

Elanders AB

Case number:
DI-2019-11551

Decision approving the Binding Corporate Rules of Elanders Group

Date:
2021-01-28

Decision of the Swedish Authority for Privacy Protection

The Swedish Authority for Privacy Protection finds that the Controller Binding Corporate Rules (Controller BCRs) of Elanders Group (Elanders) provide appropriate safeguards for the transfer of personal data in accordance with Articles 46.1, 46.2 b, 47.1 and 47.2 of the GDPR¹ and hereby approves the Controller BCRs of Elanders.

However, before making use of the BCR it is the responsibility of the data exporter in a Member State, if needed with the help of the data importer, to assess whether the level of protection required by EU law is respected in the third country of destination, including onward transfer situations. This assessment has to be conducted in order to determine if the guarantees provided by BCRs can be complied with in practice, in light of the circumstances of the possible impingement created by the third country legislation with the fundamental rights and the circumstances surrounding the transfer. If this is not the case, the data exporter in a Member State, if needed with the help of the data importer, should assess whether it can provide supplementary measures to ensure an essentially equivalent level of protection as provided in the EU.

Where the data exporter in a Member State is not able to take supplementary measures necessary to ensure an essentially equivalent level of protection as provided in the EU, personal data cannot be lawfully transferred to a third country under this BCR. Therefore the data exporter is required to suspend or end the transfer of personal data. In such case if a Group Company envisages to transfer personal data to a third country nevertheless, it must notify the competent supervisory authority beforehand to enable that SA to ascertain whether the proposed transfer should be suspended or prohibited in order to ensure an adequate level of protection.

The approved Controller BCRs will not require any specific authorization from the concerned EU/EEA Data Protection Authorities.

The Swedish Authority for Privacy Protection presupposes that Elanders notifies changes to the Controller BCRs to the Swedish Authority for Privacy Protection, which

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¹ REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)

shall in turn forward the information to all concerned EU/EEA Data Protection Authorities.

The decision can be revoked if Elanders processes personal data contrary to the Controller BCRs or to the other provisions of the GDPR.

In accordance with Article 58.2 j of the GDPR, each concerned EU/EEA Data Protection Authority maintains the power to order the suspension of data flows to a recipient in a third country or to an international organization whenever the appropriate safeguards envisaged by the Controller BCRs of Elanders are not respected.

Application

Elanders has applied for approval by the Swedish Authority for Privacy Protection (IMY) of their Controller BCRs for the transfer of personal data to third countries within the Elanders Group.

In accordance with the cooperation procedure as set out in the Working Document WP263 rev.01², the Controller BCRs application of Elanders were reviewed by IMY, as the competent Authority for the BCRs (BCR Lead) and by one Supervisory Authority acting as co-reviewer. The application was also circulated to every EU/EEA Data Protection Authority for further review and comments.

Grounds for the decision

Having regard to Article 47 of the GDPR, IMY shall approve BCRs provided that they meet the requirements set out under this Article.

The review mentioned above concluded that the Controller BCRs of Elanders comply with the requirements set out by Article 47 of the GDPR, as well as the Working Document WP256 rev.01³.

The EDPB provided its opinion 02/2021 in accordance with Article 64.1 f regarding the Controller BCRs of Elanders and IMY took utmost account of this opinion.

The decision has been taken by the Director General Lena Lindgren Schelin after presentation by the legal advisor Albin Brunskog. In addition, the Head of Unit Catharina Fernquist has participated in the final management of this matter.

Lena Lindgren Schelin

² Working Document Setting Forth a Co-Operation Procedure for the approval of "Binding Corporate Rules" for controllers and processors under the GDPR; adopted by the Article 29 Data Protection Working Party on 11 April 2018; endorsed by the European Data Protection Board (EDPB) on the first plenary meeting 25 May 2018. The Working Party was set up under Article 29 of Directive 95/46/EC. It was an independent European advisory body on data protection and privacy.

³ Working Document setting up a table with the elements and principles to be found in Binding Corporate Rules; Adopted by the Article 29 Data Protection Working Party on 28 November 2017; Last Revised and Adopted on 6 February 2018; endorsed by the European Data Protection Board (EDPB) on the first plenary meeting 25 May 2018.

How to appeal the decision

If you wish to appeal the decision, you shall write to IMY. You shall indicate in your letter which decision you wish to appeal and the requested change to the decision. The letter shall have reached IMY within three weeks of receipt of the decision, otherwise the appeal is not admissible. IMY will forward the appeal to the Administrative Court in Stockholm (Sw. Förvaltningsrätten i Stockholm) for examination, unless IMY chooses to change the decision in line with your request.

Provided that the appeal does not entail any privacy sensitive personal data or information that could be covered by the obligation of professional secrecy, you can e-mail the appeal to IMY. The contact details can be found on the first page of the decision.

Annexes to the decision

Annex 1: BCR-C, which includes

Sub-Annex 1 – List of BCR members,

Sub-Annex 2 – Legal Structure,

Sub-Annex 3 – List of Data Protection Officers, and

Sub-Annex 4 – Definitions.

Annex 2: Application

Annex 3: WP256 rev.01 referential

Annex 4: Declaration of Commitment

Annex 5: General Declaration of Commitment

Annex 6: Intra-Group Agreement

Annex 7: Complaint handling form

Annex 8: Rights of affected parties

Annex 9: Legal structure