

Tax & Legal Weekly Alert

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Legal Updates

A contract between a data exporter and data importer containing standard clauses approved by the European Commission for an intragroup personal data transfer is no longer needed, provided that the group has in place Binding Corporate Rules approved by the relevant authorities.

On 27 March 2014, the Romanian Data Protection Authority issued Decision No. 41/2014 approving the authorization model for the transfer of personal data between companies part of a multinational group using Binding Corporate Rules ("BCR") – [page 2](#).

Amendment to rules on environmental inspection has entered into force.

Order no. 256/2014 of the Ministry of Environment and Climate Change ("Order 256/2014") amending the Annex to the Ministry of Environment and Climate Change no. 464/2009 approving the norms regarding organization and deployment of environmental protection control and inspection activities was published in the Official Gazette no. 193 of 19 March 2014 (the "Regulations") – [page 3](#).



A contract between a data exporter and data importer containing standard clauses approved by the European Commission for an intragroup personal data transfer is no longer needed, provided that the group has in place Binding Corporate Rules approved by the relevant authorities

As a general note, please be informed that the main piece of legislation governing the area of data protection is Law no. 677/2001 regarding the protection of individuals with regard to the processing of personal data and on the free movement of such data (“**Data Protection Law**”). The enactment of this law is generally in line with Directive 95/46/EC of the European Parliament and of the Council of October 24, 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

Under the Data Protection Law, any data controller has the obligation to notify in advance the Data Protection Authority (“**DPA**”) with respect to any transfer of such data to another country.

Besides notification, the transfer of personal data abroad may be also subject to other legal requirements, depending on the country of destination of the data. Thus, a transfer to countries that do not ensure an adequate level of protection of personal data (i.e. countries outside the European Union and the European Economic Area or countries that have not been recognized as ensuring an adequate level of protection by way of decision of the European Commission, such as it was recognized in the case of Argentina, Canada, Switzerland and the United States – when the data controller from the US has adhered to the Safe Harbor principles) is conditional upon the DPA issuing a prior authorization for the transfer.

The authorization is issued provided that the data exporter shows sufficient guarantees regarding the safeguard of the individuals’ rights after the transfer. These guarantees take the form of agreements concluded between the data exporter and the data importer on the basis of standard contractual clauses adopted by the European Commission and approved by the DPA. In addition to executing the agreements containing these standard clauses, the DPA may also issue the prior authorization on the basis of approved Binding Corporate Rules (“**BCR**”), which are applicable for intragroup data transfers.

The BCR are internal regulations (such as a Code of Conduct) which define a group’s global policy for personal data transfers. Thus, the BCR must contain clauses ensuring the protection of personal data and must be applied effectively in intragroup activity.

The main advantage of BCR is that they facilitate intragroup communication, as well as simplify the issuance of the prior authorization with respect to transfer of personal data. To this extent, when BCR are in place, it will take less time for the DPA to issue the authorization, with no additional cost and no uncertainty regarding the DPA’s assessment of the adequacy level of data protection.

Starting from 27 March 2014, Romanian authorities have acknowledged the BCR guarantees and no longer require a contract between recipient and sender, provided that both the data exporter and the data importer are part of a group that has BCR in place. It is still required to notify the DPA of a data transfer as well as obtain prior authorization from the DPA. However the overall process will be much simpler and shorter.

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Amendment to rules on environmental inspection has entered into force

Order no. 256/2014 of the Ministry of Environment and Climate Change ("**Order 256/2014**") amending the Annex to the Ministry of Environment and Climate Change no. 464/2009 approving the norms regarding organization and deployment of environmental protection control and inspection activities was published in the Official Gazette no. 193 of 19 March 2014 (the "**Regulations**"). On a general note, the Order brings the following changes:

- Increased competency of the commissioners of the National Environmental Guard (the "**NEG**");
- Less frequent environmental inspections;
- Extension of environmental inspections to comply with the provisions of the legislation specific to chemicals;
- Changes to the inspection and control procedure/documents.

We present below the main amendments brought to the procedure, depending on the stages of the environmental inspection:

1. Preparation of the inspection

Frequency of environmental inspections

Depending on the risk class of the inspected target, environmental inspections are performed at a less frequent rate than under the regulations previously in force:

- A Class - 2 inspections/ year
- B Class - 1 inspection/ year
- C Class - 1 Inspection every 2 years
- D Class - 1 inspection every 3 years

The following special rules have also been established:

- For SEVESO objectives, one SEVESO inspection per year shall be mandatory, in addition to the number of inspections established depending on the risk class;
- For objectives in protected areas, one inspection per year shall be mandatory.

In the case that representatives of an economic operator of an authorized activity are not present at the control, the template invitation is no longer attached to the Regulations, although the invitation is still regulated for this situation.

Additionally, the criteria for the risk classes are no longer included in the content of the Regulations. Each objective included in the objectives' records shall be classified taking into consideration the environmental impact and operator's performance after a procedure that is to be established by decision of the General Commissioner. This procedure can be updated as additional information is obtained during inspections and controls.

2. Announcement of the inspection

The Regulations establish the procedure to be followed. Thus, the announcement of the environmental inspection will be made in writing, by notice in the case of planned inspections, to be prepared by the objective commissioner or by the team responsible and countersigned by the head of the territorial NEG commissary and shall be communicated prior to the date and time of the scheduled opening session. The notification shall be made by mail, facsimile or e-mail.

3. Field Inspection

The field inspection, as a mandatory stage of the environmental inspection, shall include, in addition to the activities mentioned in the previous regulations, the following:

- Verification of the existence and implementation of prevention and intervention plans in the event of damage, incidents, accidental pollution and/or major accidents;
- Internal/external emergency plan tested together with the county Inspectorate for Emergency Situations, as applicable;
- Other activities determined by internal rules.

4. Completion of Inspection

As before, the environmental commissioner that has imposed a sanction must be informed of payment of the fine. The element of novelty is that if the fine has not been paid in due time and the finding and sanctioning protocol of the contravention has not been challenged in a court of law, the environmental commissioner shall send the finding and sanctioning protocol of the contravention to the specialized bodies of the territorial administration or units under the Ministry of Finance - National Agency for Fiscal Administration in whose territorial jurisdiction the individual is domiciled or, if applicable, the legal entity has its fiscal headquarters. The deadline for submitting the finding and sanctioning protocol of the contravention for foreclosure proceedings to begin is 45 days as of the date it was communicated to the offender.

We are at your disposal if you need further details regarding these amendments presented above.

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