



**05/EN
WP107**

**Working Document Setting Forth a Co-Operation Procedure for Issuing
Common Opinions on Adequate Safeguards Resulting From “Binding
Corporate Rules”**

Adopted on April 14th, 2005

This Working Party was set up under Article 29 of Directive 95/46/EC. It is an independent European advisory body on data protection and privacy. Its tasks are described in Article 30 of Directive 95/46/EC and Article 15 of Directive 2002/58/EC.

The secretariat is provided by Directorate C (Civil Justice, Rights and Citizenship) of the European Commission, Justice, Freedom and Security Directorate-General.

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1. A corporate group interested in submitting draft binding corporate rules (BCRs) for the approval of several data protection authorities should propose a Data Protection Authority (DPA) as the lead authority for the co-operation procedure. The decision as to which DPA should act as the lead authority is based upon the criteria contained in this document (see point 2). It is for the organisation to justify the reasons why a given DPA should be considered as the lead authority.
 2. An applicant corporate group should justify the selection of the lead authority on the basis of relevant criteria such as:
 - a. the location of the group's European headquarters;
 - b. the location of the company within the group with delegated data protection responsibilities¹;
 - c. the location of the company which is best placed (in terms of management function, administrative burden etc) to deal with the application and to enforce the binding corporate rules in the group;
 - d. the place where most decisions in terms of the purposes and the means of the processing are taken; and
 - e. the member states within the EU from which most transfers outside the EEA will take place.
- 2.1. Priority will be given to factor described under 2 (a) above.
- 2.2. These are not formal criteria. The data protection authority to which the application is sent will exercise its discretion in deciding whether it is in fact the most appropriate data protection authority and, in any event, the data protection authorities among themselves may decide to allocate the application to a data protection authority other than the one to which the corporate group applied.

¹ As provided for in the Article 29 Working document number 74, if the headquarters of the corporate group is not in the EU/EEA, the corporate group should appoint a European member with delegated data protection responsibilities in charge of ensuring that any foreign member of the corporate group adjust their processing activities to the undertakings contained in the corporate group, interfacing with the leading authority where appropriate and paying compensation in case of damages resulting from the violation of the binding corporate rules by any member of the corporate group.

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2.3. The applicant should also provide the proposed lead authority (the entry point) with all appropriate information, both in paper and electronically to facilitate further distribution, which justifies its proposal, *inter alia*, the nature and general structure of the processing activities in the EU/EEA with particular attention to the place/s where decisions are made, the location and nature of affiliates in the EU, the number of employees or persons concerned, the means and purposes of the processing, the places from where the transfers to third countries do take place (irrespective of whether or not those countries are covered by the code) and the third countries to which those data are transferred.

3. The entry point will forward the information received as to why that DPA has been selected by the company to be the lead authority to all DPAs concerned (i.e. all the DPAs in the countries from where the transfers are to take place as specified by the applicants) with an indication of whether or not it agrees to be the lead authority. If the entry point agrees to be the lead authority, the other interested DPAs will be asked to raise any objections within two weeks (period extendable to two additional weeks in case of request by any DPA concerned). In the event that the entry point is of the view that it should not act as the lead authority, the entry point would explain the reasons for its decision as well as its recommendations as to which DPA should be the appropriate lead authority. The DPAs concerned will endeavour to reach a decision within one month from the date that the papers were first circulated.

4. Once a decision on the lead authority has been made, the latter will start the discussions with the applicant. The result of these discussions should be a “consolidated draft” which will be distributed among all DPAs concerned for comments. In normal circumstances, the period for comments on the consolidated draft will not exceed one month.

5. The lead authority will transmit these comments on the “consolidated draft” to the applicant and may resume discussions, if necessary. If the lead authority is of the view that the applicant is in a position to address satisfactorily all comments received, it will invite the applicant to send a “final draft” on which the lead authority will invite confirmation from the DPAs that they are satisfied as to the adequacy of the safeguards proposed.

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6. Such confirmation will be regarded by all the participant authorities and the organisation concerned as an agreement to provide the necessary permit or authorisation at national level (if required). However, additional requirements that may exist in each country such as notification or administrative formalities may also have to be complied with.

7. The Chairman of the Article 29 Working Party will be informed of this decision and will share this information with other EU/EAA DPAs immediately via CIRCA.

8. Translations: as a general rule and without prejudicing to other translations where necessary or required by law, first and consolidated drafts should be provided both in the language of the leading authority and in English. The final draft must be translated into the languages of those DPAs concerned².

Done in Brussels, on April 14, 2005

For the Working Party
The Chairman
Peter Schaar

² On the basis of the experiences with the first approved BCRs, the Article 29 Working Party may adopt a document in the future dealing with the necessary co-operation arrangements for international complaint handling and other related matters.

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