

IAPP KnowledgeNet – New York

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A Decade of Binding Corporate Rules

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International Lawyers



Overview

Some Core Characteristics

Facts and Numbers

Why BCRs?

BCR-P

Key Points When Considering BCRs

BCR Core Elements

BCR Application Process

The Future of BCRs

Some Core Characteristics

- Intra-group
- Scalable
- Robust Privacy Governance Structure

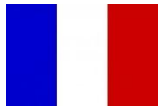
Facts and Numbers



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17



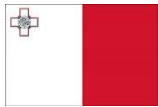
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- 60 BCRs approved
- 55 BCR-Cs and 5 BCR-Ps
- 45 BCRs officially in pipeline (more in reality) of which 13 BCR-Ps
- 5 months in average for lead DPAs to handle application/3-4 months for mutual recognition and cooperation procedure with other DPAs/8 months response time applicant

Facts and Numbers



➤ MR Procedure

Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, France, Germany, Ireland, Italy, Latvia, Luxembourg, Malta, the Netherlands, Spain, Slovakia, Slovenia and the UK.

➤ Co-operation Procedure

Croatia, Denmark, Finland, Greece, Hungary, Lithuania, Poland, Portugal, Romania and Sweden.

Why BCRs?

Pros and Cons

Strengths

- Flexibility
- Enhancement of trust
- Development of truly comprehensive privacy program
- Utilization of existing documents, procedures and audits
- Lowers administrative burden
- Innovation and commitment to privacy
- Market advantage over competitors
- Legal certainty
- Self-certifying

Weaknesses

- Transfers to third parties outside of scope
- Residual administration
- Requires investment
- Timing and length
- Liability

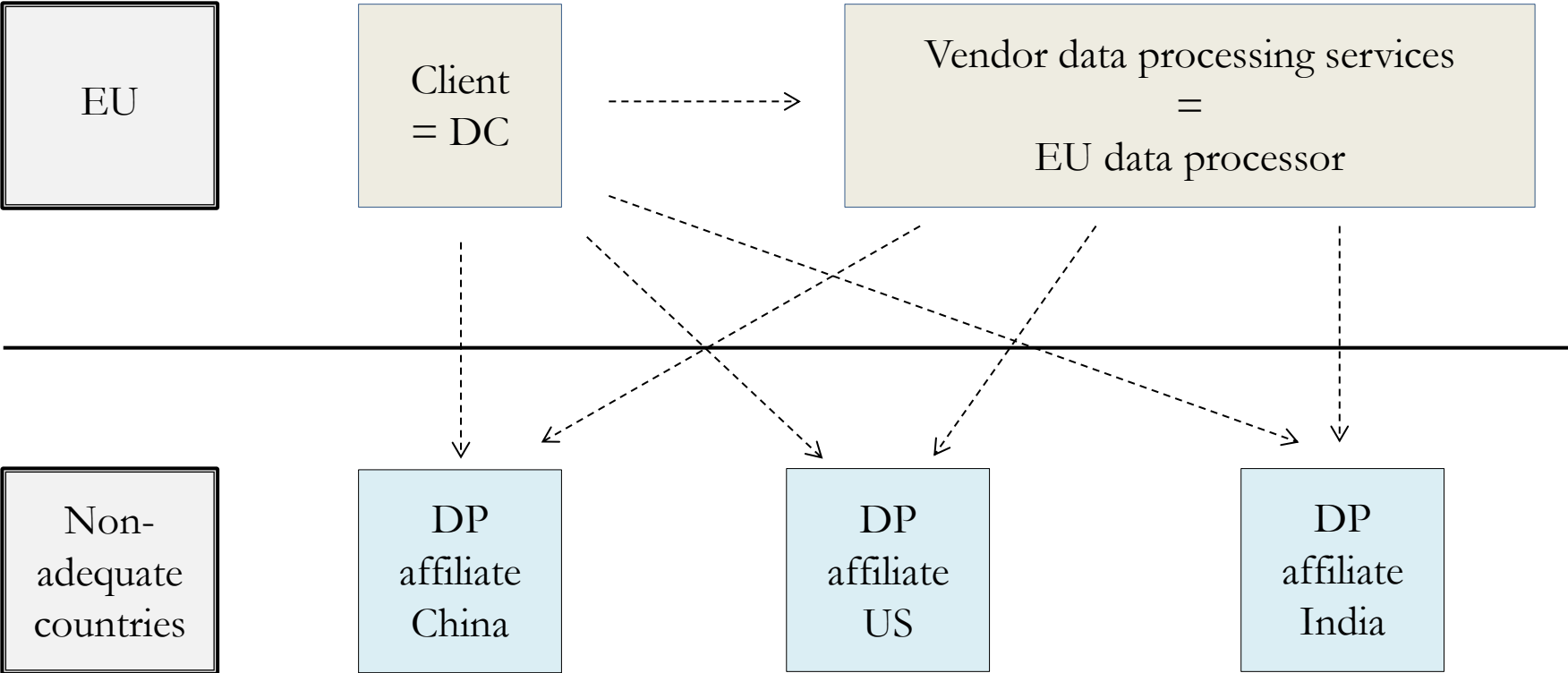
BCRs In Perspective

	<u>Safe Harbor</u>	<u>Model Contracts</u>	<u>Consent & Exemptions</u>	<u>BCRS</u>
Scope	<ul style="list-style-type: none"> • EU → US • Certain businesses excluded • Structural transfers 	<ul style="list-style-type: none"> • EU → Global • No businesses excluded • Structural transfers 	<ul style="list-style-type: none"> • EU → Global • No businesses excluded • No structural transfers 	<ul style="list-style-type: none"> • EU → Global • No businesses excluded • Structural transfers
Legal Certainty	<ul style="list-style-type: none"> • Medium • Safe harbor review • Onward transfers 	<ul style="list-style-type: none"> • High 	<ul style="list-style-type: none"> • Low 	<ul style="list-style-type: none"> • High
Maintenance	<ul style="list-style-type: none"> • Medium • Requires adequate due diligence and governance 	<ul style="list-style-type: none"> • Medium • Requires updates and amendments 	<ul style="list-style-type: none"> • Low 	<ul style="list-style-type: none"> • Low
Administrative Burden	<ul style="list-style-type: none"> • Low (generally no permits) 	<ul style="list-style-type: none"> • High (permits) 	<ul style="list-style-type: none"> • Low – High (exemptions – consent forms) 	<ul style="list-style-type: none"> • High at start, low once obtained
Cost/Complexity	<ul style="list-style-type: none"> • Cost > Complexity 	<ul style="list-style-type: none"> • Cost = Complexity (corporate structure) 	<ul style="list-style-type: none"> • Consent: Cost = Complexity (# of DS) • Exemptions: Cost (liability risk) > Complexity 	<ul style="list-style-type: none"> • Cost < Complexity

BCR-P

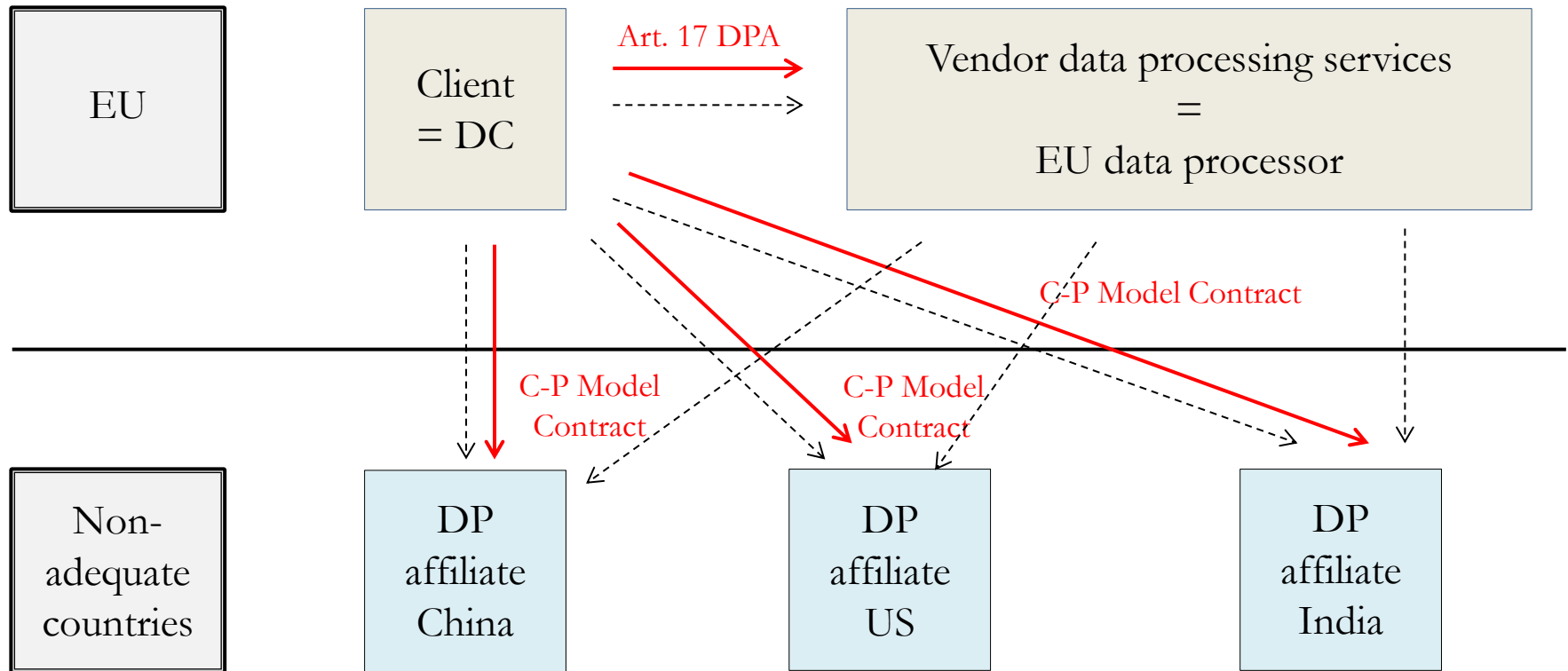
- Currently no adequate P-P transfer mechanism (WP 214)
- Vendors / Cloud providers are obliged to impose burden on clients or execute C-P model contracts

Challenges Global Data Processors - Reality



-----> Data Flow

Challenges Global Data Processors – Solutions?



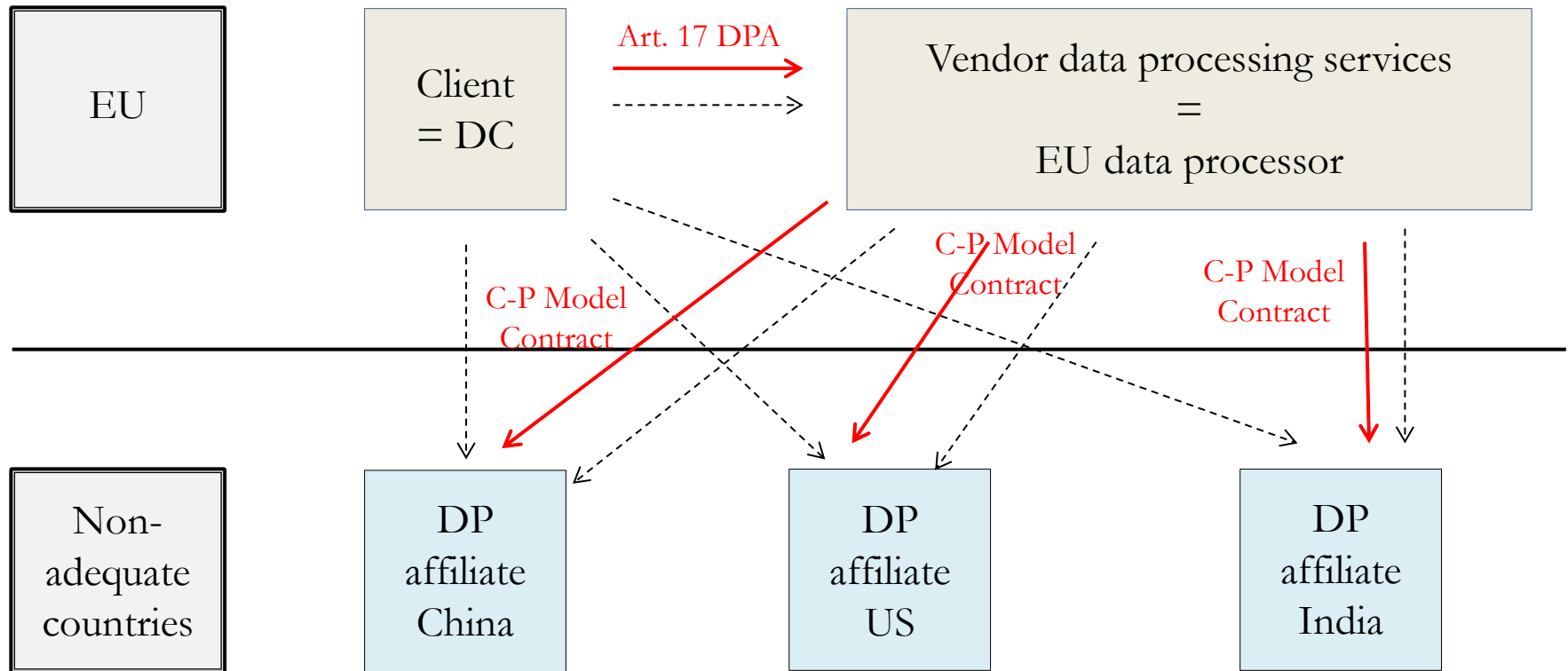
→ Burdensome for clients

- Commercially impractical
- High administrative burden related to multiple model contracts

→ Accurate reflections of data flows

-----> Data Flow
 —————> Contractual arrangements

Challenges Global Data Processors – Solutions?



→ Commercial advantage:

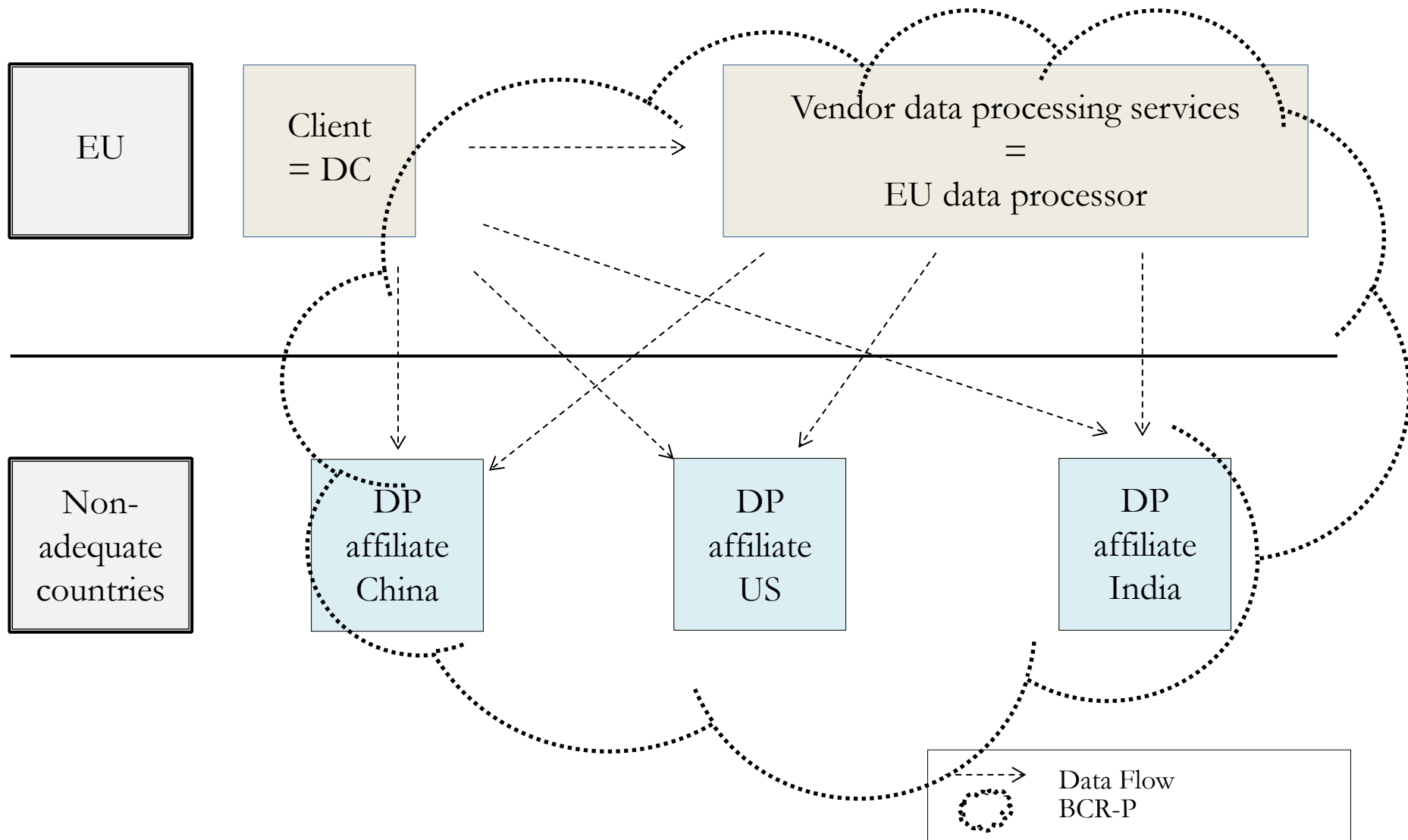
- Reduce burden for clients

→ Legal Risks:

- Does not reflect reality (i.e. Not compliant with actual data flow + requalification of process as controller)
- Shift unwanted liability to EU processor

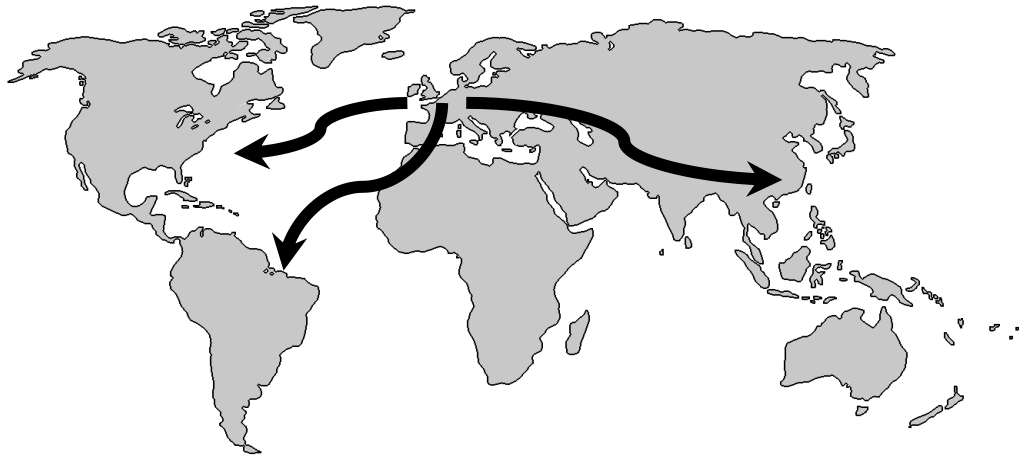
-----> Data Flow
 —————> Contractual arrangements

Challenges Global Data Processors – Solutions?



Key Points When Considering BCRs

- Multiplicity of jurisdictions
- Required flexibility to transfer PII globally

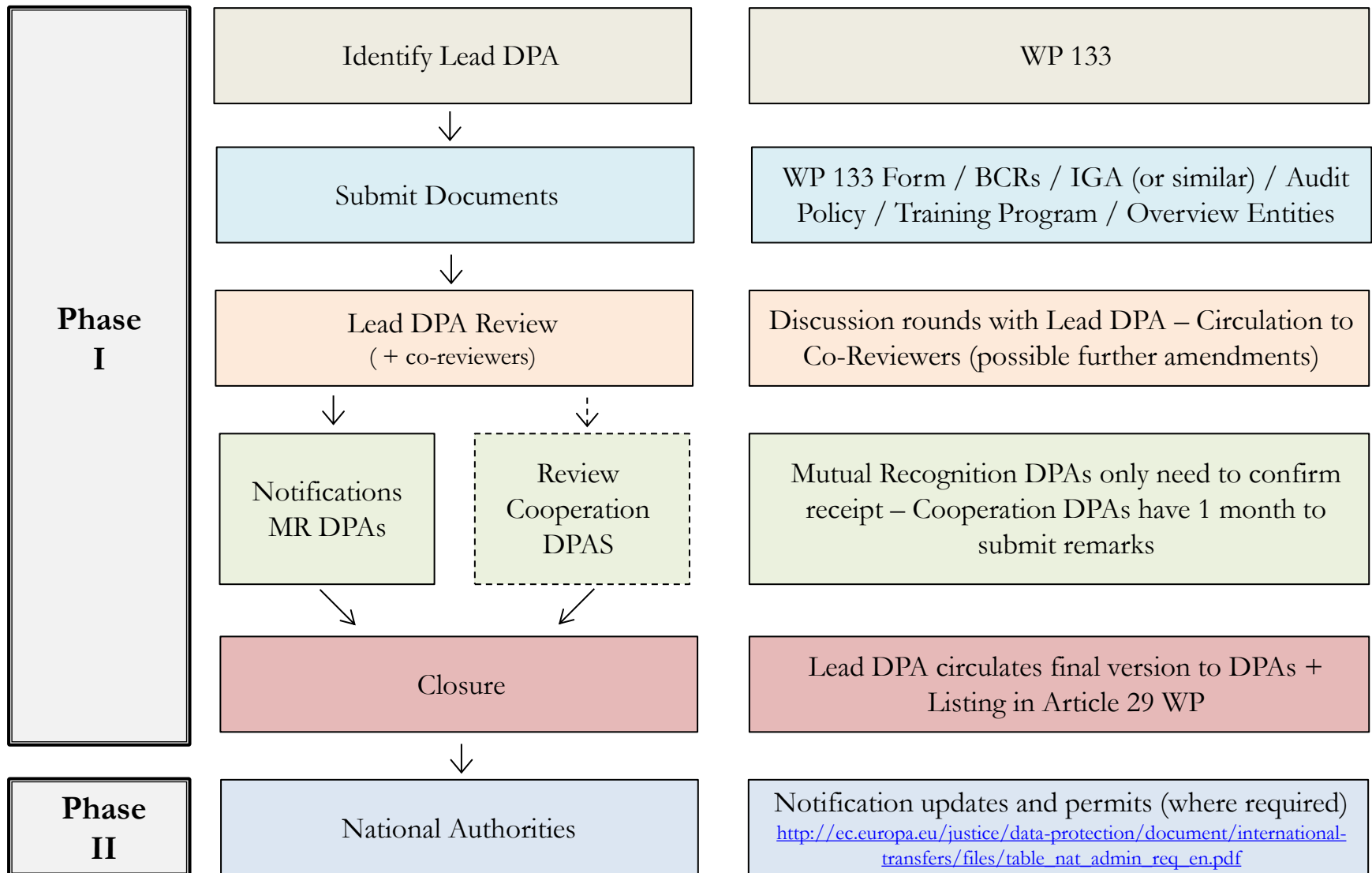


- Status current privacy compliance and privacy governance
- Long-term view on privacy

BCR Core Elements

Binding Nature	Internally and Externally	Referential Docs: BCR-C: WP 153, WP 154, WP 155 BCR-P: WP 195, WP 204
Effectiveness	Training program - Complaint handling mechanism Audit program - Privacy governance structure	
Cooperation Duty	Explicit cooperation obligation between group entities and towards DPAs	
Data Flow Description	High level description nature data/processing purposes/data importers and exporters + scope description	
Reporting and change mechanisms	Process for updating BCRs towards group members and the DPAs	
Data Protection Safeguards	BCR should explain how core data privacy principles are observed	

BCR Application Process



Future of BCRs

- BCRs obtain specific status in the GDPR (Section 43)
- Consistency mechanism (Section 57) without “Phase II” approvals
- Group of undertakings or “group of enterprises engaged in joint activity”

Issues under Future GDPR

- Status earlier BCR approvals?
- Future of BCR-P?

We appreciate the opportunity to be of service to you.

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