

## **APPROVAL OF BINDING CORPORATE RULES OF FUJIKURA AUTOMOTIVE EUROPE GROUP (FAE GROUP)**

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### **RECITALS**

**One:** The company FUJIKURA AUTOMOTIVE EUROPE, SAU, a company with registered office in Spain, as the parent company of the group of companies belonging to the FAE Group, (hereinafter, FAE Group), pursuant to Articles 47 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation, or GDPR), and 41.2 of Organic Law 3/2018, of December 5, on Data Protection and Guarantee of Digital Rights (LOPDPGDD), has submitted to the Spanish Data Protection Agency (AEPD) through its legal representative, a request for the approval of binding corporate rules (BCRs) for the transfer of data to companies of the FAE group established in third countries.

**Two:** The FAE Group submitted the following documents attached to the request:

1. Controller Binding Corporate Rules (BCRs) of FUJIKURA AUTOMOTIVE EUROPE GROUP (FAE Group)
2. BCR WP 264- BCR (Application form)
3. BCR WP 256- (Working document setting up a table with the elements and principles to be found in Binding Corporate Rules)
4. Intra-Group Agreement.
5. Annex I: List of companies of the FAE Group adhered to the BCRs
6. Annex II: Processing activities included in the BCRs
7. Annex III: Training programme
8. Annex IV: Audit programme
9. Annex E: Complaint procedure by data subjects
10. Annex G: Procedure of international transfers of personal data.
11. Annex H: Procedure on Personal Data Breach Management and Notification

**Three:** The AEPD has processed the request for the approval of the BCRs of the FAE GROUP as the competent authority, pursuant to the provisions of document WP 263rev.01 of the Working Group created by virtue of Article 29 of Directive 95/46/EC, and ratified by the European Data Protection Board (hereinafter EDPB, or Board), having participated as co-reviewers authorities the authorities of the United Kingdom and the State of Lower Saxony of the German Federal Republic, according to the cooperation procedure taken in the aforementioned document WP 263rev.01.

**Four:** On 29 January 2020, the European Data Protection Board issued an opinion pursuant to the provisions of Article 64.1.f) of the GDPR.

#### **LEGAL GROUNDS:**

**One.** - The GDPR, in its recital 110, states that *“A group of undertakings, or a group of enterprises engaged in a joint economic activity, should be able to make use of approved binding corporate rules for its international transfers from the Union to organisations within the same group of undertakings, or group of enterprises engaged in a joint economic activity, provided that such corporate rules include all essential principles and enforceable rights to ensure appropriate safeguards for transfers or categories of transfers of personal data.”*

Article 4 defines the binding corporate rules as *“personal data protection policies which are adhered to by a controller or processor established on the territory of a Member State for transfers or a set of transfers of personal data to a controller or processor in one or more third countries within a group of undertakings, or group of enterprises engaged in a joint economic activity.”*

**Two:** In Article 47, the RGDPD regulates the binding corporate rules, by providing:

*“1. The competent supervisory authority shall approve binding corporate rules in accordance with the consistency mechanism set out in Article 63, provided that they:*

*(a) are legally binding and apply to and are enforced by every member concerned of the group of undertakings, or group of enterprises engaged in a joint economic activity, including their employees;*

*(b) expressly confer enforceable rights on data subjects with regard to the processing of their personal data; and*

*(c) fulfil the requirements laid down in paragraph 2.*

*2. The binding corporate rules referred to in paragraph 1 shall specify at least:*

*(a) the structure and contact details of the group of undertakings, or group of enterprises engaged in a joint economic activity and of each of its members;*

*(b) the data transfers or set of transfers, including the categories of personal data, the type of processing and its purposes, the type of data subjects affected and the identification of the third country or countries in question;*

*(c) their legally binding nature, both internally and externally;*

*(d) the application of the general data protection principles, in particular purpose limitation, data minimisation, limited storage periods, data quality, data protection by design and by default, legal basis for processing, processing of special categories of personal data, measures to ensure data security, and the requirements in respect of onward transfers to bodies not bound by the binding corporate rules;*

*(e) the rights of data subjects in regard to processing and the means to exercise those rights, including the right not to be subject to decisions based solely on automated processing, including*

*profiling in accordance with Article 22, the right to lodge a complaint with the competent supervisory authority and before the competent courts of the Member States in accordance with Article 79, and to obtain redress and, where appropriate, compensation for a breach of the binding corporate rules;*

*(f) the acceptance by the controller or processor established on the territory of a Member State of liability for any breaches of the binding corporate rules by any member concerned not established in the Union; the controller or the processor shall be exempt from that liability, in whole or in part, only if it proves that that member is not responsible for the event giving rise to the damage;*

*(g) how the information on the binding corporate rules, in particular on the provisions referred to in points (d), (e) and (f) of this paragraph is provided to the data subjects in addition to Articles 13 and 14;*

*(h) the tasks of any data protection officer designated in accordance with Article 37 or any other person or entity in charge of the monitoring compliance with the binding corporate rules within the group of undertakings, or group of enterprises engaged in a joint economic activity, as well as monitoring training and complaint-handling;*

*(i) the complaint procedures;*

*(j) the mechanisms within the group of undertakings, or group of enterprises engaged in a joint economic activity for ensuring the verification of compliance with the binding corporate rules. Such mechanisms shall include data protection audits and methods for ensuring corrective actions to protect the rights of the data subject. Results of such verification should be communicated to the person or entity referred to in point (h) and to the board of the controlling undertaking of a group of undertakings, or of the group of enterprises engaged in a joint economic activity, and should be available upon request to the competent supervisory authority;*

*(k) the mechanisms for reporting and recording changes to the rules and reporting those changes to the supervisory authority;*

*(l) the cooperation mechanism with the supervisory authority to ensure compliance by any member of the group of undertakings, or group of enterprises engaged in a joint economic activity, in particular by making available to the supervisory authority the results of verifications of the measures referred to in point (j);*

*(m) the mechanisms for reporting to the competent supervisory authority any legal requirements to which a member of the group of undertakings, or group of enterprises engaged in a joint*

*economic activity is subject in a third country which are likely to have a substantial adverse effect on the guarantees provided by the binding corporate rules; and  
n) the appropriate data protection training to personnel having permanent or regular access to personal data.”*

**Three:** The FAE GROUP constitutes a group of undertakings, according to the definition described in Article 4.19 of the GDPR “*Controlling undertaking and its controlled undertakings*”, as stated in the structure of the group of undertakings included in the BCRs.

**Four:** Upon studying the BCRs in the cooperation procedure established in document WP 263rev. 01, they meet the requirements established in Article 47.2 of the GDPR as set out in Annex I of the decision, on which the EDPB has issued its opinion.

**Five:** According to the consistency mechanism, the European Data Protection Board issued, on 29 January 2020, its Opinion 6/2020 on the draft decision of the Spanish Data Protection Agency regarding the Controller Binding Corporate Rules of FUJIKURA AUTOMOTIVE EUROPE GROUP (FAE GROUP), pursuant to Article 64.1.f of the GDPR.

In its opinion 6/2020, the European Data Protection Board states that the binding corporate rules of the FAE Group have been reviewed according to the procedures established by the Board. Likewise, the data protection supervisory authorities of the European Economic Area assembled within the EDPB have concluded that the FAE Group draft Controller BCRs contain all elements required under Article GDPR and document WP256 rev01, as set out in the draft decision prepared by the AEPD as the competent authority, and that it is included in Annex I of this document, stating its compliance with the aforementioned binding corporate rules.

**Six:** Article 46 of the RGPD establishes that in the absence of a decision of the European Commission pursuant to Article 45 (3), the controller may transfer personal data to a third country or an international organisation only if the controller has provided appropriate safeguards, and on condition that enforceable data subject rights and effective legal remedies for data subjects are available, which may be provided for, without requiring any specific authorisation from a supervisory authority by binding corporate rules in accordance with Article 47.

**Seven.** - The Spanish Data Protection Agency is entitled to issue this decision, pursuant to the provisions of Articles 58.3.h) of the GDPR and 47 of the LOPDPGDD.

**Eight:** Annexes I and II are an integral part of this resolution.

Having reviewed and considered the aforementioned provisions and others of general application, the Director of the Spanish Data Protection Agency,

**RULES:**

**One.** - To approve the binding corporate rules (BCRs) of the FUJIKURA AUTOMOTIVE EUROPE GROUP (FAE GROUP) for international transfers of personal data within the FAE GROUP according to the terms and conditions and as set out in Annex II of this decision.

**Two.** Henceforth, international data transfers under the BCRs of the FAE GROUP shall not need any subsequent authorisation by the European data protection authorities. However, under Article 58.2.j) of the General Data Protection Regulation, each supervisory authority shall be entitled to order the suspension of data flows to a recipient located in a third country when the BCRs of the FAE GROUP are not complied with.

**Three.** - THE FUJIKURA AUTOMOTIVE EUROPA GROUP (FAE GROUP) must notify the Spanish Data Protection Agency of any amendment of the binding corporate rules, according to the BCRs update procedure indicated in Section 8.5 of the BCRs.

**Four.** - This decision is issued and notified to data subjects involved in the procedure, in compliance with the mandate of Article 26.1 of Law 39/2015, of 1 October, of the Common Administrative Procedure of the Public Administrations

**Five.** - This decision is notified to the European Data Protection Board, according to Article 70.1 (y) of the GDPR, in order to record it in the Register of Decisions taken within the framework of the consistency mechanism.

**Six.** - Pursuant to the provisions of Article 50 of Organic Law 3/2018, of 5 December, Protection of Personal Data and Guarantee of Digital Rights., this decision shall be made public once the data subjects have been notified.

Against this resolution, which exhausts the administrative procedure in the terms of Article 114 of Law 39/2015, an optional appeal for reinstatement according to Article 123 and following of the same legal text, may be filed before this Spanish Data Protection Agency, within a month, from the day after its notice, or may be directly challenged before the Chamber for Contentious Administrative Proceedings of the National Court, pursuant to the provisions of Article 25 and in the Additional Provision number four of Law 29/1998, of 13 July, on Contentious Administrative Law, within a period of two months from the day following the notice of this act, pursuant to the provisions of Article 46.1 of the aforementioned legal text.

## **ANNEX I TO THE APPROVAL OF BINDING CORPORATE RULES OF FUJIKURA AUTOMOTIVE EUROPE GROUP (FAE GROUP)**

1. According to Article 47.1 of the General Data Protection Regulation (2016/679) (GDPR), the Spanish Data Protection Agency, as the data protection authority, is entitled to approve binding corporate rules (BCRs) as long as they are provided with the requirements set forth in Article 47.2 of the GDPR.
2. Pursuant to the consistency mechanism established in the working document WP 263rev.01, the Controller BCR request of the FUJIKURA AUTOMOTIVE EUROPE GROUP (FAE Group) has been reviewed by the Spanish Data Protection Agency as the leading authority, as well as by the UK data protection supervisory authority and the Lower Saxony Regional German Authority as joint review authorities.
3. The request was also reviewed, according to the consistency mechanism, by the data protection authorities of the European Economic Area.
4. Once the appropriate modifications were made, in view of the comments issued by the authorities of the European Economic Area, it was concluded that the Controller BCRs of the FAE Group met the requirements established in Article 47.2 of the GDPR, as well as in the working document WP 256 rev. 01. In particular, the aforementioned BCRs:
  - i. Are legally binding and include a clear obligation of respect and observance for each member of the FAE Group, including employees, all of which is set forth in the Group's Intra-Group Agreement passed by all the companies affiliated to the BCRs.
  - ii. Expressly confer on data subjects the third-party beneficiary clause for the processing of their personal data, which is a right recognised in point 7 of the BCRs, as well as in the Intra-Group Agreement.
  - iii. Meet the requirements of Article 47.2 of the GDPR:
    - a) The structure and contact details of the group of undertakings and each of its members are described in Annex I and in the BCR Intra-Group Agreement.
    - b) The data transfers or set of transfers, including the categories of personal data, the type of processing and its purposes, the categories of data subjects affected and the identification of the third country or countries are detailed in point 2 of the BCRs and in Annexes I and II.

- c)** The legally binding nature of the BCRs, both internally and externally, is recognised in points 1, 2 and 8.1 of the BCRs and the Intra-Group Agreement.
- d)** The application of the general data protection principles, in particular, purpose limitation, data minimisation, limited storage periods, data quality, data protection by design and by default, legal basis for processing, processing of special categories of personal data are detailed in Sections 4, 5, 10.1 and 11 of the BCRs.
- e)** The measures aimed at guaranteeing data security and the requirements regarding subsequent transfers to bodies not bound by the binding corporate rules are specified in points 10.2, 10.3 of the BCRs and in Annex G.
- f)** The rights of data subjects in regard to processing and the means to exercise those rights, including the right not to be subject to decisions based solely on automated processing, including profiling, the right to lodge a complaint with the competent supervisory authority and before the competent courts of the Member States in accordance with Article 79 of the GDPR, and to obtain redress and, where appropriate, compensation for a breach of the binding corporate rules are set forth in Sections 6,7, 8.6 and in Annex E of the BCRs.
- g)** The acceptance by the controller or processor established on the territory of a Member State of liability for any breaches of the binding corporate rules by any member of the Group not established in the Union, as well as the exemption of the controller or the processor from that liability, in whole or in part, only if it proves that that member is not responsible for the event giving rise to the damage are specified in Section 12 of the BCRs.
- h)** The way in which information about binding corporate rules is provided to data subjects is detailed in Section 6.1 of the BCRs.
- i)** The tasks of any data protection officer designated in accordance with Article 37 of the GDPR or any other person or entity in charge of the monitoring compliance with the binding corporate rules within the group of undertakings, as well as monitoring training and complaint-handling, the claim procedures are included in Sections 8.2, 8.3 and 8.6 of the BCRs.
- j)** The claim procedure is detailed in Sections 6.3 and 8.6 of the BCRs.
- k)** The mechanisms established within the group of undertakings to verify compliance with the binding corporate rules are detailed in Section 8.4 and in Annex IV of the

BCRs. Such mechanisms shall include data protection audits and systems for ensuring corrective actions to protect the rights of data subjects. The results of such verification must be reported to the Data Protection Officer, as well as to the Group Management, and shall be available upon request from the competent data protection authority.

- l)** The mechanisms for reporting and recording changes to the rules and reporting those changes to the supervisory authority are described in Section 8.5 of the BCRs.
- m)** The cooperation mechanism with the supervisory authority to ensure compliance by any member of the group of undertakings, in particular by making available to the supervisory authority the results of verifications is detailed in Sections 8.4 and 13.2 and in Annex IV of the BCRs.
- n)** The mechanisms for reporting to the competent supervisory authority any legal requirements to which a member of the group of undertakings, or group of enterprises engaged in a joint economic activity is subject in a third country which are likely to have a substantial adverse effect on the guarantees provided by the binding corporate rules are set forth in Section 13.1 of the BCRs.
- o)** The appropriate training in data protection for personnel who have permanent or regular access to personal data is included in Section 8.3 and in Annex III of the BCRs.



## **ANNEX II TO THE APPROVAL OF BINDING CORPORATE RULES OF FUJIKURA AUTOMOTIVE EUROPE GROUP (FAE GROUP)**

The binding corporate rules of FUJIKURA AUTOMOTIVE EUROPE group approved by this decision include the following :

- a. **Scope:** Transfers of personal data within the FAE Group between those companies that are legally obliged to comply with the BCRs by adhering thereto through the Intra-Group Agreement.
- b. **Countries of the European Economic Area from which personal data are transferred:** Spain, Germany, the Czech Republic and Romania (Annex I of the BCRs).
- c. **Non-member countries to which personal data are transferred:** Ukraine, Morocco and Republic of Moldova (Annex I of the BCRs).
- d. **Purposes of transfers:** (specified in Annex II of the BCRs):
  - Human Resources: Management of employment relationships with employees
  - Candidates: Personnel recruitment processes in companies with job vacancies.
  - Customer, supplier and contact person management: Maintenance of the contractual relationship, monitoring and management of purchasing and procurement services.
- e. **Categories of data subjects concerned by the transfer:** employees, candidates for job vacancies, clients, suppliers and contact persons (Annex II of the BCRs).
- f. **Categories of personal data transferred:** (Annex II of the BCRs):

The personal data of employees to be transferred refer to the following data:

- Identifying information: name, surname, DNI (Spanish ID), address and telephone.
- Employment-related information: work phone, e-mail and fax.
- Economic information: Bank account number.
- Professional career: Training.

The personal data of candidates to be transferred refer to the following categories of data:

- Identifying information: name, surname, DNI (Spanish ID), address, telephone, e-mail.
- Personal characteristics.
- Academic and professional qualifications.

The personal data of clients, suppliers and contact persons to be transferred refer to the following categories of data:

- Identifying information: name, surname, DNI (Spanish ID), address and telephone.
- Employment-related information: address, telephone, e-mail, fax.
- Economic information: Bank account number.