

DECLARATION ON MUTUAL RECOGNITION

On 24 June 2008, the Article 29 Working Party adopted three Working Documents on Binding Corporate Rules (BCRs), including a document setting up a Table with the elements and principles to be found in Binding Corporate Rules (WP153), and a document setting up a Framework for the structure of Binding Corporate Rules (WP154). In doing so, the Working Party made an important step towards improving the BCR coordination procedure, by providing additional explanatory materials to be provided by DPAs to applicants, that further clarify the necessary content of a BCR and a BCR application.

On the basis of this work, the following DPAs will commit themselves to mutually recognize BCRs sent to them through the BCR coordination procedure: France, Germany (federal and Länder), Ireland, Italy, Luxembourg, the Netherlands, Spain, and the UK.

These DPAs thereby take into account the following conditions:

i) Upon starting the analysis of the BCR, the lead authority enquires with the other DPAs involved in the coordination procedure into relevant complaints and/ or (past) investigations concerning the company and/ or its subsidiaries;

ii) The lead DPA will ascertain that the applicant wanting to benefit from the mutual recognition procedure has guaranteed that all the elements mentioned in the Working Party documents WP74, 108, 153, and the material elements mentioned in the example for a framework of a BCR in WP154, are incorporated in his BCR, and that the applicant has completed WP133 in order to facilitate the local approval process of the BCR by the authorities concerned, according to the procedural obligations set by the national law.

Furthermore, the Article 29 Working Party subgroup on Binding Corporate Rules will set up an annual evaluation in order to assure and maintain a high level of quality and consistency of the national analyses of BCRs, both in terms of content and in terms of procedure.

Mutual recognition is a policy commitment rather than a legal change. Mutual recognition of BCRs means that, when the lead DPA circulates a consolidated draft of the BCR with a positive opinion that it meets the required standard, adopted in compliance with all relevant documentation of the Article 29 Working Party mentioned under point ii) above, other DPAs accept this opinion as sufficient basis for providing their own national permit or authorization for the BCR, or for giving positive advice to the body that provides that authorization.