Article 29 Working Party](#) and subsequently endorsed by the EDPB. Previous guidance expressly recognized that BCR-Ps apply to personal data received from an EU-based controller that is not a member of the group and subsequently processed by group members acting as processors or sub-processors, without limiting their application to purely intra-group transfers<sup>2</sup>.

The position set out in the draft Recommendations also diverges from the current [approach taken by the UK Information Commissioner’s Office](#), which has explicitly acknowledged that approved BCR-Ps are, in practice, relied upon by external controllers as a lawful transfer mechanism, including where data is transferred directly to a non-UK processor member of a BCR-P group<sup>3</sup>. Many processors have structured their global compliance frameworks in reliance on this consistent and well-established regulatory understanding.

Processors that have recently obtained BCR-P approvals from lead supervisory authorities – following multi-year application processes conducted under established guidance – did so on the reasonable understanding that their approved BCR-Ps would serve as a valid transfer mechanism for personal data received from external controllers, including transfers to group member processors located in third countries. Narrowing

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<sup>2</sup> Introduction, paragraph 2: “It should be recalled that BCR-P apply to data received from a controller established in the EU which is not a member of the group and then processed by the group members as processors and/or sub processors <.>”

<sup>3</sup> Scope of processor BCRs. “We understand that, in many cases, approved BCR-P are being relied on as an international transfer tool by external third-party UK Controllers. We are aware that those UK Controllers may be sending data directly to an overseas processor member of a BCR-P group, regardless of which member of that group they are contracting with. We acknowledge and recognise this as a broader, practical use of a UK BCR-P. We accept that an external third-party UK Controller may transfer data directly to members of a UK BCR-P located in third countries, without first passing data to the UK based BCR-P member.”

the scope of BCR-Ps at this stage risks undermining legitimate expectations and discouraging future investment in this high-standard compliance tool.

## 1.2. Creation of a redundant “two-tier” transfer framework

By excluding initial controller-to-processor transfers from the scope of BCR-Ps, the draft Recommendations effectively require the use of an additional transfer mechanism, such as the Standard Contractual Clauses (SCCs), for the first transfer, while permitting reliance on BCR-Ps only for subsequent intra-group processing operations. This creates a redundant “two-tier” compliance model, whereby the same processing chain is subject to overlapping transfer tools. That approach introduces confusion without any clear increase in the level of protection afforded to data subjects.

In practice, the draft Recommendation creates additional contractual complexity, negotiation, and administrative burden for both controllers and processors, particularly in long-term, large-scale outsourcing and cloud service arrangements. At a time when EU policymakers are seeking to promote simplification, legal certainty, and effective compliance mechanisms, this duplication risks undermining those objectives without delivering corresponding substantive safeguards.

This complexity is particularly acute for cloud computing and software-as-a-service (SaaS) providers, where personal data received from an external controller may be processed across multiple group entities in different jurisdictions as part of a single, integrated service. Requiring parallel transfer mechanisms for what is, in practice, a single and continuous processing chain creates fragmentation without enhancing the level of data protection.

## 1.3. Undermining the role of BCR-Ps as a “gold standard” mechanism

BCRs have consistently been presented by EU data protection authorities as a “gold standard” transfer mechanism, reflecting the fact that they are subject to rigorous regulatory scrutiny and formal approval by competent supervisory authorities and the EDPB. Unlike SCCs, which rely on self-assessment by the parties, BCR-Ps embody comprehensive, binding, and enforceable commitments that apply across an entire corporate group.

Against this background, it is difficult to reconcile the position in the draft Recommendations with the continued characterization of BCR-Ps as a high-standard transfer tool. Suggesting that EDPB-approved BCR-Ps provide an insufficient legal ground for an initial controller-to-processor transfer, while requiring reliance on, for example, SCCs that do not undergo equivalent regulatory approval, risks weakening the perceived value and coherence of the BCRs framework.

## 1.4. Request for reconsideration

BSA encourages the EDPB to reconsider the proposed limitation on the scope of BCR-Ps and **to clarify that approved BCR-Ps may also be used to cover initial transfers of personal data from external controllers to processor members of a BCR-P group**, provided the requirements of Article 47 GDPR are met. Such a clarification would be consistent with earlier EU guidance, support legal certainty, and help ensure that BCR-

Ps remain a practical, scalable, and high-standard mechanism for international data transfers, while aligning with broader EU efforts to promote regulatory simplification and effective compliance.

## **2. Administrative Burden, Audit Reporting, and Proportionality of Governance Requirements**

BSA supports the EDPB’s objective of ensuring effective oversight, accountability, and internal enforcement of the BCR-Ps. However, certain governance and audit-related requirements set out in the draft Recommendations risk creating disproportionate administrative burdens that, in practice, could make compliance more complex without improving data protection outcomes.

### **2.1 Communication of audit results to boards (Section 3.3.1)**

Section 3.3.1 of the draft Recommendations provides that the results of audits should be communicated to the privacy officer or function, to the board of the liable BCR-Ps member, and, where appropriate, also to the board of the group’s ultimate parent and to the controller.

BSA recognizes the importance of appropriate senior management oversight of compliance with BCR-Ps. However, the systematic communication of all audit results to the board of the liable BCR-P member, including where audits identify no significant findings or serious deviations, risks creating unnecessary administrative burden and reducing the effectiveness of oversight in practice.

In large multinational groups, audits may be conducted frequently across multiple entities and processing activities. Mandatory board-level reporting of all audit outcomes, regardless of their significance, may lead to information overload and limit the board’s ability to focus on issues that present genuine risk or require strategic attention.

### **2.2. Need for a risk-based and proportionate approach**

While Section 3.3.1 of the draft Recommendations sets out specific recipients for audit results and includes limited flexibility through the use of the qualifier “where appropriate,” BSA considers that the draft Recommendations could more clearly reflect a risk-based and proportionate approach to audit escalation under the BCR-P framework.

In particular, the draft Recommendations could recognize that decisions on escalation and reporting may take into account the nature, severity, scope, and recurrence of audit findings. Clarifying this principle would align with established GDPR accountability requirements and widely accepted corporate governance practices.

A clearer risk-based approach would help ensure that board-level oversight remains focused on significant risks and systemic issues, while enabling privacy and compliance functions to address lower-risk findings efficiently through operational remediation and continuous improvement.

### 2.3. Alignment with broader regulatory objectives and practical compliance

BSA notes that similar audit-reporting requirements appear in the recommendations on BCRs for controllers. Nevertheless, it remains important to ensure that governance expectations under the BCR-Ps framework remain aligned with broader EU regulatory objectives, including proportionality, simplification, and the promotion of effective compliance in practice.

BCR-Ps typically operate within mature corporate compliance environments and alongside multiple accountability tools, internal controls, and regulatory obligations. In this context, rigid or overly prescriptive governance requirements risk adding cumulative administrative complexity without clear additional benefits for data subjects.

BSA therefore encourages the EDPB to consider whether greater emphasis on risk, outcomes, and effective oversight, rather than formal reporting pathways, could better reflect operational realities and support continued investment in BCRs as a trusted and scalable transfer mechanism.

## 3. Conclusion

BSA encourages the EDPB to consider whether greater emphasis on legal certainty, proportionality, simplification, and risk-based implementation could help ensure that BCR-Ps continue to function as an effective, scalable, and trusted transfer mechanism in practice. Clarifying the scope of application of BCR-Ps and allowing greater flexibility in audit governance would support sustained investment in BCRs, while fully preserving the fundamental rights and protections afforded to data subjects under the GDPR.

BSA remains committed to engaging constructively with the EDPB and stands ready to contribute further expertise to support the development of clear, coherent, and workable guidance on international data transfers.

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