

UNIVERSITY OF MISKOLC  
FACULTY OF LAW  
DEÁK FERENC DOCTORAL SCHOOL OF LAW

**DR. BIANKA MAKSÓ**

**Binding Corporate Rules  
within the frame of the renewable  
European data protection legal surrounding**  
(Theses of PhD dissertation)

**Deák Ferenc Doctoral School of Law**

*The Head of the Doctoral School:* Prof. Dr. András Bragyova

*The title of the doctoral programme:* A magyar állam- és jogrendszer jogtudomány  
továbbfejlesztése, különös tekintettel az  
európai jogfejlődési tendenciákra

*Supervisor:* Prof. Dr. László Majtényi DSc.  
professor

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# PART I.

## THE BRIEF SUMMARY OF THE RESEARCH GOALS

### I.1. The aim and the subject of the dissertation


Why was this dissertation written? Why was it made at this period of time and why is the subject of it the complex analysis of BCR? Writing a PhD dissertation, in which the results of many-years-long research can be published as a whole, is the first milestone of a scientific career. I hope my dissertation is not only the first milestone of my scientific career but also a useful guidebook for those who deal with this new legal institution called binding corporate rules (hereinafter: BCR).

The subject of the research was appointed according to the suggestion of my supervisor and my personal interest about the data protection policies, so that the focus of the dissertation is on the examination of a unique, barely known legal institution, the BCR. There are only a few sources of literature at the international level and only comments can be founded at the domestic literature about it. The basic level of the constitutive best practices of creating, applying and authorizing BCRs provides the reason to lay special emphasis on the complex jurisprudential examination of them. According to certain authors,<sup>1</sup> the introduction of the BCR into the Hungarian legal system was deemed to be impossible, although it can become a preferred legal tool of multinational companies soon.

Research work, especially which are funded,<sup>2</sup> must be in the serve of the aim to create a competitive legal surrounding by applying its results. Within this professional and scientific framework, it is prior to choosing the subject of a dissertation according to the needs of the cultural, social and economic status of the certain legal system.

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<sup>1</sup> LIBER (2011) (1)

<sup>2</sup>  The research was funded by the programme of ÚNKP-17.3. of the Ministry of Human Capacities.

It must state questions, find answers for them, then introduce the results in order to make de lege ferenda suggestions for the lawmaker, and finally help the enforcement and the legal compliance.

My research topic is based on the fundamental right for data protection and concentrates on the legal framework of international data transfers. I must note, that this topic shall be a hot topic for everyone because according to statistics<sup>3</sup> since 2013 more than 9 billion personal data has been lost or stolen in the digital environment. I do not say, that the digital technology is fundamentally harmful and the usage of them necessarily leads for data protection incidents, but I would like to justify, that the law must provide new answers for these recent data protection issues, especially in the field of international data transfers.

Recently the essence of the right for information self-determination does not really mean the right for control the flow of our personal data, but it is rather a claim against the data controller to act lawfully. The General Data Protection Regulation (hereinafter: the GDPR), which is directly applicable in Hungary as well, is also based on this principle.

I examine the reformed and continuously changing rules of international data transfer from this point of view. Furthermore, the subject of my scientific examination includes the introduction and the legal issues of the application of BCR. In my dissertation, priority is given to the basically-reformed rules of international data transfer and the new regulation on BCR. So besides making scientific research, I would like to help those companies for which data protection measures and compliance, especially creating and applying a BCR, is important in their everyday operation.

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<sup>3</sup> <http://breachlevelindex.com/> The source of this data is a statistic made by company offering data security service. [2017. October 15.]

A significant part of my research focuses on law-making, which deals with the creation of the substantive and procedural legal aspects of the concept of BCR and its authorization process. Another interesting part of the research lay the emphasis on the scientific principles of enforcement, which follows the analysis of the conceptual and functional features of BCR.

This sectoral research in this field of law can support to find the right solution to the recent issues and law-making tasks waiting for Hungary in our digital economy built by our information society during a time of changing data protection trends.

## **1.2. Research questions and the starting point**

BCR is a rarely known, even less applied legal institution in our domestic legal framework. Since its implementation in 2015, the approach to it has changed just a little. The basic aim of this dissertation is to change this situation. I would like to make companies interested in applying BCR, introduce its feature to those who are interested in, guide experts to utilize its strengths and help the legislation to find the gaps and the best solutions to them, hopefully with my result and suggestions stated in this dissertation.

The regulation of international data transfers had not been suitable for solving the changing needs of everyday work for years. The reform hallmarked by the entry into force of GDPR rewrite the rules. Was that reform adequate enough to ensure lifelike solutions?

In this reorganized legal surrounding the BCR, created because of the rising needs of the market, has seems to be a practical tool. However, until recent days only soft law legal sources provide guidance for its application. This situation must be changed.

In the absence of any experience from the past and without best practices BCR has to be built up, introduced and spread by emphasizing its advantages.

There are many open questions besides creating its concept. What is the legal nature of BCR like? What kind of functions and goals can it serve? How can it be successfully applied within a multination company? In my opinion, these questions must be answered in order to make BCR a well-known and widely applied legal mean.

The public parts of the text of BCRs are typically abridgments of statues. At least they seem to be. Companies try to avoid casuistic regulation and rule their working methods as general as possible. Then what can add a BCR more than a pure data protection policy or code of ethics? I aim to find a solution for these questions on the content issues.

The national data protection authorities have clear functions and similar powers at EU level. Although procedural rules have to be created at the national level. The procedural rules for authorizing BCR has not enacted so far which, I am convinced, is an urgent deficiency. To fill the gap I make *de lege ferenda* proposal in my dissertation.

There are several solutions to provide compliance for the data transfers, then why would we need another? Is the BCR more suitable than the other well-known means? If yes, how can we reach a better result? These basic issues can make the BCR questionable itself.

**PART II**  
**THE DESCRIPTION OF THE RESEARCH MECHANISM,**  
**THE METHODS OF COLLECTING, EXAMINING AND**  
**PROCESSING THE SOURCES**

**II.1. The structure of the dissertation**

The dissertation is divided into chapters according to the separated fields of the subject headed by the certain method of the research. After the introductory ideas, I introduce the process of legal harmonization in the field of data protection, focusing on the domestic issues, especially on the rules of data transfers. Then the legal unification is investigated, laying emphasis on the GDPR and its rules about BCR. I aim to prove that the BCR is not only a new legal mean construed by the lawmaker but it derives from the need of the market, it fits into the reform of the regulation of data protection.

I examine the certain rules of BCR by having the GDPR as a basis and I make an attempt to find the role and the real function of it. Obviously, this chapter is followed by the analysis of the concerning domestic legal surrounding.

Having the legal framework examined, the conceptual examination plays a key role in the dissertation. I pay attention to grammatical issues and the difficulties of interpretation and enforcement by judging each part of the concept of BCR.

National authorization - or approval as the domestic translation states - is a conceptual part and a validity feature of BCR. In the absence of domestic legal rules, I make efforts to create a sample for the authorization process and make *de lege ferenda* proposal to the certain procedural rules and several difficulties.

On one hand, nowadays only soft law sources can be cited by the administration. On the other hand, the number of these processes must be growing in the close future. The first decree of the NAIH<sup>4</sup> in this field is also construed in the dissertation.

The authorization is based on the examination of the data protection policy of the whole group of undertakings. The main element is the core text of BCR. An expanded chapter consists of the analysis of authorized BCRs by introducing each point according to a model structure.

Having many open points about BCR, I used the method of SWOT analysis to introduce the strengths, the weaknesses, the opportunities and the threats deriving from applying BCR. A chart is made in order to help data controllers in decision making.

The biggest advantage of BCR is that it can be tailored to the structure and the operation of each company. In contrast, there are country-specific methods to ensure compliance, like the Privacy Shield in the USA and the CBPR in the APEC countries. These systems use the mechanism of certification in order to provide an adequate level of protection. In comparison with the BCR fundamental differences can be determined, mostly in favour of the BCR.

Finally, the right for data protection is examined from a jurisprudential aspect. Attention is paid to the fact that personal data in the digital era is an expensive good on the market, valuable not only for the data subject but for the data controller as well.

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<sup>4</sup> The Hungarian National Data Protection Authority.

## **II.2. The applied research methods**

Having only a few English-language legal literatures on BCR and having no practical experience of law enforcement, besides answering fundamental questions, my research is expanded to find solutions and create best practices of the introduction of BCR. The Article 29. Working Party's working papers give useful guidance. As a result, in several occasions certain legal concepts - such as privacy, undertaking, authorization or approval - have to be reinterpreted in order to implement them into the domestic legal framework.

The analysis of the certain legal rules was based on analytic, comparative and critical aspects, having a normative methodology. The logical, grammatical and structural examination helped me in the procedural issues. Conceptualizing methodology supported my work in the conceptual examination. The research basically was made by using analytical methods which are comprehensive and comparative.

Knowing the modernity of BCR, for the issues on legal harmonization, the Safe Harbour and the CBPR analysis historical and descriptive methods were also applied, although I used comparative tools as well. During SWOT analysis the classical 4-part-chart was created then the several features were evaluated.

The chapter of closing ideas involves mostly dogmatical and jurisprudential aspects, but at the same time, the practical American viewpoints are also introduced.



**PART III.**  
**THE BRIEF SUMMARY OF THE FINDINGS AND**  
**THE PRACTICAL RESULTS OF THE RESEARCH**

The newly introduced legal instrument of the GDPR, the BCR is introduced from several aspects. In the dissertation the emphasis is laid on the process of the domestic implementation, the difficulties and the advantages of the application of BCR within the framework of the lately reformed legal surrounding of personal data protection. These factors are evaluated not only from the point of the legislator and the authorities but also from certain data controllers and the data subjects as well.

The Hungarian law concerning personal data protection has been exemplary strict and comprehensive among the European countries. As GDPR has a direct effect this kind of difference is annulled, however in certain fields in which GDPR entitles the member states to regulate some detailed or restrictive national rules can be enacted. One of the unique features of the Hungarian data protection law is that BCR had been enacted in October 2015, long before the GDPR came into effect on 25<sup>th</sup> May 2018. With this legislative action, Hungary developed this legal field overtaking many other EU member states.

BCR as a legal instrument plays a key role in the GDPR as its implementation was supported by the economic operators from the first time of the legislation process. It has been justified, that the BCR is created according to the needs of the multinational companies and it fits well to the tendencies of the reform of the data protection law: BCR is a hybrid tool with a combination of elements of self- and co-regulation. It can provide the adequate level of protection for all members of a group of undertakings irrespective of their registered office or their activities and even the nationality of the data subjects.

The enactment of BCR has deemed to be accepted by the legislator as well: while it was only a potential but mostly ignored tool under the era of 95/46/EK Directive, the Hungarian legislator modified the domestic law years to enact it and the GDPR has reformed the rules on data transfers to third countries and recognizes BCR as an important and accepted way of ensuring adequate level of protection.

Knowing the reasons and the steps of introducing BCR, the dissertation contains a detailed conceptual evaluation. A proposal for its Hungarian appellation is made: the terminology of the GDPR was supported to keep or the terminus technicus of „code for data protection of the group of undertakings” should be applied. The reasons for this recommendation is stated in a certain part of the dissertation. Several parts of the concept induce arguments concerning the entitlements, the issues of liability, the interpretation of binding force having the BCR as an internal code or a unilateral commitment. In the part of the conceptual determination, I provide guidance of interpretation.

The approval process of BCR by data protection supervisory authorities is not regulated by the GDPR, nor any domestic statute, and only soft law legal sources give guidance for the requirements. In the next chapter of the dissertation, a proposal is made on the urging need for the creation of procedural rules. My proposal includes the steps and the special actions of a model process of the approval of a BCR. As a conclusion it is also stated that during the first approval of a BCR all of the data protection authorities of the member states shall take part in the process and evaluate the draft of the BCR, referring which the national approval processes can be annulled.

Creating a BCR is not only making another code of conduct for the company. The creation of a BCR is an essential part of the strategy of the group of undertakings including not only the mechanism for the process of personal data but also policies for data security, liability issues, structural and personnel questions, steps and requirements for trainings, audits, and monitoring activities.

In that chapter of the dissertation the core texts of approved BCRs are taken into account in order to build up a model structure and emphasize the significance and the role of each element of the content.

Companies take several features into consideration when they create the structure and mechanisms for the processing of personal data they work with. The number of the components of each cell of SWOT chart does not show much rather the importance and the relevance of the factors. It cannot be stated that because more weaknesses than strength are listed BCR is unsuitable. The need for and the benefits deriving from its application shall be evaluated case by case to be able to make a deliberated decision.

Two parallel systems are also introduced in the dissertation. One is the system concerning data transfers toward the data processor in the USA, the other is the mechanism of APEC member states. These two approved certification mechanisms are compared to the BCR. The evaluation provided the conclusion that the BCR is grounded on a different legal basis but its biggest advantage derives from its uniqueness.

Our personal data constitute high value not only for us but for the data controller companies as well, although the financial profit goes only to the companies. In the last chapter of the dissertation, a brief outlook is made in order to provide arguments towards theoretical and fundamental rights issues. In this part a different approach is taken into consideration thus the phenomenon of propertisation and commodification of personal data can be understood better. A thoughtful situation in which we have lived nowadays which results in the spread of the privacy paradox. This concerns everybody so that it is important for every person to be conscious in the questions of personal data protection, the prevention the infringements, even with the support of the application of BCR.

**PART IV.**  
**THE PUBLICATIONS OF**  
**THE AUTHOR OF THE DISSERTATION**

Maksó Bianka

Binding Corporate Rules as the new concept for data protection in data transfers

In: Bakhoun – Gallego – Mackenrodt – Surlytė-Namavičienė (edit): "Personal Data In Competition, Consumer Protection and Ip Law - Towards a Holistic Approach?"

Max Planck Institute for Innovation and Competition

MPI Studies on Intellectual Property and Competition Law, Volume 28, p. 501-525

Springer, 2018. ISBN: 978-3-662-57645-8

Maksó Bianka

Az APEC tagállamok adatvédelmi keretrendszeréről

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Miskolci Doktoranduszok Jogtudományi Tanulmányai 18.

(megjelenése folyamatban)

Maksó Bianka

A BCR szerepe az adatvédelmi jogban

interTalent Unideb 2018 Konferencia – Debreceni Egyetem

Konferencia helye, ideje: Debrecen, Magyarország, 2018.04.27.

(megjelenése folyamatban)

Maksó Bianka

BCR a munkahelyen: avagy a munkavállalók személyes adatai védelmének aktuális kérdéseiről fókuszban napjaink technológiai kihívásaival

Studia Iurisprudentiae Doctorandorum Miskolciensium

Miskolci Doktoranduszok Jogtudományi Tanulmányai 17.

p. 201-222. (2017)

Maksó Bianka

Az adatvédelmi jog reformja és a BCR szerepe

Miskolci Doktorandusz Konferencia Tanulmánykötet

Konferencia helye, ideje: Miskolc, Magyarország, 2017. október 27.

Miskolc, Bíbor Kiadó, 2017. p. 119-130. (ISBN:978 615 5536 56 4)

Maksó Bianka

A kötelező szervezeti szabályozás (BCR) hazai bevezetéséről

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XII. Jogász Doktoranduszok Országos Szakmai Találkozója. 450 p.

Konferencia helye, ideje: Budapest, Magyarország, 2017.12.06. Budapest, Patrocinium

Kiadó, 2017. p. 252-262. (Jog és Állam; 22.)

Maksó Bianka

International data transfer with special attention to the conclusions of the invalidity of US Safe Harbour scheme

In: Kékesi Tamás (szerk.)

The Publications of the MultiScience - XXX. microCAD International Multidisciplinary Scientific Conference

Konferencia helye, ideje: Miskolc, Magyarország, 2016.04.21-2016.04.22.  
Miskolc: University of Miskolc, 2016. Paper E15.

Maksó Bianka

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In: Haffner Tamás, Kis Kelemen Bence, Kovács Áron (szerk.)

Fiatalok EUrópában Konferencia 2015: Tanulmánykötet: II.

Pécs, 2015. november 13-14. 401 p.

Pécs, Sopianae Kulturális Egyesület, 2016. p. 153-162.

(ISBN:978-615-80444-0-0)

Maksó Bianka

A hazai adatvédelmi jogi környezet mai állapotához vezető főbb jogharmonizációs lépések, különös tekintettel a külföldi adattovábbítás szabályaira

JURA 2016:(1) p. 239-244. (2016)

Maksó Bianka

Exporting the policy - International data transfer and the role of Binding Corporate Rules for ensuring adequate safeguards

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In: Szabó Miklós (szerk.)

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Maksó Bianka

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In: Bodó László (szerk.)

Jogalkotás és jogalkalmazás a XXI. század Európájában II. 118 p.

Konferencia helye, ideje: Budapest, Magyarország, 2015.05.15 Budapest;

Debrecen: Doktoranduszok Országos Szövetsége, 2016.

(ISBN:978-615-5586-06-4)

Maksó Bianka

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Az Infotv. legújabb adatvédelmi eszközének bevezetéséről

Infokommunikáció és Jog 64. p. 147-154. (2015)

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Maksó Bianka

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Jogtudományi Tanulmányai 16: p. 305-323. (2015)

Maksó Bianka

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In: Szabó Miklós (szerk.)

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Konferencia helye, ideje: Miskolc, Magyarország, 2014.11.20 Miskolc:

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Maksó Bianka

A kötelező erejű vállalati szabályok:

Az adatvédelmi önszabályozás új lehetősége

In: Koncz István, Szova Ilona (szerk.)

A Tudomány szolgálatában 2. köt: PEME IX. Ph.D. Konferencia.

Konferencia helye, ideje: Budapest, Magyarország, 2014.10.29 Budapest,

Professzorok az Európai Magyarországiért Egyesület, 2014. p. 159-170.

2. kötet. (ISBN:978-963-89915-4-6)