

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

File identification

Archive resolution of the previous information no. IP 238/2019, referring to the Department of Territory and Sustainability

Background

1. On 02/09/2019, the Catalan Data Protection Authority received a letter from a person who filed a complaint against Rodalies Catalunya, on the grounds of an alleged breach of the regulations on data protection personal data.

Firstly, the complainant stated that on 07/05/2019, the ticket vending machine at the L'Hospitalet de l'Infant train station was broken, and he was unable to purchase the ticket before boarding the train. Faced with this situation, the person from the company operating the passenger transport service who was at the station informed him that "the train inspector was in charge of selling me the ticket" and "that you could not pay by credit card on the train, but that the controller would give me the necessary solution to make this payment". In relation to this, the person making the complaint complained that on board the train he tried to regularize his situation in front of the inspection staff of the rail transport service for passengers in the Region, who informed him that "I had to provide him with my ID, that is, my personal data, and that once I arrived at Barcelona Sants station I had to go to the control point and pay with a credit card", an action that the person making the complaint here refused to perform by invoking an unlawful treatment of your personal data. This led to the railway agent telling him that if he did not provide him with his ID card details, he would make him get off at the next station.

2. The Authority opened a preliminary information phase (no. IP 238/2019), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure of application to the areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (henceforth, LPAC), to determine whether the facts they were likely to motivate the initiation of a sanctioning procedure, the identification of the person or persons who could be responsible and the relevant circumstances involved.

3. In this information phase, on 15/10/2019 a request was sent to Renfe Viatgers to inform, among others, the reasons that would justify the need to require the National Document number of Identity (henceforth, DNI) for travelers who have not been able to purchase a ticket at the station of origin before boarding the train, and if there was a protocol of the actions to be followed in cases like the one here brought up

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

4. On 10/29/2019, Renfe Operadora (hereinafter, Renfe) responded to the request mentioned through a letter in which he set out, among others, the following:

- That "the first thing that needs to be clarified is that "Rodalies de Catalunya" does not have legal personality, since it is a Directorate of the railway transport service provider."

- That "it is necessary to review the competence exercised by the APDCAT." (...). "As you can see - with reference to art.3 of Law 32/2010-, none of the aforementioned assumptions are applicable, since the company has its domicile and headquarters (...) in Madrid.

Additionally, it should be noted that rail transport has the character of a service of general interest, in accordance with the tenor of article 47 of Law 38/2015, of 29 September, on the railway sector, but it is not configured as a public service. The competent Administration, in accordance with the framework of Law 4/2006, of March 31, Railways and the provisions of Law 7/2004, of July 16, on fiscal and administrative measures, would be the Department of Territory and Sustainability of the Generalitat de Catalunya".

- That "we consider that the control authority that has full powers and competence to make a request of such characteristics would be the Spanish Data Protection Agency."

- That in relation to the collection of DNI data of the reporting person "is obliged by the following law, (...): Law 7/2004, of July 16, on fiscal and administrative measures", and in this regard, transcribes article 52 of the Law, on applicable measures for improper use of public passenger transport services.

- That "The identification of the traveler without a transport ticket is required by the aforementioned legal obligation, in connection with what is provided for in article 38.3 of the Catalan Law 4/2006, of March 31, Railways. (...). As can be seen, the aforementioned article establishes that the intervention employees of the railway company, in services subject to transfer, (...), among others, must exercise the inspection functions and report on the infractions detected to the competent administrative bodies of the Generalitat de Catalunya, which must in any case supervise the inspection and processing of the complaints presented and the imposition of sanctions if appropriate."

- That "the DNI request to the interested person is directly related to the fact that he did not have a ticket, which, according to the provisions of art. 65 a) of the aforementioned Law 4/2006, of March 31, Railways, is a minor infraction."

- That "In addition, it should be noted that the general conditions of use of the regional and regional railway services in Catalonia were approved at the time by the Generalitat de Catalunya".

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

- That "Rodalies de Catalunya has a protocol of action for the situations as described, (that is, related to the request for ID to travelers without a ticket)" and "currently, on March 15, 2012, The "Contract for the provision of services for the maintenance of data on behalf of third parties" was signed between the Directorate General of Transport and Mobility of the Department of Territory and Sustainability and RENFE-Operadora".

- That "in the clauses of said contract the following is established:

- First (exhibit I), that the Directorate General of Transport and Mobility of the Department of Territory and Sustainability of the Generalitat de Catalunya has the competence in the regulation and inspection of rail transport and the power to impose sanctions in the railway sector under of the art. 66.4 of Law 4/2006, of March 31, railway.

- Second (exhibit II), which the lending company - Renfelo - does as a consequence of the transfer made pursuant to Royal Decree 2034/2009, of December 30, on the transfer to the Generalitat of Catalonia of the functions of the General Administration of State corresponding to the passenger transport service by rail in Cercanías, and in response to Royal Decree 1598/2010, of November 26, transferring to the Generalitat de Catalunya the functions of the General Administration of the State corresponding to regional railway services of passenger transport on the Ancho Iberian network of the general interest railway network.

- And third (clause one) that to comply with the obligation to report to the Generalitat de Catalunya of the detected infringements:

- Renfe has the obligation to collect the data of those persons who have incurred any of the offenses specified by the Catalan railway legislation, or who do not make the immediate payment of the minimum charge.

- That the data subject to treatment will be the number and surnames, DNI and details of the infraction.

- That once the period of 30 days has passed since the date of the infraction without the person having paid the minimum fee, the data collected in the complaints will be communicated to the General Directorate of Transport and Mobility of the Generalitat.

- That in the event that the minimum fee has been paid during said 30-day period, Renfe will cancel your data."

The reported entity attached to the letter a copy of the "Contract for the provision of services for the processing of data on behalf of third parties signed between the General Directorate of Transport and Mobility of the Department of Territory and Sustainability and RENFE-Operadora."

5. On 11/30/2020, the Department of Territory and Sustainability (hereinafter, TES) to inform if in the cases of travelers who have not been able to acquire

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

a ticket at the station of origin before boarding the train, and they want to pay by credit card on board the train, the railway agent processes the same minimum perception ticket as in cases where a user is detected traveling without ticket intentionally. It was also required that, in case the railway agent fills in a different document, it should be informed about which document is issued when travelers have not been able to purchase a ticket at the station of origin and want to pay for the ticket on board of the train with a credit card, the procedure, and the legal basis that would legitimize the need to require the ID number.

6. On 14/12/2020, the TES Department responded to the aforementioned request, through a writing that stated the following:

- That "Article 38.3 of Law 4/2006, of 31 March, on railways, grants the power of inspection to operating companies" and, in this regard, transcribes the aforementioned article.
- That "in the Renfe procedure for data protection in after-sales management on board the train (the document is attached), it is specified what needs to be done in the case in question"

In this respect, in the after-sales management document on board the Renfe train Rodalies Catalunya attached, it is stated that:

"In all cases in which the controller requires the request for personal data of a traveler, for not having a valid transport ticket to travel, the Minimum Perception Form must be filled in inexcusably established for this purpose and deliver the corresponding copy to the traveler."

"In the case of those travelers who have accessed a station without the possibility of selling tickets and who do not have cash to make the payment on board the train (only credit card), the after-sales management to be carried out will be Next:

1st.- The inspection staff will fill in the Minimum Perception Bulletin and give the corresponding copy to the traveler ("customer copy") noting the telephone number of the inspector in the space indicated.

2º.- The inspection staff will indicate to the traveler that, at the ticket offices of the station of destination, he will have to pay for the corresponding ticket.

3º.- The staff of the ticket offices where the traveler makes the payment must call the controller's mobile phone, which will appear noted in the Minimum Payment Bulletin presented by the customer, so that they can proceed with the cancellation of this BPM and stop its usual process, given that the ticket office will have confirmed the payment of the ticket by the traveler. When the traveler makes the payment at the ticket office, all the leaves that make up the Minimum Fee Bulletin will be destroyed and their personal data will be deleted.
(...)"

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

Fundamentals of law

1. In accordance with the provisions of articles 90.1 of the LPAC and 2 of Decree 278/1993, in relation to article 5 of Law 32/2010, of October 1, of the Authority Catalan Data Protection Agency, and article 15 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Data Protection Agency, the director of the Catalan Data Protection Authority.

2. Based on the account of facts that has been set out in the antecedents section, it is necessary to analyze the reported facts that are the subject of this archive resolution, and specifically, if the collection of the personal data contained in the ID of the person reporting here by a railway agent, in order to be able to process the minimum perception ticket, is a data processing that would be covered by one of the authorizations provided for in article 6 of Regulation (EU) 2016/679 of European Parliament and of the Council, of 27/4, relating to the protection of natural persons with regard to the processing of personal data and the free movement thereof (hereafter RGPD).

As a premise, mention must be made of the issue invoked by Renfe in its written response to this Authority's request, regarding the Authority's lack of competence to request information relating to the facts reported.

First of all, to indicate that Rodalies Catalunya are the railway services that run entirely through the Catalan territory on the railway network of general interest of the State, and that although the public business entity Renfe-operadora, is the operator that provides the service, have been owned by the Generalitat of Catalonia since 2010 and 2011, in accordance with Royal Decree 2034/2009, of December 30, on the transfer to the Generalitat of Catalonia of the functions of the General Administration of the State corresponding to commuter rail passenger transport services, and Royal Decree 1598/2010, of 26 November, transferring to the Generalitat de Catalunya the functions of the General Administration of the State corresponding to the services of passenger transport on the Iberian-wide network of the railway network of general interest.

In other words, the public business entity Renfe is the operator that provides the Rodalies Catalunya passenger transport service, however, the management and direction of the Rodalies Catalunya service corresponds to the Generalitat de Catalunya.

Secondly, it is necessary to take into account the object of the complaint, the fact that the Renfe railway agent required the DNI data of the person making the complaint in order to process the corresponding complaint/minimum perception ticket. In this regard, it should be noted that the Generalitat has competence in the regulation and inspection of rail transport which

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

take place entirely within the territory of Catalonia (art.169 EAC), and the power to sanction in the railway sector, by virtue of articles 5.1.p) and 66.4 of Law 4/2006, of 31 March, railways. In this respect, the action of the railway agent is within the framework of a data treatment carried out by the operator Renfe as the person in charge of the treatment, of which the Department of Territories and Sustainability (henceforth, TES) is responsible. It is also indicated in the Contract for the provision of services for the processing of data on behalf of third parties signed between the General Directorate of Transport and Mobility of the Department of TES and Renfe-Operadora, formalized on 03/15/2012. In said contract, in its first clause, on the object of the processing order, it states that: "Through this agreement, the entity Renfe, in charge of the processing, is authorized to process, on behalf of the Management General of Transport and Mobility of the Department of Territory and Sustainability, responsible for processing, the personal data necessary for the completion of complaint forms." In this regard, it should be noted that article 4.8 of the RGPD defines the data controller as "the natural or legal person, public authority, service or any other body that processes personal data on behalf of the data controller". In accordance with this definition, and as evidenced by the documentation provided by Renfe, this entity would be placed as a data controller before the Department of TES, which is responsible for the reported data processing.

In this way, the Authority's scope of competence to deal with the complaint made is determined by article 3.f) of Law 32/2010, as the Authority's scope of action includes the files and the treatments carried out by: "f) Other private law entities that provide public services through any form of direct or indirect management, if it is files and treatments linked to the provision of these services."

Finally, it should be noted that from the response of the TES Department to the request made by the Authority, it can be inferred that the railway agent processes the same ticket of minimum perception both for the cases in which it detects a user traveling without a ticket intentionally, and for cases where a user who has not been able to purchase a ticket at the station of origin wants to pay on board the train with a credit card. The only difference is that in the latter case, that is, when it comes to a traveler who has entered a station without the possibility of selling tickets and who does not have cash to make the payment on board the train (only have a credit card), the railway agent will write down his mobile phone number on the minimum receipt ticket so that the ticket office staff at the destination station, once the passenger has made the payment there ticket, you can call the agent to remove the minimum perception and not process it. That is to say, that the railway agent always issues the document of minimum perception, and it is its subsequent processing, which varies in one case or the other. Thus, in the case of the traveler who travels without a ticket intentionally, the minimum perception document will then be used to initiate a sanctioning procedure for the commission of the offense of traveling without a ticket, and in the case of the traveler who has not been able to acquire the ticket in the station of origin and does not have cash to pay on board the train, the ticket will be used so that the traveler can regularize his situation at the station of

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

destiny The latter, without prejudice to the fact that, in the event that the traveler does not regularize his situation at the station of destination, the railway agent sends the minimum perception to the bodies in charge of initiating a sanctioning procedure against the traveling person for the commission of an infringement in the field of railway transport. Therefore, the issuance of the minimum collection ticket is an act that falls within the scope of the exercise of the inspection power of the railway agents, and that in both cases may end up being the document with which the initiation of a sanctioning procedure.

2.1 On the legality of the processing of personal data collection

First of all, it must be said that the object of this resolution focuses on the analysis of whether the processing of the data of the complainant here carried out by the railway agent of Renfe in the service of Rodalies Catalunya, violated the principle of legality. That is to say, it is not part of the study of this resolution, nor does it fall within the jurisdiction of this Authority, to analyze the reasons why the person making the complaint here traveled without a ticket.

What must therefore be determined is whether in the processing of personal data referred to in the complaint, the principle of legality was violated, in which case we could potentially be faced with an infringement provided for in article 83.5.a) of RGPD, provision that typifies as an infringement the violation of: "a) the basic principles for treatment, including the conditions for consent pursuant to article 5, 6, 7 and 9".

Article 5 of the RGPD lists the principles relating to the processing of personal data. Among these principles, and for the purposes of focusing the object of the complaint presented, it is necessary to take into consideration the principle of lawfulness (Article 5.1.a) RGPD) which requires that personal data be treated in a lawful, fair and transparent manner in relation to with the person concerned.

In order for a treatment to be lawful, it is necessary to have, at least, a legal basis of those provided for in article 6.1 of the RGPD that legitimizes this treatment, either the consent of the affected person, or any of the other circumstances that provides for the same precept. In the field of public administrations, as in the case at hand, the legal bases provided for in letters c) and e) of article 6.1 of the RGPD are of particular interest, according to which the treatment will be lawful when it is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment (letter c), or when the treatment is necessary for the fulfillment of a public interest or in the exercise of public powers conferred on the person responsible for the treatment (letter e). However, as can be seen from Article 6.3 of the RGPD, the legal basis for the treatment indicated in both cases must be established by European Union Law or by the law of the Member States that applies to the person responsible for treatment. The reference to the legitimate basis established in accordance with the internal law of the Member States referred to in this article requires that the rule of development, when dealing with the protection of personal data of a fundamental right, has the status of law (Article 53 CE), as recognized by Article 8 of Organic Law 3/2018, of 5

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

December, on protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD).

In particular, it is necessary to determine whether the Renfe railway agent could carry out the controversial data processing, in order to have a legal basis other than the consent of the person concerned, which would allow the collection of the DNI data of the person here to be considered lawful complainant in the corresponding complaint/minimum perception ticket. In this regard, it is necessary to note what has already been advanced in this resolution, that the issuance of the minimum perception ticket is carried out when a user is detected traveling without a ticket, for whatever reason, and therefore it is an act that falls within the scope of the inspection authority exercised by railway employees. In this sense, the Generalitat has the competence in the regulation and inspection of railway transport that takes place entirely within the territory of Catalonia (art.169 EAC), and the power to sanction in the railway field, by virtue of articles 5.1. p) and 66.4 of Law 4/2006, of March 31, railways.

Likewise, article 60.1 of Law 4/2006, on the inspectorate function, provides that "The inspection of railway companies, of rail transport and of the form of provision of additional, complementary and auxiliary services corresponds to the competent department in matter of infrastructures and transport services."

In relation to this, article 38.3 of Law 4/2006 provides the following:

"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."

In turn, article 52 of Law 7/2004, of July 16, on fiscal and administrative measures, provides the following:

"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, the following must be adopted: or they have the measures

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.(...).

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

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.

(...)"

It is also necessary to cite here the General Conditions of use by users of the railways of Rodalies Regionals Catalunya (articles https://www.gencat.cat/ca/atencio_al_client/condicions_dus_2/noves_condicions/),

applicable to local and regional rail services under the jurisdiction of the Generalitat de Catalunya pursuant to Royal Decrees 2034/2009, of December 30, and 1598/2010, of November 26. Its 9th point, on the inspection function, establishes the following:

1. Pursuant to the provisions of articles 38 and 60 of Law 4/2006, of March 31, on railways, the intervention and inspection staff of the operating company of Rodalies and Regional services in Catalonia is expressly authorized by carry out the inspection function in relation to:

(...)

c) The immediate monitoring of the observance, by users and by third parties in general, of the rules established by laws and regulations.

2. In the exercise of inspection functions, the inspection and intervention staff of the operating company may request users or third-party offenders to identify themselves in order to process the appropriate administrative sanctioning files , and if they refuse to identify themselves, they can request the help and support of surveillance services and public order agents to identify them, without prejudice to the right to require the user to leave the means of transport or the facilities."

Also, point 5.7 letters a) ib) of said Conditions reproduces article 52 of Law 7/2004 and article 38.3 of Law 4/2006, to the literal of which we refer. And, point 5.7. c), adds that: "In the event that the user refuses to pay the minimum fee or to identify himself properly, the intervention personnel of the operating company may request the assistance of security personnel or agents of public order to identify him, without prejudice to the faculty to require him to leave the means of transport or the facilities.(...)".

Finally, it is necessary to quote here again, the Contract for the provision of services for the processing of data on behalf of third parties signed between the General Directorate of Transport and Mobility of

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

Department of TES and Renfe-Operadora. In its contractual clauses, Renfe's status as data processor is expressly defined, and among its obligations, it collects the personal ID data of users of the transport service when its action could constitute an infringement administrative

"
First. Object of the treatment order

By means of this agreement, the entity Renfe, in charge of the treatment, is authorized to process, on behalf of the General Directorate of Transport and Mobility of the Department of Territory and Sustainability, responsible for the treatment, the personal data necessary for the completion of complaint forms.

For the purposes of this contract, Renfe will be obliged to request the data of those persons who have committed any of the offenses specified by Catalan railway legislation, or who do not make the immediate payment of the minimum charge. The data subject to treatment will be personal data of the alleged infringer (name and surname, DNI/NIF/NIE/Passport and postal address, details of the infringement (line, train, time, reason, station).

(...)

Second.- Identification of the affected files

(...)

Renfe's access to personal data for which the General Directorate of Transport and Mobility of the Department of Territory and Sustainability is responsible for processing will not be considered data communication.

(...)"

Having said that, it should be noted that, as indicated, in cases such as that of the person reporting here, in which he claims he was traveling without a ticket because he had not been able to buy it at the station of origin, and he wanted to buy - him on board the train, the railway agent also issues the minimum perception, although in this case the traveler is given the possibility to regularize his situation by presenting said minimum perception at the station of destination and making the ticket price effective. Well, in these cases, it is also necessary to collect the personal identification data of the traveler in the minimum perception document, since their identification will be required by the ticket office staff at the destination station to be able to notify the railway agent who has issued the document of minimum perception that the situation has already been regularized, and to remove the document of minimum perception, thus avoiding the processing of any sanctioning procedure. This is explained in the after-sales management document on board the train, presented by the Department of TES in response to this Authority's request for information, and to the clauses of which we refer (legal background 6th).

Therefore, the personal identification data of the traveler are necessary, both for their identification to process the regularization of their situation, and in the event that the traveler does not regularize his situation with the payment of the ticket, the entity can continue the

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

processing of the minimum payment and, if applicable, the start of the corresponding sanctioning procedure.

For all the above, for the purposes of Article 6.1.e) of the RGPD, it can be affirmed that the action of the Renfe railway agent, as in charge of data processing, does not violate the principle of legality, as the competence from which the processing of the complainant's data derives is provided for in rules of the rank of law. Therefore, said treatment had a sufficient legal basis in referring to a treatment 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.

3. In accordance with everything that has been set out in the 2nd legal basis, and given that during the actions carried out in the framework of the previous information it has not been accredited, in relation to the facts that have been addressed in this resolution, no fact that could be constitutive of any of the violations provided for in the legislation on data protection, it is necessary to agree on its file

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 238/2019, relating to the Department of Territory and Sustainability
2. Notify this resolution to the Department of Territory and Sustainability and to the reporting person.
3. Communicate this resolution to Renfe Operadora.
4. Order the publication of the resolution on the Authority's website (apdcat.gencat.cat), in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with article 14.3 of Decree 48/2003, of 20 February, which approves the Statute of the Catalan Data Protection Agency, the persons interested parties may file, as an option, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after their notification, in accordance with what provided for in article 123 et seq. of Law 39/2015. An administrative contentious appeal can also be filed directly before the administrative contentious courts, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, governing the contentious administrative jurisdiction.



Autoritat Catalana de Protecció de Dades

IP 238/2019

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

Likewise, interested parties may file any other appeal they deem appropriate to defend their interests.

The director,

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