

# 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 Binding Corporate Rules are intended to provide adequate guarantees that Personal Data in particular those regarding employees, clients and suppliers of Michelin Group, is protected during any Transfer from the said Michelin Group entities based in an EU Member State or a country ensuring an adequate level of protection, to other Michelin Group entities based in other countries (outside the EU) which do not ensure an adequate level of protection.

## II. **DEFINITIONS**

The Definitions: Personal Data, Processing of Personal Data, Controller and Processor used in these Binding Corporate Rules are those of the directive 95/46/EC dated 24 October 1995.

The terms and expressions used in these Binding Corporate 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, trade union memberships, health, or sexual orientation.

**“Entity”**, any legal entity of Michelin group that exports or imports Personal Data.

**“Exporter of Personal Data or Exporter”**, a Michelin group’s entity, based in the European Union or in a country ensuring an adequate level of protection, which transfers Personal Data to another Michelin group’s entity based in a country that does not ensure an adequate level of protection.

**“Purpose of Processing”**, objective(s) of an application, purpose for which Personal Data are processed, irrespective of the medium used (electronic, paper or other) that processes Personal Data.

**“Importer of Personal Data or Importer”**, a Michelin group’s entity, based in a country outside the EU, not ensuring an adequate level of protection, which receives Personal Data from an Exporter and/or another Importer, processed within the European Union.

**“Country ensuring an adequate 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’s 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 of 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**

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, by reason of its central role in the operational organisation in Michelin group, the responsibility for applying the

Binding Corporate Rules for the protection of Personal Data within the Michelin group during any Transfer of Personal Data from 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 Binding Corporate Rules. A group directive has been drawn up and a system of group management organised through the creation of a Personal Data Protection Committee chaired by the group's legal director, who is also responsible for the worldwide protection of Personal Data, and composed of the managers of the group's human resources, IT systems and security 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 must ensure that Personal Data processing operations comply with its local law and these Binding Corporate Rules.

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

Exporters must comply with the applicable national law in the Member States of the European Union for the Processing and Transfer of the Data which they are in charge of.

Exporters warrant that they have made a declaration to the relevant national supervisory authority of the envisaged Processing or that they have obtained, as the case may be, the authorisation required for these Processing and that the Processing they have undertaken, including the envisaged Transfer, has been, is and will be made in compliance with these Binding Corporate Rules.

Subject to compliance with the national provisions made under Community Directive 95/46/EC dated 24 October 1995, the Exporter can, however, transfer Personal Data to a third country which does not ensure an adequate level of protection on condition that:

- the Data Subject has given his consent unambiguously to the proposed Transfer;
- or if the Transfer is necessary for one of the following conditions:
  1. to protect the vital interests of the Data Subject;
  2. to perform a task carried out in the public interest;
  3. to establish, exert or defend a legal claim;
  4. to consult, under regular conditions, a register which, according to laws or regulations, is intended to provide information to the public and which is opened to consultation either by the public in general or by any person who can demonstrate legitimate interest;
  5. to perform a contract between the Data Subject and the Controller or to implement precontractual measures taken in response to the Data Subject's request;
  6. to conclude or perform a contract in the interest of the Data Subject between the Controller and a third party.

### ***7.1 Rules regarding the Processing of Personal Data***

Subject to compliance with the national provisions made under European Union Directive 95/46/EC dated 24 October 1995, the Processing of Personal Data may be processed only if:

- the Data Subject has unambiguously given his consent; or
- Processing is necessary for the performance of a contract to which the Data Subject is party or in order to take steps at the request of the Data Subject prior to entering into a contract; or
- Processing is necessary for compliance with a legal obligation to which the Data Controller is subject; or
- Processing is necessary in order to protect the vital interests of the Data Subject; or
- Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the Data Controller or in a third party to whom the Data are disclosed; or
- Processing is necessary for the purposes of the legitimate interests pursued by the Data Controller or by the third party or parties to whom the Data are disclosed, except where such interests are overridden by the interests for fundamental rights and freedoms of the Data Subject which require protection under Article 1 of the Directive 95/46/EC of 24 October 1995.

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

Exporters undertake to ensure that Personal Data transferred to Importers are:

- collected and processed in a fair and lawful manner;

- collected for specific, 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, kept up to date;
- kept 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.

### ***7.3 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.

### ***7.4 Rules for Sensitive Data***

Subject to compliance with the national provisions made under European Union Directive 95/46/EC dated 24 October 1995, Processing operations related to Sensitive Data and/or use biometrics are prohibited in principle except if:

- The Data Subject has given his explicit consent to their Transfer;

or if

- Processing is necessary for the purposes of carrying out the obligations and specific rights of the Controller in the field of employment law;

or if

- Processing is necessary to protect the vital interests of the Data Subject or of another person where the Data Subject is physically or legally incapable of giving his consent;

or if

- Processing relates to Sensitive Data which are manifestly made public by the Data Subject or is necessary for the establishment, exercise or defence of legal claims.

### ***7.5 Rules for the respect of the Importer's undertakings***

Exporters warrant having undertaken reasonable efforts to ensure that the Importer is able to satisfy the obligations set out in the Article VIII here-after.



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

The Importer may process and transfer non sensitive and Sensitive Data to another Importer if the conditions set out in Article VII are fulfilled.

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, X, XI, XII, XIII, XIV, XV and XXI of these Binding Corporate Rules.

Importers also undertake that Data Subjects benefit from the rights set out in Articles XIX, XX.

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

In the event of a Personal Data Transfer to an Importer, Data Subjects are entitled to:

- obtain a copy of these Binding Corporate Rules from the persons or services mentioned in Appendix 3, upon request and within a reasonable time period;
- be informed of their Personal Data Transfer, 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. Privacy Officers must be able to provide Controllers with templates of information notice relating to the employees, suppliers, customers and, in general, all the persons whose Personal Data may be located in files related to Michelin's business;
- obtain access to all processed Data relating to themselves and, when appropriate, obtain its rectification, erasure or blocking, when it appears that it has not been processed in accordance with the principles set out by these Binding Corporate Rules;
- object to the Processing of their Personal Data for compelling and legitimate reasons relating to their particular situation;
- refer the matter to the persons or services mentioned in Appendix 3 for the handling of their complaints;
- refer the matter to the relevant Data protection authority,
- refer the matter to the courts having jurisdiction.
- Object, free of charge, to the Processing of personal Data relating to him which the Controller anticipates being processed for the purposes of direct marketing, or to be informed before Personal Data are disclosed for the first time to third parties or used on their behalf for the purposes of direct marketing, and to be expressly offered the right to object free of charge to such disclosure or uses.

## **X. GUARANTEED APPLICATION**

Entities undertake to take all the measures needed to implement these Binding Corporate Rules.

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

Entities undertake to implement training programs on the protection of Personal Data for their employees, particularly those who have access to and collect Data, those involved in developing Data Processing systems, the managerial staff and the staff of group's human resources, IT, audit and security services. An example of a user guide for French employees is attached in Appendix 6.

Relevant, up-to-date information on transferring Personal Data and a copy of the Binding Corporate Rules are available for the employees on the Group Intranet: this information will also be transmitted by internal memos and posted on the notice boards provided for this purpose. For the clients and suppliers, these Binding Corporate Rules will be available on Michelin's corporate website.

Disciplinary sanctions may be imposed in response to breaches of these Binding Corporate Rules. These sanctions are set out in Article XVIII below.

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

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

Under such circumstances MFPM must take a managerial decision and consult the relevant Data protection authority.

## **XIII. RESTRICTIONS ON TRANSFERS OUTSIDE THE GROUP AND OUTSIDE THE EUROPEAN UNION**

Entities at the origin of the Transfer outside the Group and outside the European Union undertake to obtain the prior consent of the Data Subjects and to inform them that, after the Transfer, the Data can be processed by a Data Controller which is not bound by these Binding Corporate Rules and which is not established in a Country ensuring an adequate level of protection.

Before any Transfer outside the Group and outside the European Union, the Data Subject must be given:

- a beforehand information about the goal of the Transfer outside the Group and outside the European Union,
- the identification of the Exporter which the Data come from,
- the categories of the subsequent Data receivers and the receiving countries.

Two cases must be distinguished: situations:

#### 1. Data Transfers to Data Controllers external to the Michelin group

For all Transfers outside the Group and outside the European Union, each Importer/Exporter undertakes to enter into a contract with the external Data Controller companies on the basis of the standard contractual clauses adopted by the European Commission in its 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 Data Processors external to the Michelin group

For all Transfers outside the Group and outside the European Union to Data Processors, each Importer/Exporter undertakes to enter into a contract with Data Processors based in countries outside the EU on the basis of the standard contractual clauses adopted by the European Commission in its Decision No. 2002/16/EC dated 27 December 2001 (concerning Transfers to Data Processors), made under Directive 95/46/EC dated 24 October 1995.

### **XIV. CONFIDENTIALITY**

Only persons 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 appropriate 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 persons from accessing them or human error from damaging their integrity, availability and confidentiality;
- the company's networks which are protected against cyber-attacks by the use of firewalls and anti-malware software;
- the Personal Data transmitted outside the company's networks securely according to the Data Controller's instructions;
- the management of changes so that the continuity, integrity, confidentiality and security of the Data are ensured;
- the organisation with a separation of the functions between several different persons or organisations.

## ***XVI. AUTOMATED INDIVIDUAL DECISIONS***

Every person has the right not to be subject to a decision which produces legal effects concerning him or significantly affects him and which is based solely on automated processing of data intended to evaluate certain personal aspects relating to him, such as his performance at work, creditworthiness, reliability, conduct, etc.

However, a person may be subjected to a decision of that kind if that decision:

- a) is taken in the course of the entering into or performance of a contract, provided the request for the entering into or the performance of the contract, lodged by the data subject, has been satisfied or that there are suitable measures to safeguard his legitimate interests, such as arrangements allowing him to put his point of view  
or
- b) is authorized by a law which also lays down measures to safeguard the data subject's legitimate interests.

## ***XVII. RELATIONS WITH INTERNAL DATA PROCESSORS BASED INSIDE AND 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 as well as to external Data Processors based within the European Union. It is simply pointed out, where necessary, that Exporters/ Importers undertake to implement procedures to ensure that said Data Processors comply with the confidentiality and security of the Data which they are given access to. Data Processors, on the other hand, must provide the said Exporters/ Importers with sufficient guarantees that the prescribed security and confidentiality measures are effectively implemented. To formalise this aspect, the contracts between the Data Controller and the Data Processor must set out the obligations falling on the

Data Processor with regard to Data security and confidentiality and specify that the Data Processor must only act on instruction of the Data Controller.

Upon 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.

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

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

The Privacy Officers are to carry out regular, periodical compliance audits to ensure that the principles set out in these Binding Corporate Rules are effectively applied. These audits are to concern the reliability of the first-level checks conducted by the operational Data Controllers, in accordance with the specific Michelin group's internal procedures set out in Appendix 4 and based on the control of compliance to these Binding Corporate Rules attached in 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.

Approximately every 5 years, the audit service of the Michelin's group will evaluate the compliance inspections to these Binding Corporate Rules performed by the Privacy Officers in order to ensure that the risks are managed. The reports of audit service of the Michelin's group will be transmitted to the group's Risk Manager responsible for implementing management plans and corrective measures, as well as to the group's executive committee.

## **XIX. HANDLING OF COMPLAINTS**

1. In case of dispute, Data Subjects may lodge a complaint relating to any unlawful Processing or handling of their Personal Data incompatible with these Binding Corporate Rules to the Privacy Officers of their country either directly or by letter. Subject to difficulties 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 on the reality of the alleged facts and on the imputability of the event causing the damage;
  - seeking to mediate by offering compensation, after informing MFPM. Matters can be referred to the relevant courts or supervisory authority only after being subject to a mediation and amicable settlement procedure.
  
3. The fact that handling of complaints is centralised with the Privacy Officers cannot prevent nor limit the rights of Data Subjects to lodge complaints before the relevant Data protection authority or jurisdiction.
  
4. Data Subjects who have suffered from damage caused by an Importer relating 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 adequate level of protection because of illicit Processing or any action that is incompatible with these Binding Corporate Rules are entitled to obtain:
  - the correction of the operations performed in breach of these Binding Corporate Rules ;
  - compensation for the loss incurred.
  
5. In the framework of their tasks, Privacy Officers have their independence guaranteed and are bound to a strict duty of neutrality in the matters which they are in charge of.

## **XX. LIABILITY – DISCIPLINARY ACTION**

In the case where the Importer acts as Processor, the Data Subject has the right to obtain compensation from the Exporter for the damage incurred because of breach of these Binding Corporate Rules.

In the event where the Importer acts as Controller, Exporters and Importers of Data are liable to Data Subjects for failing to perform their respective obligations such as they result from these Binding Corporate Rules as well as for the damages they cause to Data Subjects because of breach of the rights of third parties based on the Articles XVIII and XIX of these Binding Corporate Rules. They may be either partially or fully exonerated if they can prove that the cause of such failure is not attributable to them.

Each Exporter and/or Importer accepts that a Data Subject is entitled to compensation for damage caused because of breach of these Binding Corporate Rules by an Importer relating to Personal Data transferred by an Exporter and accepts the jurisdiction of the country in which the Exporter is based.

In the situations where complaints alleging a failure by the Importer in its obligations have been lodged, the Data Subject must first ask the Exporter to take appropriate measures in order to assert his rights against the Importer. If the Exporter fails to take such measures within a reasonable time (normally 1 month), the Data Subject may then assert his rights against the Importer directly. A Data Subject is also entitled to bring an action directly against an Exporter which has failed to take reasonable steps to determine whether the Importer is capable of satisfying its obligations under these Binding Corporate Rules.

In any case, the defendant must demonstrate that the Binding Corporate Rules have not been infringed or that the event causing the damage is not attributable to the Importer/ Exporter provided that the person concerned has to demonstrate that he/she suffered from damage and prove that the damage most probably results from a breach of the 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 the provisions these Binding Corporate Rules,
- failure to apply the recommendations and advice issued further to the audit of compliance carried out by the Privacy Officers,
- failure to cooperate in the framework of audit of compliance with the Binding Corporate Rules carried out by Privacy Officers as well as with the authorities responsible for the protection of Personal Data.

In accordance with applicable labour law, company regulations and employment contract, disciplinary measures may be taken as sanctions against anyone in breach of the Binding Corporate Rules.

Upon request of 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;
- permanent or temporary prohibition of the carrying on of the flows.

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

Exporters and Importers agree to cooperate with the relevant Data protection authorities by replying within a reasonable time frame to all the requests they may make.

Exporters and Importers agree to have audits carried out by the relevant Data protection authorities, if necessary.

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.

## **XXII. UPDATE OF THE BINDING CORPORATE RULES**

### **22.1 Update of the content of the Binding Corporate Rules**

The Binding Corporate Rules may be amended through a decision of the Personal Data Protection Committee.

As part of the Michelin group's undertakings under Article XX of these Binding Corporate Rules, any substantial changes to the Binding Corporate Rules or to the list of Michelin group's Entities must be notified, once a year, to the relevant Data Protection Authorities, with a brief explanation of the reasons justifying the update.

These changes will be made available for all the Entities, members of Michelin group.

### **22.2 Update of 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's 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 ensure an adequate level of protection until the Michelin group's Entity exporting the Data has ensured that the new Entity is bound by these Binding Corporate Rules and is capable of complying with them.

Any change to the list of Entities must be notified to the relevant Data protection authorities.



### ***XXIII. LAW APPLICABLE TO THESE BINDING CORPORATE RULES***

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

### ***XXIV. AMICABLE ARRANGEMENT: JURISDICTION***

Failing an agreement between the Data Subject and the Michelin group's Entity concerned, or failing performance of the provisions contained in the amicable agreement as part of the mediation procedure specified in Article XIX above, jurisdiction shall be attributed to the courts of the exporting Entity.

### ***XXV. 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 Michelin group's 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's 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.