

**Opinion in relation to the consultation of a railway company on the legitimacy for the processing of personal data of children under 14 years of age by its inspection staff**

**A letter from a railway company is presented to the Catalan Data Protection Authority regarding the authorization for the processing of personal data of children under the age of 14 in order to impose on them the minimum perception provided for in the applicable legislation to travel without a correct transport ticket or for not validating it.**

**Having analyzed the request and seen the report of the Legal Counsel, the following is ruled.**

**I**

**(...)**

**II**

**The consulting entity begins its consultation letter by reproducing article 7 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereafter, LOPDGDD), according to which:**

**"Article 7. Consent of minors.**

**1. The treatment of the personal data of a minor can only be based on his consent when he is over fourteen years old. The cases in which the law requires the assistance of the holders of parental authority or guardianship for the celebration of the legal act or business in whose context consent for the treatment is obtained are excepted.**

**2. The treatment of the data of minors under fourteen years of age, based on consent, will only be lawful if the holder of parental authority or guardianship is included, with the scope determined by the holders of parental authority or guardianship."**

**Then, it is agreed that, in accordance with Law 4/2006, of March 31, railways, its employees have, in acts of service and in those motivated by them, the consideration of agents of the authority in exercise of their functions, especially those of immediate monitoring of the observance, by users and by third parties in general, of the rules established by laws and regulations.**

**Given this, it asks this Authority if its inspection staff can request from minors under 14 the personal data required for the imposition of a minimum fine for traveling without a valid transport ticket or for not having the validated, as it is a penalty that must be imposed directly on the person who commits the infraction. If not possible, consider what should be the way to proceed to be able to identify them.**

**III**

**The Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereinafter, RGPD), establishes that all processing of personal data must be lawful, loyal and transparent (article 5.1.a)).**

**In order for this treatment to be lawful, one of the legal bases of article 6.1 of the RGPD must be met, either the consent of the affected person (letter a)) - which,**

in the case of minors, it would certainly be necessary to bear in mind the provisions of article 7 of the LOPDGDD, mentioned above - or any of the other legal bases provided for in the same article, such as, for the purposes that concern, that "the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment" (letter e)).

As can be seen from article 6.3 of the RGPD, the basis of the treatment indicated in article 6.1.e) of the RGPD must be established by the law of the European Union or by the law of the Member States that apply to the person responsible for the treatment, which, in the case of the Spanish State, must be in a rule with the rank of law (Article 53 EC).

This is how it is established in the LOPDGDD:

"Article 8. Data treatment protected by law. 1. (...)

2. The treatment of personal data can only be considered based on the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible, in the terms provided for in article 6.1 e) of Regulation (EU) 2016 /679, when it derives from a competence attributed by law."

Therefore, to consider the data treatments covered by the legal basis of article 6.1.e) of the RGPD there must be a regulatory provision with the rank of law.

In the present case, reference must be made to Law 4/2006, of 31 March, on railways.

As indicated by the consulting entity itself, this law recognizes the employees of the railway companies and the operating companies that provide the service as agents of the authority in the exercise of their functions. Specifically, article 38.3 provides that:

"3. The employees of the owner of the infrastructure, of the railway companies and of the operating companies that provide the service have, in the acts of service and those motivated by them, the consideration of agents of the authority in the exercise of their functions, especially those of immediate monitoring of the observance, by users and by third parties in general, of the rules established by laws and regulations and the general conditions of use. Said employees must perform the corresponding inspection functions and must report the detected violations to the competent administrative bodies, which must supervise, in all cases, the inspection, the processing of the complaints presented and the imposition of the corresponding sanctions, if applicable."

According to article 60.3 of the same law "the action procedure and the attributions that correspond to the agents of the authority must be determined by regulation (...) and also the obligations relating to the inspection of the natural and legal persons to whom this law can be applied."

It is appropriate, at this point, to refer to Law 7/2004, of July 16, on fiscal and administrative measures.

Article 52 of this law, in the wording given by article 85 of Law 3/2015, of March 11, on fiscal, financial and administrative measures, provides that "people using the transport service public travelers subject to a tariff system must have, in order to access these services, a ticket or an appropriate transport ticket in accordance with the conditions applicable at each time" (paragraph 1) and enables the staff of the 'operating company "to require the user" to travel without a ticket, with an unvalidated transport ticket or with a ticket

of transport not valid for the characteristics of the journey or of the same user, "the payment of a minimum perception of 100 euros" (section 3.a)).

This same precept of Law 7/2004 establishes the conditions and the form in which the minimum collection must be requested, as well as the subsequent management procedure in the event that this collection is not paid within the period indicated, in the following terms:

"3. In the event that the user travels without a ticket, with an invalid transport ticket or with a transport ticket invalid for the characteristics of the journey or the user, measures must be taken following: a) The staff of the operating company must require the user to pay a minimum fee of 100 euros. For this purpose, the staff of the operating company must issue the supporting document corresponding to the minimum perception. This amount must be paid within thirty days from the intervention of the personnel of the operating company. If the minimum collection is paid immediately, or within two working days of its issue, the amount is reduced by 50%. b) In the event that the user does not make the immediate payment of the minimum charge, the staff of the operating company must request that they be identified in order to manage the collection. In the event that payment is not made during the thirty days following the intervention, the Administration responsible for the service must process the corresponding sanctioning procedure, provided that the action of the user constitutes an administrative infraction of in accordance with the applicable transport regulations.

c) In the event that the user refuses to pay the minimum fee or to identify himself/herself properly, the staff of the operating company may request the assistance of security personnel or public order agents for them to identify him, without prejudice to the faculty of requiring him to leave the means of transport or the facilities."

In accordance with this precept and for the relevant purposes, it is therefore necessary to bear in mind that:

- The staff of the operating company must issue the supporting document corresponding to the minimum perception (article 52.3.a)); - In the event that the user does not make the immediate payment of the minimum fee, the staff of the operating company must request that they be identified in order to manage the payment (article 52.3.b));
- In the event that the minimum charge has been imposed on a minor, public transport operating companies must formally notify their legal guardians (article 52.9).

Regulatory provisions that, it should be noted, are included in the General Conditions of Use of the business group of which the consulting entity is a part.

In short, in view of the aforementioned legal provisions, it can be said that the processing of the data of minors by the inspection staff of the entity consulting for the imposition, when appropriate, of a minimum perception when detecting , in the exercise of their inspection and control functions, the failure to comply with the obligation to travel with an appropriate ticket or ticket (and to make good use of it) established in said laws would be legitimized by the legal basis of article 6.1.e) of the RGPD in being necessary "for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treat

Therefore, agreeing that it would not be necessary to resort to another legal basis that would legitimize this treatment, such as the consent of the interested parties or, in the specific case raised

(under 14 years of age), of holders of parental or guardianship (Article 6.1.a) RGPD and Article 7 LOPDGDD). The processing of the data of these children in this case (in fact, also of minors over the age of 14 and adults) would be protected, as has been said, in the legal basis of article 6.1.e) of the 'RGPD.

Having said that, note that, by application of the principle of data minimization (article 5.1.c) RGPD), only the minimum data necessary to manage the imposition, including payment and notification to the legal guardians, of the minimum collection may be requested. In this sense, it is considered appropriate to request the data relating to the first and last names, address and ID of the children mentioned in the consultation letter.

We also acknowledge the need to provide them, in the collection of this data, with transparent information regarding the processing of their data using a language appropriate to their level of understanding (articles 12.1 and 13 RGPD).

In the event that the minor (or his legal guardians, if traveling with him) refuses to provide his identification data, the staff of the consulting entity could request the assistance of the security staff or the agents of public order to identify him, as provided for in the applicable legislation (article 52.3.c) Law 7/2004 and article 38.5 Law 4/2006).

In accordance with the considerations made so far in relation to the query raised, the following are made,

#### Conclusions

The staff of the railway company may, in the exercise of their inspection and control functions, request from children under the age of 14 the identification data that are strictly necessary for the imposition and management of the pass of a minimum perception, in meeting the legitimate basis of article 6.1.e) of the RGPD in attention to the provisions of Law 4/2006 and Law 7/2004 examined.

Barcelona, September 20, 2019