

Binding Corporate Rules for Processors

Data Transfers

This frequently asked questions (FAQ) document is designed to address customer concerns regarding the use of binding corporate rules (BCRs) by VMware as its preferred data transfer mechanism.

Q. What are Binding Corporate Rules (BCRs)?

A. European data protection law prohibits the transfer of personal data from the European Economic Area (EEA) to countries outside of the EEA that do not ensure an "adequate level of data protection." The United States (US) is deemed to be one of these countries, so VMware must put in place legal solutions to protect the EEA personal data it transfers to the US (and/or other non-adequate countries outside the EEA) to the standard required by Europe.

BCRs provide one way to legally transfer EEA personal data outside countries that have data protection laws deemed inadequate. BCRs are, essentially, a set of intra-group global privacy policies that ensure personal data has a uniform level of protection and security wherever it travels within the group of related companies.

To rely on BCRs, companies must go through an authorization process with a Data Protection Authority in the EU. VMware worked with the Irish Data Protection Commission, and they involved the Bavarian and Bulgarian data regulators in the peer review process. Due to the UK having left the EU, VMware has applied to the Information Commissioner's Office (ICO) for UK BCR-P (application submitted in June 2021). We are currently awaiting the outcome of our application having answered all previous queries raised by ICO.

Q. What are BCRs for processors?

A. BCRs for processors, also commonly referred to as BCR-P, apply when VMware, acting on behalf of its customers as a "data processor", transfers such personal data outside of the EEA, to another member of the VMware group of related companies (VMware Group). As an example, VMware is a data processor of personal data

that may be contained in content that a customer uploads to VMware cloud services.

[VMware EU BCR-P](#) was last updated and reviewed by Irish Data Protection Commission in November 2022.

The GDPR (General Data Protection Regulation) is an EU Regulation that became applicable on 25 May 2018. The GDPR applies to all companies that are controllers or processors of EU personal data. Among other things, the GDPR requires that companies have a legal mechanism in place to protect and secure personal data that they transfer outside the EEA to countries deemed inadequate.

Q. What is the difference between BCR and Standard Contractual Clauses?

A. Both BCRs and Standard Contractual Clauses (also referred to as EU Model Clauses) are types of data transfer mechanisms. EU Model Clauses are standard clauses that have been drafted by the European Commission and are available to be used by any entities wishing to transfer EU personal data from within the EEA to an outside country that has data protection laws deemed inadequate.

To obtain BCRs a company's data protection standards are reviewed by three European Data Protection Authorities. This extensive review and approval process involves significant time, cost, and resources to prepare and implement. VMware, as part its BCR application, worked with the Irish Data Protection Commission and they involved the Bavarian and Bulgarian data regulators in the peer review process. VMware's EU BCRs was approved by the European Data Protection Authorities on May 23, 2018.

Q. What personal data does VMware process under BCRs?

A. Personal data processed by VMware under the "[Binding Corporate Rules: Processor Policy](#)" will include any personal data contained within content that VMware customers upload onto VMware cloud service offerings

and in content that a customer may upload to VMware systems in connection with a technical support request. As customers may upload a variety of content onto VMware service offerings, it is impossible to enumerate all the types of data that VMware may process on behalf of customers, but in broad terms it will comprise any personal data submitted to VMware cloud services for processing or contained within files, databases, applications, audio-visual media, or other content that VMware customers choose to process within VMware cloud services.

Q. When will the BCRs apply?

A. The BCRs will apply to all transfers of personal data between members of the VMware Group where VMware is acting as a processor, provided the BCRs have been referenced by our contract with the customer (acting as the controller of the personal data). VMware Group members that process this personal data will have made a binding commitment in a separate Intergroup Agreement (IGA) between the VMware Group members to comply with the BCRs. The IGA has also been approved through the European review process. [VMware affiliates that have signed the IGA.](#)

Q. How do the BCRs benefit customers?

A. VMware customers, as the data controllers, have primary responsibility for personal data under EU law. By contracting with a company with approved BCRs, customers can demonstrate to their end users, investors, and regulators that they are working with a company whose data protection policies and procedures have been subject to scrutiny from, and approved by, the European Data Protection Authorities and the BCRs has been approved on that basis.

Also, BCRs are beneficial from an administrative perspective: unlike Standard Contractual Clauses, BCRs do not require VMware to enter into separate contractual documents between the involved legal entities, which can be complex if affiliated companies are involved. As described above, BCRs simply apply by being referenced in the respective contracts with the customer.

Section 6.3 of the [VMware Data Processing Addendum](#) (DPA) was updated to provide customers with a right to institute BCR claims (which stem from a BCR breach)

either against VMware International Unlimited Company or the individual member of the VMware group which caused the BCR breach. This change was implemented to reflect the new post-GDPR implementation requirements at the request of the Irish Data Protection Commission who approved and oversees VMware BCRs.

Q. What changes have been introduced by the updated VMware EU BCRs?

A. As set forth in the VMware BCR Updating Procedure, the VMware BCRs were last updated in November 2022, and introduced the following changes:

- The introduction of Rule 12 (Ensuring Adequate Protection for International Transfers) together with Appendix 8 (Transfer Impact Assessment Procedure) demonstrates our EU BCRs' alignment to the revised Standard Contractual Clauses and the Schrems II judgement.
- Specifically, under the new Rule 12, VMware Group Members commit to performing a risk assessment (i.e., transfer impact assessment) to assess whether there is reason to believe that the laws and practices in the non-adequate location, including any requirements to disclose personal information to public authorities, will conflict with VMware obligations under the EU BCRs. The Transfer Impact Assessment Procedure describes how VMware will ensure there is adequate protection for personal information that is subject to the GDPR when it transfers such personal data internationally, including notifying any associated transfer risks. Approach used by VMware to conduct [transfer impact assessments](#).

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