

Courtesy translation

French Data Protection Authority – CNIL

**DECISION No.2023-143 of 21 DECEMBER 2023 APPROVING PROCESSOR BINDING CORPORATE
RULES OF SODEXO
(application for approval No. 20005717)**

The « Commission nationale de l'informatique et des libertés » (hereafter “CNIL”),

Pursuant to the request by SODEXO SA on behalf of the group SODEXO (hereafter “SODEXO”), for approval of their binding corporate rules for processor;

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 also to the French Data Protection Act 78-17 of 6 January 1978;

On a proposal from Ms. Anne DEBET, Commissioner, and the observations made by Mr. Damien MILIC, Government Commissioner;

Makes the following observations:

1. Article 47(1) of the EU General Data Protection Regulation 2016/679 (GDPR) provides that the French Data Protection Authority (CNIL) shall approve Binding Corporate Rules (BCRs) provided that they meet the requirements set out under this Article.
2. The implementation and adoption of BCRs by a group of undertakings is intended to provide guarantees to controllers and processors established in the European Union (“EU”) as to the protection of personal data that apply uniformly in all third countries and, consequently, independently of the level of protection guaranteed in each third country.
3. Before carrying out any transfer of personal data on the basis of the BCRs to one of the members of the group, it is the responsibility of any 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 in the case of the specific data transfer, including onward transfer situations. This assessment has to be conducted in order to determine whether any legislation or practices of the third country applicable to the to-be-transferred data may impinge on the data importer’s and/or the data exporter’s ability to comply with their commitments taken in the BCRs, taking into account the circumstances surrounding the transfer. In case of such possible impingement, the data exporter in a Member State, if needed with the help of the data importer, should assess whether it can provide supplementary measures in order to exclude such impingement and therefore to nevertheless ensure, for the envisaged transfer at hand, an essentially equivalent level of protection as provided in the EU. Deploying such supplementary measures is the responsibility of the data exporter and remains its responsibility even after approval of the BCRs by the competent supervisory authority (SA) and, as such, they are not assessed by the competent SA as part of the approval process of the BCRs

Courtesy translation

4. In any case, where the data exporter in a Member State is not able to implement 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 these BCRs. Therefore, the data exporter commits to waive, suspend or end the transfer of personal data. In the same vein, where the data exporter is made aware of any changes in the relevant third country legislation that undermine the level of data protection required by EU law, the data exporter is required to suspend or end the transfer of personal data at stake to the concerned third countries.
5. In accordance with the cooperation procedure as set out in the Working Document WP263 rev.01¹, the Processor BCRs application of the group was reviewed by the CNIL, as the competent SA for the BCRs (BCR Lead) and by two SAs acting as co-reviewers. The application was also reviewed by the concerned SAs to which the BCRs were communicated as part of the cooperation procedure.
6. The review concluded that the Processor BCRs of the group comply with the requirements set out by Article 47(1) of the GDPR as well as the Working Document WP257 rev.01² and in particular that the aforementioned BCRs:
 - i) Are legally binding and contain a clear duty for each participating member of the group including their employees to respect the BCRs by entering in an Intra-Group Agreement (Rule 26 of the BCRs);
 - ii) Expressly confer enforceable third-party beneficiary rights to data subjects with regard to the processing of their personal data as part of the BCRs (Rules 10 and 21 of the BCRs);
 - iii) 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 WP265 that was provided as part of the file review;
 - 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 appendix 7 of the BCRs;
 - c) the legally binding nature, both internally and externally, of the Processor BCRs is recognized in Rule 26 of the BCRs and in the Intra-Group Agreement;
 - 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

¹ Endorsed by the EDPB on 25 May 2018.

² Endorsed by the EDPB on 25 May 2018.

Courtesy translation

special categories of personal data, measures to ensure data security, and the requirements in respect of onward transfers to bodies not bound by the BCRs are detailed in Rules 2, 3, 4, 5, 6, 7, 8, 13 et 14 of the BCRs;

- e) the rights of data subjects in regard to processing and the means to exercise those rights, including the right to lodge a complaint with the competent SA and before the competent courts of the Member States in accordance with Articles 77 and 79 of the GDPR, and to obtain redress and, where appropriate, compensation for a breach of the BCRs which are set forth in Rules 10, 21 and 22 of the BCRs;
- f) the acceptance by processor established on the territory of a Member State of its liability for any breaches of the BCRs by any member concerned not established in the Union as well as the exemption from that liability, in whole or in part, only if the concerned party proves that that member is not responsible for the event giving rise to the damage are specified in Rule 22 of the BCRs;
- g) how the information on the BCRs, in particular on 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 Rule 12 of the BCRs;
- h) the tasks of any data protection officer designated in accordance with Article 37 of the GDPR or any other person or entity in charge of monitoring the 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 Rules 16, 17 and 20 of the BCRs;
- i) the complaint procedures, including the obligation for the processor to inform the controller of a request or complaint by a data subject, are specified in Rules 2 and 17 of the BCRs;
- j) the mechanisms put in place within the group of undertakings for ensuring the monitoring of compliance with the BCRs are detailed in Rule 18 of the BCRs. Such mechanisms include data protection audits and methods for ensuring corrective actions to protect the rights of the data subject. The results of such monitoring are communicated to the person or the entity referred to in point (h) above and to the board of the controlling undertaking of the group of undertakings and are available upon request to the competent SA;
- k) the mechanisms for reporting and recording changes to the rules and reporting those changes to the SAs are specified in Rule 25 of the BCRs and in appendix 4;

Courtesy translation

- l) the cooperation mechanism put in place with the SA to ensure compliance by any member of the group of undertakings is specified in Rule 24 of the BCRs and in appendix 3. The obligation to make available to the SA the results of the monitoring of the measures referred to in point (j) above is specified in Rule 18 of the BCRs;
 - m) the mechanisms for reporting to the competent SA 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 by the binding corporate rules are described in Rule 23 of the BCRs;
 - n) finally, Rule 16 of the BCRs provide for an appropriate data protection training to personnel having permanent or regular access to personal data.
7. The EDPB issued opinion No 30/2023 on 28 November 2023 in accordance with Article 64(1) (f) of the GDPR. The CNIL took utmost account of this opinion.

Decides as following:

1. The CNIL approves the Processor BCRs of SODEXO as providing appropriate safeguards for the transfer of personal data in accordance with Article 46(1) and (2) (b) and Article 47(1) and (2) GDPR. For the avoidance of doubt, the CNIL recalls that the approval of BCRs does not entail the approval of specific transfers of personal data to be carried out on the basis of the BCRs. Accordingly, the approval of BCRs may not be construed as the approval of transfers to third countries included in the BCRs for which, an essentially equivalent level of protection to that guaranteed within the EU cannot be ensured.
2. The approved BCRs will not require any specific authorization from the concerned SAs.
3. In accordance with Article 58(2)(j) GDPR, each concerned SA maintains the power to order the suspension of data flows to a recipient in a third country or to an international organisation whenever the appropriate safeguards envisaged by the Processor BCRs of SODEXO are not respected.

The President

Marie-Laure Denis

This decision may be subject to appeal before the Conseil d'État within a period of two months from the date of its notification.

Courtesy translation

ANNEX TO THE DECISION

The Processor BCRs of SODEXO that are hereby approved cover the following:

- a. **Scope.** Those Processor BCRs apply to all personal data flows processed by a Sodexo entity bound by the BCR on behalf of a data controller for processing activities within the group, whatever the origin of the Personal Data.
- b. **EEA countries from which transfers are to be made:** Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Romania, Spain, Sweden.
- c. **Third countries to which transfers are to be made:** Algeria, Australia, Brazil, Canada, Chile, China Mainland, Colombia, Costa Rica, India, Indonesia, Israel, Japan, Malaysia, Mexico, Morocco, Myanmar, New Zealand, Oman, Panama, Peru, Philippines, Republic of Korea, Singapore, South Africa, Sri Lanka, Switzerland, Thailand, Tunisia, Turkey, Uruguay, UAE, UK, USA, Venezuela, Vietnam.
- d. **Purposes of the transfer:** The purposes are detailed in appendix 8 of the BCRs, as follows:
 - Performance of the services provided by Sodexo on behalf of Clients (e.g., Facilities Management services, food services, some of the Benefits & Rewards services).
- e. **Categories of data subjects concerned by the transfer:** Those categories are specified in appendix 7 of the BCRs, as follows:
 - Clients (current or potential business contacts);
 - Consumers/Beneficiaries (current or potential consumers or beneficiaries).
- f. **Categories of personal data transferred:** Those categories are specified in appendix 7 of the BCRs, as follow:
 - Identification data (civil status, identity...);
 - Professional life;
 - Connection data (e.g., credentials for authentication purposes, logs/interaction with the relevant IT applications, IP address).