

# MICHELIN'S

# Binding Corporate Rules

**on the transfer of personal data  
from the European Union**

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## I. PRELIMINARY REMARKS

In accordance with European Union Directive 95/46/EC dated 24 October 1995 and European Union Directive 02/58/EC dated 12 July 2002, these Internal Rules are intended to provide acceptable guarantees that personal data is protected during transfers from said Michelin Group entities based in one EU Member State or a country providing an acceptable level of protection, to other Michelin Group entities based in other countries (outside the EU) that do not provide an acceptable level of protection.

## II. DEFINITIONS

Definitions: personal data, processing of personal data, Controller and Processor used in these Internal Rules are taken from directive 95/46/EC dated 24 October 1995.

The terms and expressions used in these Internal Rules have the following meaning:

**“Personal data”, “Data”** any information relating to an identified or identifiable natural person (the data subject); an identifiable person is one who can be identified directly or indirectly , in particular by reference to an identification number or to one or more factors specific to his/her physical, physiological, psychological, economic, cultural or social identity.

**“Sensitive data”**, any information concerning racial or ethnic origin, political, philosophical or religious views, health, or sexual orientation.

**“Entity”**, any legal entity of the Michelin Group that exports or imports Personal data.

**“Exporter of personal data or Exporter”**, a Michelin Group entity based in the European Union or in a country that provides an acceptable level of protection, and which transfers personal data to another Michelin Group entity based in a country that does not provide an acceptable level of protection.

**“Purpose of processing”**, objective(s) of an application, irrespective of the medium used (electronic, paper or other) that processes personal data.

**“Importer of personal data or Importer”**, a Michelin Group entity based in a country outside the EU that does not provide an acceptable level of protection, and which receives personal data from the Exporter for processing in accordance with the provisions of these Internal Rules.

**“Country providing an acceptable level of protection”**, 1) EU member states and also 2) Liechtenstein, Norway and Iceland, 3) countries for which the European Commission has issued an adequacy decision: Canada, Argentina, Switzerland, Isle of

Man, Guernsey and/or 4) all countries that may join the European Union and/or about which a decision regarding adequacy will be taken.

**“Data subject”**, an identified or identifiable natural person to whom the transfer of personal data applies.

**“Privacy Officer”**, any national representative (natural person) in charge of protecting personal data in each legal department of the Michelin Group Companies.

**“Data Controller (Exporter or Importer)”**, the natural person or legal person, public authority, agency or any other body which alone or jointly with others, determines the purposes and means of the processing Personal data. Where the purposes and means of processing are determined by national or Community laws or regulations the Data Controller or the specific criteria for his nomination may be designated by national or Community law. Within the Michelin Group the Data Controller is the legal entity represented by the employee, whether Head of Department or not, who determines the purposes and means of processing.

**“Data Processor”**, the natural person or legal entity, public authority, department or any other body which processes personal data on behalf of the Data Controller.

**“Processing of personal data”, “Processing”**, any operation or set of operations, which is performed upon Personal data whether or not by automatic means such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction.

**“Transfer”**, any disclosure of Personal data via a network or any disclosure from one medium to another, irrespective of the type of medium, in so far as such data is intended for processing in the recipient country, other than situations in which the data merely crosses the European Union territory.

### **III. DELEGATED DATA PROTECTION MANAGER**

Due to its central role in the operational organisation in Michelin Group, the Michelin Group's parent company, Compagnie Générale des Etablissements Michelin, which is constituted under and governed by French law, has delegated to Manufacture Française des Pneumatiques Michelin (hereinafter referred to as MFPM), which is also constituted under and governed by French law, responsibility for applying the Binding Corporate Rules for the protection of Personal data within the Michelin Group for the transfer of Personal data from member states of the European Union.

#### **IV. MICHELIN GROUP ENTITIES TO WHICH THE BINDING CORPORATE RULES APPLY**

The purpose of these Binding Corporate Rules is to organise cross-border flows of Personal data between the Exporters and the Importers listed in Appendix 1.

The Exporters and Importers undertake to abide by these Rules. A group directive has been drawn up and a system of group management organised. This has involved the creation of a Personal Data Protection Committee chaired by the Group's legal director and composed of the directors of the personnel, IT systems and security Group Services.

#### **V. DESCRIPTION OF PROCESSING OPERATIONS**

These Binding Corporate Rules relate to the processing operations, whether automated or otherwise, specified in appendix 2 comprising personal data that has been processed in the European Union and transferred outside the European Union for processing.

#### **VI. NATIONAL REQUIREMENTS REGARDING ENTITIES**

Each Exporter and/or Importer is to ensure that Personal data processing operations comply with its local law and these Binding Corporate Rules.

#### **VII. UNDERTAKINGS OF THE DATA EXPORTER AS CONTROLLER**

The Exporters warrant that they have completed the prior formalities required by law with the national supervisory authority with jurisdiction for the original processing as regards the transfer of Personal data that is envisaged.

The Exporters undertake that the processing of Personal data carried out under their control, including data transfers at their initiative, will continue to be carried out in accordance with the provisions of these Binding Corporate Rules and in particular the following:

##### **7.1 Rules regarding the quality of Data collected**

Exporters undertake to ensure that personal data transferred to Importers is:

- collected and processed in a fair, lawful manner;
- collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes;
- adequate, relevant and not excessive in relation to the purposes for which they are collected and or further processed;
- accurate, complete and, where necessary, keep up to date;

- stored in a form that allows the Data subjects to be identified for no longer than necessary for the purposes for which they are collected and processed.

### **7.2 Limitation of data transfers to a specific purpose**

Within the framework of transferring Personal data to Importers, Exporters warrant that:

- the transfer of Personal data is carried out for a specific, explicit, legitimate purpose;
- the Data transferred is not further processed such in a way incompatible with those purposes.

### **7.3 Rules for Sensitive data**

Subject to compliance with the national provisions made under Community Directive 95/46/EC dated 24 October 1995, processing operations related to Sensitive data and/or use biometrics are prohibited in principle.

## **VIII. UNDERTAKINGS OF THE DATA IMPORTER AS DATA CONTROLLER**

Importers undertake to process the Data transferred in accordance with the intended purpose at the time of collection and consequently to process Personal data in a manner compatible with the purpose of the Transfer and in accordance with the principles for processing Personal data set out in Articles VII, IX, XII, XIII, XIV and XV of these Binding Corporate Rules.

## **IX. INFORMATION AND RIGHTS OF DATA SUBJECTS**

In the event of a Transfer of Personal data to an Importer, data subjects are entitled to:

- obtain a copy of these Binding Corporate Rules from the people or departments named in Appendix 3, on request and within a reasonable time frame,
- be informed of the Transfer of their Personal data, the purpose of the Transfer, the place in which the data Importer is based and the lack of adequate protection (as defined in European Directive 95/46/EC dated 24 October 1995) provided by the country in which the Importer is based,
- obtain access to all processed data relating to themselves and, where appropriate, obtain its rectification, erasure or blocking if it emerges that it has not been processed in accordance with the principles laid down by these Binding Corporate Rules,
- object to the processing of their Personal data on compelling, legitimate grounds relating to their particular situation,
- refer their complaints to the people or departments named in Appendix 3,
- refer the matter to the relevant data protection authority,
- refer the matter to the court with jurisdiction.

## **X. GUARANTEED APPLICATION**

Michelin Group entities undertake to take all the steps needed to implement these Binding Corporate Rules.

## **XI. TRAINING AND AWARENESS-RAISING**

Michelin Group entities undertake to implement training programmes on the protection of their employees' Personal data, particularly those who have access to and retrieve Data, those involved in developing data processing systems, managerial staff and the staff of group personnel, IT, audit and security Group Services. An example of a user guide for French employees is attached as appendix 6.

Relevant, up-to-date information on transferring Personal data and a copy of the Binding Corporate Rules are available on the Group Intranet: this information will also be circulated by internal memo and posted on the notice boards provided for the purpose.

Disciplinary action may be taken in response to breaches of these Binding Corporate Rules. The relevant disciplinary measures are set out in Article XVII below.

## **XII. DIFFICULTY FOR ENTITIES TO APPLY COMPANY BINDING CORPORATE RULES**

If an Importer has reason to believe that the applicable legislation might prevent it from fulfilling its obligations under these Rules and have a detrimental effect on the guarantees provided, said Importer shall immediately inform MFPM, unless prohibited to do so by a judicial authority or proceedings.

Under such circumstances MFPM must take a managerial decision and consult the authority with jurisdiction over data protection.

## **XIII. RESTRICTIONS ON SUBSEQUENT TRANSFERS**

A distinction needs to be made between two different situations:

1. Transfers of Personal data to non-Michelin Group Data controllers.

For all subsequent Transfers, each Importer/Exporter undertakes to draw up a contract with the non-Group company Data controllers. This contract will be based on the standard contractual clauses adopted by the European Commission in Decision No.

2001/497/EC dated 15 June 2001, modified on 27 December 2004 (for transfers to Data controllers), made under Directive 95/46/EC dated 24 October 1995.

## 2. Data transfers to non-Group Data processors.

For all subsequent transfers to Data processors, each Importer/Exporter undertakes to draw up a contract with Data processors based in countries outside the EU. This contract shall be based on the standard contractual clauses adopted by the European Commission in Decision No. 2002/16/EC dated 27 December 2001 (for transfers to Data processors), made under Directive 95/46/EC dated 24 October 1995.

## **XIV. CONFIDENTIALITY**

Only people expressly designated to receive disclosure may have access to the Personal data contained in a file.

They are prohibited from using such Data for personal purposes, transmitting it to non-expressly designated third parties or using it in any way whatsoever.

## **XV. DATA SECURITY**

Exporters and Importers have adopted a range of technical and organisational measures to protect personal data from any form of damage, loss, misuse, intrusion, disclosure, corruption or destruction. These measures apply to:

- the physical and environmental protection of IT rooms, computer hardware or computer media used for Data to ensure the continuity of processing or avoid the loss of information following theft or deterioration due to fire, water damage or other natural disasters,
- the use of security devices (software or hardware) and the administration of access rights that provide logical protection over processing and Data by preventing unauthorised people from accessing them or human error from damaging their integrity, availability and confidentiality,
- company networks protected against cyber-attacks by the use of firewalls and anti-malware software,
- Personal data transmitted outside the company network securely according to the Data controller's instructions,
- management of changes such that the continuity, integrity, confidentiality and security of Data is ensured;
- organisation with functions being divided over several different people or organisations.



## ***XVI. RELATIONS WITH INTERNAL DATA PROCESSORS BASED OUTSIDE THE EUROPEAN UNION (IMPORTERS) AND NON-GROUP DATA PROCESSORS BASED WITHIN THE EUROPEAN UNION***

These Binding Corporate Rules cover transfers of Personal data to internal Data Processors based outside the European Union, or to non-Group Data processors based within the European Union. It is simply pointed out, where necessary, that Exporters undertake to apply procedures to ensure that said data processors comply with the confidentiality and security of the Data to which they are given access. Data processors, in turn, are to give the said Exporters sufficient guarantees that the prescribed security and confidentiality measures are effectively implemented. To formalise this aspect, contracts between the data controller and the Data processor must set out the obligations falling to the Data processor with regard to data security and confidentiality and specify that the data processor must only act on instruction from the Data controller.

On termination of the contract, the data processor undertakes to either destroy any hard or soft copies of the file in which the information is stored, or return any media containing Personal data that may have been provided, if the law of the country in which said data processor is based allows this. Otherwise, the data processor is to ensure that the confidentiality of the Data is protected and that said Data does not undergo any further processing.

## ***XVII. MONITORING APPLICATION OF THE BINDING CORPORATE RULES***

Exporters and Importers have appointed a number of Privacy Officers, who may also be designated by the protection authority with jurisdiction if permitted by local law. The Privacy Officers are responsible for ensuring that the operational data controllers comply with these Internal Rules. They will also be accountable for their task to MFPM.

The Privacy Officers will also carry out regular, periodical compliance checks to ensure that the principles laid down in these Internal Rules are effectively applied. These checks will concern the accuracy of the first-level checks conducted by the operational Data controllers, in accordance with the specific Michelin Group internal procedures set out in appendix 4 and based on the compliance check programme appended as Appendix 5.

On completion of the compliance check procedure, a report will be drawn up and sent to the global privacy manager.

On request a copy of the report will be sent to the relevant data protection authority.

## ***XVIII. HANDLING OF COMPLAINTS***

1. In the event of dispute, Data subjects may lodge a complaint about any unlawful processing or handling of their personal data that is incompatible with these Binding Corporate Rules with the Privacy Officers of their country either directly or by letter.

Unless it proves particularly difficult to find the necessary information, complaints must be investigated within one month of their being lodged.

2. Within the framework of these Binding Corporate Rules, the Privacy Officers are responsible for:
  - identifying and registering individual complaints from Data subjects,
  - drawing up a list of such complaints,
  - conducting an enquiry into the reality of the alleged contraventions,
  - seeking to mediate by offering compensation, after informing MFPM. There is a systematic mediation and amicable settlement procedure before matters are referred to court or the supervisory authority with jurisdiction.
3. The fact that complaints handling is centralised with the Privacy Officers in no way impedes or curbs Data subjects' right to lodge complaints with the supervisory authority or the data protection court with jurisdiction.
4. Data subjects who have suffered damage caused by an Importer relative to Personal data transferred by an Exporter based in the European Union to an Importer based outside the European Union that the European Commission does not recognise as having an acceptable level of protection due to illicit processing or any action that is incompatible with these Internal Rules are entitled to:
  - insist that the operations performed in breach of these Binding Corporate Rules be corrected,
  - compensation for the loss suffered.
5. The independence of Privacy Officers is guaranteed during the performance of their duties and they are bound to strict neutrality in the cases they handle.

## ***XIX. LIABILITY – DISCIPLINARY ACTION***

Exporters and Importers of Data are answerable to Data subjects for failing to perform their respective obligations. They may be either partially or fully exonerated if they can prove that they are not responsible for the cause of such failure.

Each Exporter and/or Importer accepts that a Data subject is entitled to compensation for damage caused by an Importer relative to Personal data transferred by an Exporter and consequently accepts the jurisdiction of the country in which the Exporter is based.

In situations where complaints are lodged alleging that the Importer has failed in its obligations, the Data subject must first ask the Exporter to take acceptable steps in order to assert its rights against the Importer. If the Exporter fails to take such steps within a reasonable time (normally 1 month), the Data subject may then assert its rights against the Importer directly. A Data subject is also entitled to take action directly

against an Exporter who has failed to make reasonable efforts to determine whether the Importer is capable of satisfying its obligations under these Binding Corporate Rules.

Exporters and Importers have sufficient financial resources at their disposal to cover the payment of compensation for breach of these Binding Corporate Rules.

MFPM may take disciplinary action, in particular in the event of:

- breach of these Binding Corporate Rules,
- failure to apply the recommendations and advice issued after the Privacy Officers have checked for compliancy,
- failure to cooperate in checks for compliancy with Binding Corporate Rules carried out by Privacy Officers, or with the relevant authorities responsible for the protection of Personal data.

In accordance with applicable labour law, company rules and employment contract, disciplinary measures may be taken against anyone in breach of the rules.

If requested by the Group's Personal Data Protection Committee such sanctions may also include the following measures:

- publication of the Privacy Officer's recommendations on the Group's intranet,
- publication of the sanctions decided by the authority responsible for data protection,
- temporary or definitive ban on continued flow of data.

## **XX. COOPERATION WITH THE SUPERVISORY AUTHORITIES**

Exporters and Importers agree to:

- cooperate with the relevant data protection authorities:
  - o during any enquiries they may conduct;
  - o by replying to any requests they may make within a reasonable time frame.

Exporters and Importers agree to lodge a copy of these Binding Corporate Rules with the relevant authorities if required by the governing national law on data protection in the State where the Exporter is based.

Exporters and Importers undertake to follow the advice and recommendations of the relevant authorities regarding the interpretation and application of these Binding Corporate Rules.

## ***XXI. UPDATING THE BINDING CORPORATE RULES***

### ***Updating the content of the Binding Corporate Rules***

The Binding Corporate may be amended in a decision by the Personal Data Protection Committee.

As part of Michelin Group's undertakings under Article XX of these binding Corporate Rules, the Data Protection Coordinating Authority must be notified of any amended text of the Binding Corporate Rules.

### ***Updating the list of entities to which the company's Binding Corporate Rules apply.***

The Personal Data Protection Committee undertakes to appoint a person or department to be in charge of drawing up a list of the Michelin Group entities to which the Binding Corporate Rules apply, and to keep it up to date.

No personal data may be transferred to a new entity based in a country outside the EU which does not provide an acceptable level of protection until the Michelin Group entity exporting the Data has checked that the new entity is bound by these Binding Corporate Rules and is capable of complying with them.

The relevant data protection authorities must be notified of any changes to the list of entities.

## ***XXII. LAW APPLICABLE TO THESE INTERNAL RULES***

The provisions of these Binding Corporate Rules are governed by the law of the Member State in which the Exporter is based.

## ***XXIII. AMICABLE ARRANGEMENT: JURISDICTION***

Failing an agreement between the Data subject and the Michelin Group entity concerned, or failing performance of the provisions contained in the amicable agreement as part of the mediation procedure specified in Article XVIII above, jurisdiction shall be attributed to the court of the exporting or importing entity.

## ***XXIV. EFFECTIVE DATE - DURATION***

These Binding Corporate Rules take effect on the date of the Group Directive, for an unspecified duration.

## **APPENDICES**

These Binding Corporate Rules include the following appendices:

- Appendix 1: List of the Michelin Group entities exporting and importing Personal data,
- Appendix 2: Processing operations governed by these Binding Corporate Rules,
- Appendix 3: Job description of the Privacy Officers and mission of Privacy Committee
- Appendix 4: Briefing note on Michelin Group internal procedures, group procedure and covering note, Michelin's internal audit process
- Appendix 5: Binding Corporate Rules compliance programme;
- Appendix 6: French employee user guide