

Easier data transfer to countries  
outside the EU  
Legal newsletter



# Easier data transfer to countries outside the EU

**Deloitte Legal Szarvas, Erdős and Partners Law Firm provides its clients with a monthly newsletter on the most recent changes and newly adopted regulations in economic law and the most notable legal cases.**

As of 1 October, the amendment of Act CXII of 2011 on Information Self-determination and Freedom of Information ("Information Act") enters into force, introducing the concept of binding corporate rules (BCR) into Hungarian data protection law. The use of BCR facilitates easier data forwarding abroad, especially to countries outside the EU and EEA for company groups operating in more than one country.

## What is BCR?

**BCR is a commitment whereby members of a multinational group undertake to ensure EU level data protection standards in their data handling practice** in all countries, including members operating outside the EEA. In terms of content, **BCR is a complex data protection policy for the whole group**, which lays down how to handle what type of data at the company, as well as organises data security and data protection rules, and ensures their use during data transfer.

**If the company group applies BCR, it allows the group to forward personal data to third countries (i.e. outside the EEA) without the explicit consent of the private individuals concerned.** Furthermore, the application of BCR substitutes data transfer agreements between group members, thus reducing the administrative burden.

The provisions of Directive 95/46/EC of **the European Parliament and of the Council have allowed the transfer of personal data abroad before, provided that the entity handling the data used BCR to sufficiently guarantee the protection of the private life, basic rights and freedom of the individuals and the practice of relating rights.** Therefore, in several member states this solution has been available for years to guarantee the security of data transfer, while in Hungary this long awaited option is only granted from October.

## Hungarian practice before and from now on

Pursuant to the Information Act, **currently personal data may only be forwarded to third countries with the explicit consent of the individual concerned, or if the "appropriate protection" of the personal data transferred is ensured.** The introduction of **BCR extends the scope of this appropriate protection.** Previously, in similar cases this was ensured by "standard contractual clauses", or in case of data transfer to the USA, by the so called "Safe Harbor" declaration. **The new regulation may greatly simplify the data transfer practice of multinational companies in Hungary to third countries, including the USA.**

## How is BCR applicable in Hungary?

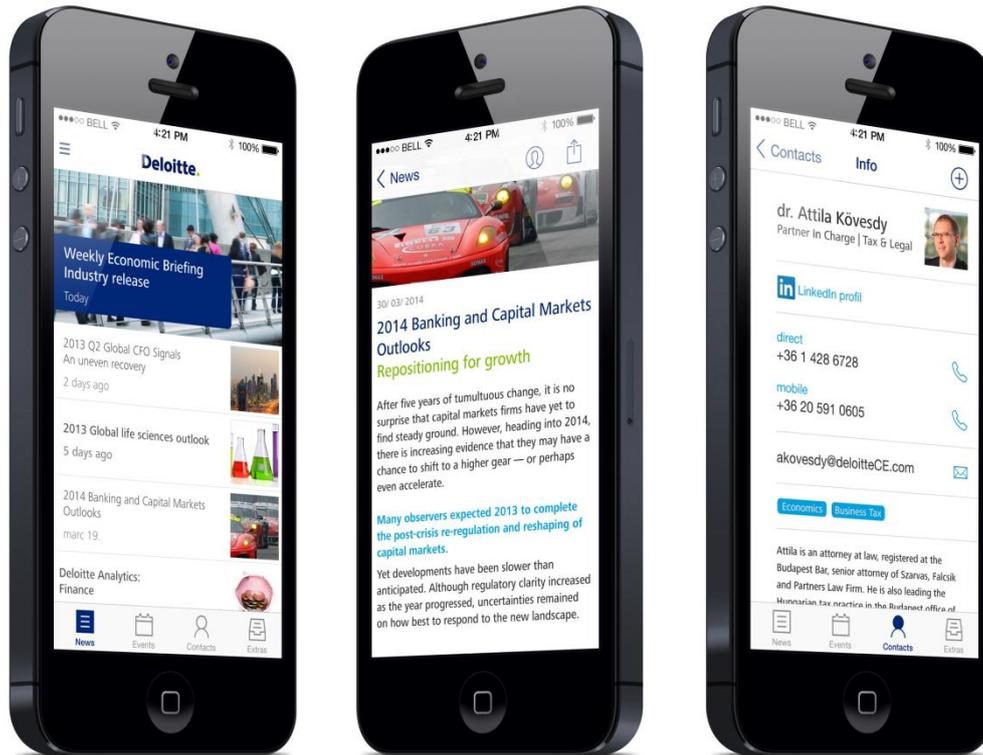
**If a company group has no BCR in place yet, then from October this option is available for Hungarian data transfer (too). For this, the applicable BCR should be licensed by the Hungarian National Authority for Data Protection and Freedom of Information (NAIH).**

**Even if the company group already has BCR licensed in another member state, it still needs to be licensed at NAIH as the Hungarian regulation does not apply the "principle of mutual recognition".** This means that companies that already use BCR and now wish to extend it to the data transfer of the Hungarian data processing member still have to have it licensed,

i.e. BCRs always have to be registered with the authority before their Hungarian application. NAIH has 60 days to judge the applications, and the administrative charge for the BCR licensing will be HUF 266,000. In addition to presenting the draft BCR, it should also be confirmed that the company group will guarantee that the use of BCR is obligatory within the group. To certify the above, on the one hand a suitably skilled staff should be available to ensure compliance with BCR constantly available for employees, e.g. on intranet, and on the other hand the option should be granted for the authority to conduct data protection reviews at the company.

**In the short run, the preparation and licensing of BCR will involve administrative tasks and costs for companies. In the long run, however, it will almost certainly simplify internal administrative processes and thus lower the costs. Furthermore, the application of BCR is a proof for clients and authorities of the company's serious commitment to comply with the data protection rules, which also improves its reputation.**





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