

French Data Protection Authority - CNIL

DECISION n° 2021-087 of July 22th 2021 APPROVING CONTROLLER BINDING CORPORATE RULES OF CGI INC GROUP. (corrigendum)

(application for approval n°20005213)

The « Commission nationale de l'informatique et des libertés »,

Pursuant to the request by CGI France SAS on behalf of the group CGI Inc., received on 20 April 2017, for approval of their binding corporate rules for “Controller”;

Having regard to articles 47, 57 and 64 of the 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” or “GDPR”);

Having regard to the amended French Act n°78-17 of January 6, 1978 relating to information technology, data files and civil liberties (the “French Data Protection Act”);

Having regard to Decree No. 2019-536 of May 20, 2019, as amended, taken for the application of the French Data Protection Act, in particular Article 73;

Following the proposal of Mme Anne DEBET, commissaire, and after hearing the observations made by M. Benjamin TOUZANNE, commissaire du Gouvernement,

Makes the following observations:

1. Having regard to Article 47(1) of the GDPR, the French Data Protection Authority (the “CNIL”) shall approve Binding Corporate Rules (“BCRs”) provided that they meet the requirements set out under this Article.
2. In accordance with the cooperation procedure as set out in the working document WP263.rev.01, the “Controller” BCRs application of CGI INC were reviewed by the French Data Protection Authority (the “CNIL”), as the competent Authority for the BCRs (BCR Lead) and by two Supervisory Authorities (“SAs”) acting as co-reviewers. The application was also reviewed by the concerned SAs member of the European Economic Area to which the BCRs were communicated as part of the cooperation procedure set up by the European Data Protection Board (“EDPB”).
3. The review concluded that the “Controller” BCRs of CGI INC. comply with the requirements set out by Article 47(1) of the GDPR as well as the working document WP256.rev.01 and in particular that the aforementioned BCRs:
 - are made legally binding by an intra-group agreement and contain a clear duty for each participating member of the Group including their employees to respect the BCRs;

- expressly confers enforceable third-party beneficiary rights to data subjects with regard to the processing of their personal data as part of the BCRs as described in articles 7 and 9 of the latter;
- Fulfil the requirements laid down in Article 47(2) of the GDPR:
 - a) The structure and contact details of the group of undertakings and each of its members are described in the Application form WP264, provided as part of the review, and in appendix A of the BCRs;
 - b) the data transfers or set of transfers, including the categories of personal data, the type of processing and its purposes, the type of data subjects affected and the identification of the third country or countries in question are specified in article 2 and 5 of the BCRs and in the appendix B “Activities covered by the BCR-C”
 - c) the legally binding nature of the “Controller” BCRs, both internally and externally, is recognized in articles 3.1 and 3.2 of the BCR as well as in article 2 of the draft Intra-Group Agreement provided for by the group;
 - d) the application of the general data protection principles, in particular purpose limitation, data minimisation, limited storage periods, data quality, data protection by design and by default, legal basis for processing, processing of special categories of personal data, measures to ensure data security, and the requirements in respect of onward transfers to bodies not bound by the binding corporate rules are detailed in articles 3.3, 4,5, 6 and 11 of the “Controller” BCRs.
 - e) Data subjects rights in regard to the processing and the means to exercise those rights, including the right not to be subject to decisions based solely on automated processing, including profiling in accordance with article 22 of the GDPR, the right to lodge a complaint with the competent supervisory authority and before the competent courts of the Member States in accordance with article 79 of the GDPR, and to obtain redress and, where appropriate, compensation for a breach of the binding corporate rules set forth in articles 7 “Third Party beneficiary rights” and 10 “Data Subject rights” of the BCRs
 - f) the acceptance by the controller or processor established on the territory of a Member State of its liability for any breaches of the binding corporate rules by any member concerned not established in the Union as well as the exemption from that liability, in whole or in part, only if it proves that that member is not responsible for

the event giving rise to the damage are specified in article 8 of the BCRs “ CGI liability in case of breach of the Data Privacy Policy”;

- g) how the information on the binding corporate rules, in particular regarding the provisions referred to in points (d), (e) and (f) of article 47.2 of the GDPR are provided to the data subjects in addition to articles 13 and 14 of the GDPR is specified in articles 13.1 and 13.2 of the BCRs;
- h) the tasks of any data protection officer designated in accordance with article 37 or any other person or entity in charge of the monitoring compliance with the binding corporate rules within the group of undertakings, or group of enterprises engaged in a joint economic activity, as well as monitoring training and complaint-handling are detailed in article 16 “Privacy organization” and appendix F of the BCRs;
- i) the complaint procedures are specified in article 9 “Data Subject request & complaint handling process” and in appendix D of the BCRs.
- j) the mechanisms within the group of undertakings for ensuring the verification of compliance with the binding corporate rules are detailed in article 15 “Audit” and Appendix C of the BCRs. Such mechanisms include data protection audits and methods for ensuring corrective actions to protect the rights of the data subject. and provide that the results of such verification should be communicated to the person or entity referred to in point (h) and to the board of the controlling undertaking of a group of undertakings (in this situation to CGI headquarters, as well as to the data privacy organization) and are made available upon request to the competent supervisory authority;
- k) the mechanisms put in place for reporting and recording changes to the rules and reporting those changes to the supervisory authority are specified in article 18 of the BCRs;
- l) the cooperation mechanism with the supervisory authority put in place to ensure compliance by any member of the group of undertakings is specified in article 13.4 of the BCRs. The requirement that the results of the verifications of the measures referred to in point (j) above are to be made available to the supervisory authority is mentioned in article 15 of the BCRs;
- m) the mechanisms for reporting to the competent supervisory authority any legal requirements to which a member of the group of undertakings is subject in a third country which are likely to have

a substantial adverse effect on the guarantees provided for by the binding corporate rules are described in article 13.5 of the BCRs

n) and the appropriate data protection training to personnel having permanent or regular access to personal data is specified in article 14 and Appendix E of the BCRs.

4. The EDPB provided its opinion n°21/2021 as of July the 1st 2021 in accordance with article 64(1)(f) of the GDPR. The CNIL took utmost account of this opinion.

5. DECIDES AS FOLLOWS:

6. The Controller BCRs of CGI INC provide appropriate safeguards for the transfer of personal data in accordance with Article 46(1), (2f) and Article 47 (1), (2) GDPR and the Controller BCRs of CGI INC are hereby approved.

7. 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 EEA 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 for by the 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 EEA.

8. 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.

9. The approved BCRs will not require any specific authorization from the concerned European supervisory authorities.

10. In accordance with Article 58.2.j of the GDPR, each concerned Supervisory 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 Controller BCRs of CGI INC are not respected.

ANNEX TO THE DRAFT DECISION

The “Controller” BCRs of CGI Inc Group that are hereby approved cover the following:

- A. **Scope.** The “Controller” Binding Corporate Rules apply when a CGI entity, legally bound by the BCR and having implemented the BCRs, acts as a **Data Controller** and when **CGI acts as a Data Processor on behalf of CGI** further referred to as **Internal Data Processor**. (article 2 of the BCR-C)
- B. **European Economic Area countries from which transfers are to be made:** Belgium, Bulgaria, Denmark, Estonia, Finland, France, Germany, Hungary, Italia, Latvia, Lithuania, Luxembourg, Norway, The Netherlands, Poland, Portugal, Czech Republic, Romania, Slovakia, Spain and Sweden.
- C. **Third countries to which transfers are to be made:** most data transfers are made to CGI entities in Canada, Morocco, India, the Philippines and the United States. Transfers may also take place to CGI entities in Australia, Brazil, Malaysia, Singapore, South Africa and the United Kingdom.
- D. **Purposes of the transfer:** The purposes are specified in appendix B “Activities covered by the BCR-C”. They include the following:
- Strategic planning and human resources (e.g. compensation or recruitment management)
 - Finance (e.g. administrative, accounting and financial management of CGI);
 - IT and security (e.g. provision of computer system access and support);
 - Communication (e.g. management of corporate communications);
 - Legal (e.g. management of whistleblowing).
- E. **Categories of data subjects concerned by the transfer:** The categories are detailed by purpose and specified in Appendix b “Activities covered by the BCR-C”. Are included:
- CGI members (employees);
 - clients, prospects and sales leads;
 - shareholders and investors;
 - suppliers and subcontractors;
 - third parties (e.g. visitors or event attendees).
- F. **Categories of personal data transferred:** The categories are detailed by purpose and by category of data subjects in appendix B “Activities covered by the BCR-C”