

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. The EU General Data Protection Regulation and UK Data Protection Laws (UK GDPR and the Data Protection Act 2018) prohibit the transfer of personal data outside the European Economic Area (EEA) and the UK to countries 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 a legal transfer mechanism to protect personal data transferred from the EEA and the UK to the US (and/or other non-adequate countries outside the EEA) as required by law.

BCRs provide one way to legally transfer personal data outside of the EEA and UK to countries whose data protection laws are 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.

BCRs are known as the 'gold standard' for transfers of personal data because companies must go through an extensive oversight and authorization process with the relevant Data Protection Authority in the EU or the UK's Information Commissioner's Office (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 or UK, 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.

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

A. Both BCRs and standard contractual clauses (SCCs) are mechanisms for transferring personal data from the EEA or UK to an outside country that has data protection laws deemed inadequate under the EU GDPR and UK Data Protection Laws.

SCCs are standard clauses established by the applicable regulatory authority and must be included in a contract between a data exporter and a data importer. In the EU, the standard clauses have been drafted by the European Commission and are oftentimes referred to as the EU Model Clauses. In the UK, the equivalent to standard contractual clauses is the International Data Transfer Agreement which was drafted by the ICO. Entities can also execute an UK Addendum to the EU Model Clauses for transferring data outside the UK.

BCR's, on the other hand, are intra-group policies which set out the way a group of affiliated companies will protect personal data. To obtain BCRs a company's data protection standards are reviewed by the relevant Data Protection Authorities (DPA). In the EU, the lead DPA and two additional EU DPAs review and approve a BCR application. In the UK, the ICO is responsible for reviewing and approving a company's BCR application. This extensive review and approval process involves significant time, cost, and resources to prepare and implement. Customers benefit from all the commitments in BCRs where the BCRs are referenced as the governing mechanism for transferring personal data.

Q. Does VMware have EU BCRs?

A. Yes. VMware, as part its application for EU BCRs for Processors (BCR-Ps), worked with the Irish Data Protection Commission (being the lead authority) and they involved the Bavarian and Bulgarian data regulators in the peer review process. The VMware EU BCR-P was approved by the European Data Protection Authorities on

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May 23, 2018. View the VMware “[EU Binding Corporate Rules: Processor Policy](#)”.

the European review process. [VMware affiliates that have signed the IGA](#).

Q. Does VMware have UK BCRs?

A. Due to the UK having left the EU, VMware has applied to the UK’s ICO for UK BCR-P. We are currently awaiting the outcome of our application having answered all previous queries raised by ICO. However, until such time as the VMware application is approved, VMware grants its Customers a contractual commitment (section 6.2 of VMware’s Data Processing Addendum) to process and transfer all UK personal data using its EU BCR-P.

Q. What personal data does VMware process under BCRs?

A. Personal data processed by VMware under its EU BCR-Ps 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, 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 Inter Group Agreement (IGA) between the VMware Group members to comply with the BCRs. The IGA has also been approved through

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 conclude 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) provides 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.

Q. How does VMware update its BCR's?

A. VMware provides annual updates to the Irish Data Protection Commission to ensure that its EU BCR-Ps remain compliant with GDPR. Updates are published in the VMware “[Binding Corporate Rules: Processor Policy](#)”. Updates may include adding additional VMware affiliates, or reflecting changes in the law, such as adding the requirement to conduct transfer impact assessments.

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Q. Does VMware's BCR's address the Schrems II decision?

A. Yes, VMware BCR's include provisions to demonstrate VMware's alignment to the revised EU Standard Contractual Clauses and the Schrems II judgement.

Under Rule 12 (Ensuring Adequate Protection for International Transfers) and Appendix 8 (Transfer Impact Assessment Procedure) of VMware's EU BCR Processor Policy, 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, plus the approach used by VMware to conduct [transfer impact assessments](#).

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