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File No.: EXP202201247

RESOLUTION OF SANCTIONING PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and based on
to the following

BACKGROUND

FIRST: On January 14, 2022, A.A.A. (hereinafter, the claiming party)
filed a claim with the Spanish Data Protection Agency.

The claim is directed against AUTOMOVILES FERSAN, S.A. with NIF A03071248
(hereinafter, the claimed party).

The reasons on which the claim is based are the following:

The claimant declares that the claimant has made use of her personal data
to include them in a vehicle purchase contract without their consent.

The claimant states that her personal data was used without her consent
to endorse the sale of a vehicle purchased by his sister, in the process
for its financing.

He indicates that his sister made the purchase of the vehicle with the claimed entity, to
which, said entity managed the procedures to formalize a loan contract
financed by BMW BANK GMBH, using the complainant's data, to
obtain sufficient guarantee and carry out the operation.

When a non-payment by the purchasing party occurs, the financial entity demands the
payment to the claimant, and by demanding this last justification for the required collection, said

The financial institution provides documents, qualified by the claimant as false, in which

In addition to the personal data of his sister, as the buyer of the vehicle,

They also add the personal data of the claimant, as well as her signature.

Provide legal action, and exclusive credit contract in the name of B.B.B. (sister of the claimant)

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5 December, Protection of Personal Data and guarantee of digital rights (in forward LOPDGDD), on February 3, 2022, said claim was transferred to the claimed party, to proceed with its analysis and inform this Agency in the period of one month, of the actions carried out to adapt to the requirements provided for in the data protection regulations.

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The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations Public (hereinafter, LPACAP), was collected on February 4, 2022 as

It appears in the acknowledgment of receipt that is in the file.

On March 3, 2022, this Agency received a written response indicating that AUTOMÓVILES FERSÁN, through BMW Group Financial Services, has a clear protocol on the documentation that must be requested when a person requests financing, said protocol is strictly applied by part of the dealership, and this applies to all its commercials.

In this operation the four brothers of the family (...), appearing as guarantors of the operation.

It is stated that the operation was approved and was viable, with the co-ownership of Ms. B.B.B. and Ms. A.A.A..

The relationship of Ms. A.A.A. and his family with AUTOMÓVILES FERSÁN, SA from a chronological point of view is as follows:

October 25, 2018. Ms. C.C.C. (Sister of Mrs. A.A.A.) asks for a

□

budget to AUTOMÓVILES FERSÁN, proposing the contract of sale of the vehicle in the name of a company to be incorporated.

October 29, 2018, Ms. C.C.C. sends the census registration and payroll of Ms.

□

B.B.B.

November 08, 2018 – D.D.D.D. (Claimant's brother) sent by

□

mail rent 2017 (model 100) of Mrs. B.B.B..

□

The option of having guarantors to guarantee the operation is valued very highly.

November 9, 2018, 9:00 a.m. Since the operation required an input

November 9, 2018 - – D.D.D.D. sends by mail the pay slips and the registration of

□

Ms. B.B.B. and he writes to (...) (employee of the claimed entity):

"Hello (...), I am attaching the pay slips and the discharge.

When they ask you for a guarantor, tell me what documentation I have to provide.

All the best".

November 9, 2018, 6:45 p.m. Once the study of Mrs. B.B.B.

□

(sister of the claimant) have to provide a guarantee or deposit of ***AMOUNT.€.

THIRD: On April 14, 2022, in accordance with article 65 of the

LOPDGDD, the claim presented by the claimant party was admitted for processing.

FOURTH: On July 20, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate disciplinary proceedings against the claimed party, in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (in hereafter, LPACAP), for the alleged infringement of article 6.1 of the GDPR, typified in Article 83.5 of the GDPR.

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FIFTH: Notified of the aforementioned start-up agreement in accordance with the rules established in Law 39/2015, of October 1, on the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), the claimed party submitted a written of allegations in which, in summary, it stated verbatim the following:

(...).

See Annex I. (...)

Annex II is sent. (...).

(...):

☐ (...).

☐ (...).

☐ (...).

☐ (...).

(...).

(...).

SIXTH: On August 11, 2022, the procedure instructor agreed to give

by reproduced for evidentiary purposes the claim filed by the claimant and your documentation, the documents obtained and generated during the admission phase processing of the claim, and the report of previous investigation actions that are part of the procedure. Likewise, it is considered reproduced for the purposes evidence, the allegations to the agreement to start the disciplinary procedure referenced, presented by the claimed entity and the documentation that they accompanies.

SEVENTH: On August 30, 2022, a resolution proposal was formulated, proposing that the Director of the Spanish Data Protection Agency fine AUTOMOVILES FERSAN, S.A. with NIF A03071248, for an infraction of article 6.1 of the GDPR, typified in article 83.5 of the GDPR, and for the purposes of prescription, by article 72.1 b) of the LOPDGDD, with a fine of 5,000 euros (five thousand euros)

EIGHTH: On September 9, 2022, the respondent entity presents allegations to the proposed resolution stating that the claim, in no way moment is carried out as a guarantor but as a co-owner.

It is further stated that:

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- (...).

(...)

Of the actions carried out in this procedure and of the documentation

in the file, the following have been accredited:

PROVEN FACTS

FIRST: The claimant affirms that her personal data has been used by the defendant without their consent to guarantee the sale of a vehicle acquired by his sister

Provide legal action, and exclusive credit contract in the name of B.B.B. (sister of the claimant)

SECOND: The claimed entity states that the claimant is a co-owner, since together with his sister, he bought the vehicle in dispute.

Provides:

☐ (...)

☐ (...)

☐ (...)

☐ (...)

FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter GDPR), grants each

control authority and as established in articles 47 and 48.1 of the Law

Organic 3/2018, of December 5, Protection of Personal Data and guarantee of

digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve

this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "Procedures

processed by the Spanish Data Protection Agency will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations dictated in its development and, insofar as they do not contradict them, with character

subsidiary, by the general rules on administrative procedures.”

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II

Article 4.11 of the GDPR defines the consent of the interested party as "all

manifestation of free, specific, informed and unequivocal will by which the

The interested party accepts, either through a declaration or a clear affirmative action, the processing of personal data concerning you”.

In this sense, article 6.1 of the LOPDGDD establishes that "in accordance with the

provided in article 4.11 of Regulation (EU) 2016/679, consent is understood to

of the affected party, any manifestation of free, specific, informed and incompetent will.

equivocal by which he accepts, either by means of a declaration or a clear action

affirmatively, the processing of personal data concerning him”.

For its part, article 6 of the GDPR establishes the following:

"1. Processing will only be lawful if at least one of the following conditions is met:

nes:

a) the interested party gave his consent for the processing of his personal data

for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party

is part of or for the application at the request of the latter of pre-contractual measures;

c) the processing is necessary for compliance with a legal obligation applicable to the responsible for the treatment;

d) the processing is necessary to protect vital interests of the data subject or of another

Physical person;

e) the treatment is necessary for the fulfillment of a mission carried out in the interest

public or in the exercise of public powers conferred on the data controller;

f) the treatment is necessary for the satisfaction of legitimate interests pursued

by the person in charge of the treatment or by a third party, provided that on said interests

the interests or the fundamental rights and freedoms of the interested party do not prevail.

that require the protection of personal data, particularly when the interest

sado be a child

The provisions of letter f) of the first paragraph shall not apply to the treatment

carried out by public authorities in the exercise of their functions.”

II

In the present case, the claimant denounces AUTOMOVILES FERSAN, S.A.

because they claim as a guarantor the payment of a vehicle that your

sister B.B.B. despite the fact that, in the financing contract, only his sister and

not her.

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The requested entity has provided documentation that proves that the

claimant is co-owner of the vehicle causing the required debt and therefore, is

requires payment not as a guarantor but as co-owner. Specifically, it provides

judicial claim for non-payment, in which both the claimant and the

B.B.B. as holders of the vehicle and the financing contract.

Therefore, after proving that the claimant is co-owner of the vehicle and clarifying in

concept of what the debt is claimed from, we must consider that the entity claimed is legitimized for the use of the personal data of the claimant, based on the prior execution of a sales contract, and for

Therefore, there would not have been a violation of article 6 of the GDPR indicated in the foundation of law II.

Therefore, after learning of these facts, the Director of the Agency

Spanish Data Protection RESOLVES:

FIRST: PROCEED TO THE ARCHIVE of the present proceedings.

SECOND: NOTIFY this resolution to the claimant and defendant.

In accordance with the provisions of article 50 of the LOPDGDD, this

Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common for Public Administrations, and in accordance with the provisions of the

arts. 112 and 123 of the aforementioned Law 39/2015, of October 1, interested parties may

file, optionally, an appeal for reversal before the Director of the Agency

Spanish Data Protection Agency within a period of one month from the day

following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National Court,

in accordance with the provisions of article 25 and paragraph 5 of the provision

additional fourth of Law 29/1998, of July 13, regulating the Jurisdiction

Contentious-Administrative, within a period of two months from the day following

to the notification of this act, as provided in article 46.1 of the aforementioned Law.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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