

BINDING CORPORATE RULES (“BCRs”) FOR PROCESSORS

– EXTERNAL FAQs

June 25, 2018

Coincident with the EU General Data Protection Regulation (GDPR) becoming applicable, VMware has completed the EU approval process for its global Binding Corporate Rules (BCRs) as a data processor. This significant regulatory approval allows VMware to use this transfer mechanism to protect the personal data of its customers when acting as their data processor. The BCRs will now apply to our customer data processing relationships.

Confirmation that the EU BCR cooperation review procedure has now closed for VMware’s BCRs can be found at: http://ec.europa.eu/newsroom/article29/item-detail.cfm?item_id=613841. Further information about VMware’s BCRs may be found at <https://www.vmware.com/help/privacy/binding-corporate-rules.html>.

1. What are BCRs?

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 US is deemed to be one of these countries, so VMware must put in place legal solutions to protect the EEA data it transfers to the US (and/or other countries outside the EEA) to the standard required by Europe.

BCRs provide one way to legally transfer personal data between the EEA and outside countries that have data protection laws deemed inadequate. BCRs are, essentially, 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 Commissioner and they involved the Bavarian and Bulgarian data regulators in the peer review process.

2. What are BCRs for processors?

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.

3. Why has VMware worked to attain BCRs?

BCRs are considered the "gold standard" solution for data exports by European consumers and regulators alike. To achieve BCR approval, 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 is very proud of receiving its BCR-P approval.

4. What is the difference between BCR and GDPR?

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

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of the EEA. There are a number of data transfer mechanisms that a company can use to ensure that the transfer is legal under the GDPR, including BCRs. A company may comply with GDPR but choose a data transfer mechanism other than BCRs.

5. What is the difference between BCRs and EU Model Clauses?

Both BCRs and EU Model Clauses (also referred to as Standard Contractual Clauses) are types of data transfer mechanisms. EU Model Clauses are standard clauses that have been drafted by the European Commission. EU Model Clauses are entered into between the transferring entities when EU personal data is transferred from within the EEA to an outside country that has data protection laws deemed inadequate. Before it obtained BCR-P approval, VMware offered EU Model Clauses to customers, and will now apply BCR-P when acting as a Processor. While both are valid data transfer mechanisms, EU Model Clauses are currently facing legal challenge as to their validity, while BCRs are explicitly recognized in the GDPR.

6. What personal data does VMware process under BCRs?

Personal data processed by VMware under the "[Binding Corporate Rules: Processor Policy](#)" will include any personal data contained within content that VMware's customers upload onto VMware's cloud service offerings and in content that customer may upload to VMware systems in connection with a technical support request. As customers may upload a variety of content onto VMware's 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's cloud services for processing or contained within files, databases, applications, audio-visual media, or other content that VMware's customers choose to process within VMware's cloud services.

7. When will the BCRs apply?

The BCR-P will apply to all transfers of personal data between members of the VMware Group where VMware is acting as a processor, provided 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 BCR-P. This IGA has also been approved through the European review process.

8. How does the BCR-P benefit customers?

Our 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 BCR-P has been approved on that basis.

Also, BCRs are beneficial from an administrative perspective: unlike EU Model Clauses, BCRs do not require 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 a reference in the respective contracts with the customer.

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9. Who should I contact if I have a question or concern about BCRs?

If you have any questions regarding VMware’s BCRs, or VMware’s data protection policies, you may contact VMware's Privacy Team at privacy@vmware.com. VMware's Privacy Team will either address the matter directly or refer your inquiry to the appropriate person or department within VMware.