

## File identification

Dismissal resolution of sanctioning procedure no. PS 80/2020, referring to  
Department of Territory and Sustainability

## Background

1. En data 06/05/2019, va tenir entrada a l'Autoritat Catalana de Protecció de Dades, per remissió de l'Agència Espanyola de Protecció de Dades, un escrit d'una persona pel qual formulava denúncia contra Renfe Viatgers, en relation to the management of the "Devolució Xpress" service of Rodalies Catalunya, due to an alleged breach of the regulations on the protection of personal data.

Specifically, the person making the complaint stated that on 26/10/2018 and 04/01/2019 he made two "Devolución Xpress" requests in relation to two local services that he had accessed with prior access validation on the train of a multi-person title of 10 integrated journeys of a zone (hereinafter T10), which does not have the nature of a nominative title. In relation to this, the complainant complained that in the "Xpress Return" application form that the affected person fills out, as well as in the "Authorization for the Issuance of Transport Ticket" document that is issued as answer, the number of the national identity document is included, together with the name and surname of the person concerned, data that he considered unnecessary "in a return of a non-nominal bill".

On the other hand, the complainant complained that his personal data had been processed for different purposes for which he gave his consent, and in this sense he referred to the informative clauses on the protection of data published on the page website of the virtual office of procedures of the Generalitat of Catalonia, from where he had started the processing of his claim. It should be noted that the informative clause on the website of the virtual office of the Generalitat de Catalunya, gives generic information on the processing of data in relation to the consultation, complaints and suggestions that people can make about any of the services offered by the Generalitat de Catalunya.

([https://ovt.gencat.cat/gsitfc/AppJava/generic/conqxsGeneric.do?webFormId=391&set locale=es\\_ES and http://economia.gencat.cat/ca/20\\_departament/protecciodades/informacio/tratamientos/unitats-responsables/transmissions-information-registration-gencat/](https://ovt.gencat.cat/gsitfc/AppJava/generic/conqxsGeneric.do?webFormId=391&set locale=es_ES and http://economia.gencat.cat/ca/20_departament/protecciodades/informacio/tratamientos/unitats-responsables/transmissions-information-registration-gencat/)).

In this respect, the person reporting here complained that they had not given effect to their right to information correctly, and specifically, about the purpose of processing the personal data collected in the form.

The complainant provided various documentation, including the two copies of the response letters, dated 16/01/2019 and 14/03/2019, sent by Renfe Viatgers Direcció de Rodalies Catalunya. In both communications, the entity informed the

person here reporting and there claiming, who attached the document "Authorization for the Issuance of Transport Ticket", redeemable for an integrated 1-zone "Devolución Xpress" ticket, at any station with ticket service "upon presentation of the IDENTITY CARD".

2. The Authority opened a preliminary information phase (no. IP140 /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 1 October, on the common administrative procedure of public administrations (henceforth, LPAC), to determine whether the facts were capable of motivating the initiation of a sanctioning procedure, the identification of the person or persons who could be responsible and the relevant circumstances that occurred.

3. In this information phase, on 17/05/2019 Renfe Viatgers, provider of the Rodalies Catalunya service, was requested to report on the reasons justifying the need to require the National Identity Document number of the persons interested in processing the "Xpress Return", in those cases where the applicant has accessed the transport service with prior validation of the T10 multi-personal title. It was also required to report how the right to information provided for in art. 13 of the RGPD in the collection of the data of the people who request the "Xpress Return", and that it be specified whether in a complementary way to the information offered on the web page of the virtual office of procedures of the Generalitat de Catalunya, the entity makes available to the interested person more detailed information on the purpose of the collection and on the processing of their personal data in relation to the processing of the "Xpress Return".

4. On 05/29/2019, the Renfe Operadora entity responded to the aforementioned request in writing in which it stated the following:

- That "RODALIES DE CATALUÑA (RODALIES, hereinafter), is a Directorate integrated in RENFE VIAJEROS SOCIEDAD MERCANTIL ESTATAL SA ("RENFE VIAJEROS"), a company wholly owned by RENFE OPERADORA (hereinafter, "RENFE").
- That "the entity has designated a Data Protection Delegate for the group of entities of that Group."
- That "Devolución Xpress" is a service managed entirely by RENFE VIAJEROS. For its part, the competence belongs to the Generalitat, by virtue of 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 the railway passenger transport service from nearby."
- That "the form for completing the Devolución Xpress service, enabled at the following web through address the

([http://rodalies.gencat.cat/ca/atencio\\_al\\_client/devolucioexpress\\_2/servei\\_rodalia\\_barcelona/solicitud\\_de\\_devolucio\\_xpress/](http://rodalies.gencat.cat/ca/atencio_al_client/devolucioexpress_2/servei_rodalia_barcelona/solicitud_de_devolucio_xpress/)), facilitating the following specific informative clause for the treatment of data derived from this service:

"We inform you that the data you provide us will be the responsibility of Renfe Viajeros, Sociedad Mercantil Estatal, SA, which will treat them for the management and response of requests for information, complaints, claims and/or suggestions sent, as well as the completion of surveys global quality in customer service. In this sense, we inform you that the bases that legitimize these treatments are the legitimate interest on the part of Renfe Viajeros in processing your requests. In the case of claims management, the legal basis will be the fulfillment of legal obligations (arts. 62.3 and 58.4.a of Law 38/2015, of 29 September, of the Railway Sector)".

- That "it is reported through said clause that the data are processed "for the management and response of requests for information, complaints, claims and / or suggestions sent". In this way, and in order to provide full information on data processing, the informative clause in the first layer included in the form includes a link to the RENFE VIAJEROS website through the following message: "you can access, rectify, delete, as well as exercise the other rights recognized by it regulations, as explained in Renfe Viajeros' Privacy Policy which can be consulted at [www.renfe.com](http://www.renfe.com)". The privacy policy is accessible through: [http://www.renfe.com/empresa/informacion\\_legal/LegalViajeros/PoliticaPrivacidad.html](http://www.renfe.com/empresa/informacion_legal/LegalViajeros/PoliticaPrivacidad.html)."
- That "the privacy policy of RENFE VIAJEROS sets out, in a detailed manner and trying to reflect all the activities managed by the entity, among others, the categories of personal data and intended purposes of treatment, as data controller and in accordance with the requirements established, among others, by arts. 13 and 14 RGPD, as well as art. 11 of the LOPDGDD."
- That "in both sections of the clause - referring to the section on categories of data and purposes of treatment - it is informed, therefore, that RENFE VIAJEROS can treat "Identifying and contact data" to "Adequately manage the products and services", as well as "Control, analyze and manage situations of risk, fraud, incidents or claims".
- That in relation to the right to information "that the services and, therefore, the purposes of the treatment involved in this situation, are clearly differentiated:
  - On the one hand, there is the purpose of managing a RENFE VIAJEROS service, the sale of tickets, for which no identifying data is required since they are not nominative tickets, as effectively indicated in the letter.
  - On the other hand, there is the treatment derived from the management of the user's claim, through Devolución Xpress, a service that can only be supplied in the form of

direct and personal to the client who is interested in that service, for which it is necessary to know the minimum identifying data to be able to process your request."

- That "the user omits this point when writing his essay, because he understands that the ticket sales service and the management of the Devolució Express service are the same treatment when, in reality, they are fully differentiated and this is how it is reported expressly in the corresponding informative clauses, as previously reflected."
- That "the data required in the request form of "Devolució Xpress" are adequate and relevant for the purpose pursued, in accordance with the principle of data minimization contained in art. 5 RGPD, since it is impossible to process the return of the economic amount without identifying the applicant and being able to address him expressly, a situation that is not necessary for the sale of non-nominal tickets."

5. On 15/12/2020, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against the Department of Territory and Sustainability (hereafter, TES) for an infringement provided for in article 83.5. b) in relation to article 12; all of them from Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free movement thereof (hereinafter, RGPD). Likewise, he appointed Mrs. (...), an employee of the Catalan Data Protection Authority, to be the person investigating the case. This initiation agreement was notified to the accused entity on 12/21/2020.

6. The initiation agreement also explained the reasons why no imputation was made with respect to the other fact reported relative to the possible violation of the principle of data minimization, due to the collection of data made through of the "Devolució Xpress" request, because the different personal data requested from the complainant here in order to process said claim, including the first and last name and ID, were the minimum for in order to be able to process the refund of the ticket by the reported entity, given that they are relevant and necessary elements to manage the refund correctly and safely and to be able to follow it up.

7. In the initiation agreement, the accused entity was granted a period of 10 working days, counting from the day after the notification, to formulate allegations and propose the practice of evidence that it considered appropriate to defend their interests.

8. On 12/29/2020, the TES Department requested in writing an extension of the deadline granted to present allegations, which was accepted by this Authority on the same day, extending the initial deadline of 10 days, for 5 more days.

9. On 01/14/2021, the Department of TES made objections to the initiation agreement, which were supplemented with a second letter, dated 05/02/2021. These allegations are addressed together in section 2 of the legal foundations.

proven facts

The entity responsible for the "Devolució Xpress" service, when it obtains the personal data of users of the local transport service who have made a complaint or claim through the general contact mailbox form on the virtual office website of procedures of the Generalitat de Catalunya - which depends on the Department of the Vice-Presidency and the Economy and Finance - does not give effect to the right to information provided for in article 14 of the RGD.

This system became evident following two complaints from the person reporting here and claiming there, on 26/10/2018 and 04/01/2019, complaints that gave rise to the processing of the "Xpress Return", which allows the affected person to exchange the ticket for a new transport ticket.

From all the actions taken in this procedure, with respect to the initiation agreement, a change in the identification of the entity responsible for the treatment of the "Xpress Return" service is derived.

Fundamentals of law

1. The provisions of the LPAC, and article 15 of Decree 278/1993, according to the provisions of DT 2a of Law 32/2010, of October 1, of the Catalan Data Protection Authority. In accordance with articles 5 and 8 of Law 32/2010, the resolution of the sanctioning procedure corresponds to the director of the Catalan Data Protection Authority.

2. The allegations of the Department of TES, considered in the initiation agreement as the entity responsible for data processing linked to the "Devolució Xpress" service, do not call into question the account of the events reported, but its status as responsible for this treatment of personal data, and consequently, refuses its responsibility in the commission of the infringement of not informing the claimant, who submits his complaint through the website of the virtual office of procedures of the Generalitat of Catalonia, of the ends provided for in article 14 of the RGD.

Having said that, it should be noted that "Devolució Xpress" is an exclusive service for commuters of suburban and regional services under the jurisdiction of the Generalitat de Catalunya, according to section 13.3 of the General Conditions of Use of Suburban and Regional Railway Services of Catalonia. These General Conditions of Use were authorized by the TES councilor and published in DOGC no. 7179, of 08/08/2016.

In this regard, Renfe, in the response to this Authority's request, indicated that the "Xpress Return" is "a service managed entirely by RENFE VIAJEROS", however, also, it pointed out that "Por su parte, the competence belongs to the Generalitat, by virtue of Royal Decree 2034/2009, of December 30."

In this sense, it should be indicated 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 operator that provides the service, they 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 Administration General of the State corresponding to passenger transport services on the Iberian wide network of the railway network of general interest.

So things are, as stated in the 5th precedent, the agreement to initiate this sanctioning procedure was directed against the Department of TES, given that, from the actions practiced up to that moment, it was inferred that it was acting as responsible for the processing of personal data for the management of the express return service, and that Renfe Viatgers managed said service in the capacity of manager.

In relation to this, the Department of TES has stated that, in effect, it holds the powers in the matter of rail transport transferred to the Generalitat de Catalunya, by virtue of Royal Decree 2034/2009, of December 30, and Royal Decree 1598 /2010, of November 26. Also, which exercises powers over the Railway System of Catalonia in accordance with the provisions of Law 4/2006, of March 31, railways and assumes, among other functions, the one established in article 5.2.g): " The granting of authorizations for the provision of railway services declared to be of public service and the establishment, where appropriate, of the compensation regime for the public service obligations assumed by the operating company."

But in turn he has made it clear that it is the authorized operators who have the power to decide "on the use, purpose and content of the processing of personal data and establish a direct commercial relationship with their customers". And, in this sense, it points to Renfe travelers, as the person responsible for the data it collects from its customers, to manage the refunds established due to non-compliance with the contracted services, and defends that the Department of TES does not participate in any activity of processing of personal data related to this management.

As things stand, the Department of TES maintains that the relationship that Renfe establishes with its users is a bilateral relationship of a commercial nature, the transport ticket that the user acquires being the document that certifies the formalization of the contract that endorses this relationship. Based on this argument, he invokes point 12.5 of the Terms of Use, corresponding



to claims, in which it is foreseen that the user of the passenger service may claim before the Transport Arbitration Board of Catalonia, the damages caused by "the operating company", and in this sense, reinforces the argument of the commercial relationship between Renfe and its users, linking it to the fact that, among the functions of the Arbitration Board, is that of resolving "the disputes of a commercial nature arising in relation to the fulfillment of land transport contracts for amounts less than 15,000 euros." Finally, it also justifies that the information on the "Xpress Return" form is found collected on a website owned by the Generalitat in the fact that Renfe did not have an exclusive space on its website for the commuter service in Catalonia.

From all the above, it can be inferred that the question of who is responsible for processing the data to be able to process the referred return is certainly not a peaceful question.

At this point, it is necessary to go to article 4 of the RGPD, which contains the definition of the person responsible for the treatment, as "the natural or legal person, public authority, service or other organism that, alone or together with others, determines the purposes and means of treatment; if the Law of the Union or of the Member States determines the purposes and means of the treatment, the person responsible for the treatment or the specific criteria for his appointment may be established by the Law of the Union or of the Member States."

With regard to the aforementioned definition, and in particular, in what is established in its final part, in which it is indicated that the status of responsible for a treatment may also be granted when this is provided for by law, it is necessary to bear in mind the provided for in articles 58.4.a) and 62.3 of Law 38/2015, of September 29, on the Railway Sector.

"Article 58. Obligations of railway companies.

(...)

4. The railway companies whose object is the rail transport of travelers must, likewise: a) Establish a system of attention to complaints presented by users, in the terms that are developed by regulation."

"Article 62. User rights.

(...)

3. The railway companies must have, at the disposal of the users of the services, a book of claims, edited according to the model that is determined by regulation."

From the reading of both precepts, it follows that our internal law establishes the legal obligation for the railway company to have a system of attention to the claims presented by the users, as well as to have a book available to the users of claims

In this way, it is considered that Law 38/2015, of September 29, of the Railway Sector, attributes the responsibility for the treatment of personal data relating to the management of user claims, among these, the "Refund Xpress", to the railway company.

In addition to the above, it should be added that the information clause contained in the specific form of the "Xpress Return", the following is also indicated:

"We inform you that the data you provide us will be the responsibility of Renfe Viatgers, Societat Mercantil Estatal, SA, which will treat them for the management and response of requests for information, complaints, claims and / or suggestions sent, as well such as conducting global customer service quality surveys. In this sense, we inform you that the bases that legitimize these treatments are the legitimate interest on the part of Renfe Viatgers in processing your requests. In case of claims management, the legal basis will be the fulfillment of legal obligations (art. 62.3 and 58.4.a of Law 38/2015, of September 29, on the railway sector)."

For its part, Renfe Viatgers, in the response to the request made by this Authority, also invoked the aforementioned information clause to argue that it complied with the obligation to inform the claimants, without disputing its status as responsible for the processing of the data used for the management of the controversial express return.

In short, in view of the specific circumstances related to the facts reported, it is considered that the person responsible for the treatment of the data collected by the management of the "Devolución Xpress" service is not the Department of TES, against whom This sanctioning procedure was initiated at the outset, but Renfe travelers.

Therefore, Renfe travelers is the entity that, when it obtains the personal data of users of the local transport service who have made a complaint or claim through the general contact mailbox form on the web page of the virtual office of procedures of the Generalitat de Catalunya - that is to say, by a different route to the specific "Devolució Xpress" form found for that purpose on the Catalunya website - does not give effect to the right to information provided for in article 14 of the RGPD.

Consequently, taking into account that the existence of responsibility for the proven facts has not been proven in the Department of TES, it is appropriate to postpone the present procedure in accordance with article 20.1.c) of Decree 278/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Generalitat de Catalunya.

For all this, I resolve:

1. Declare the dismissal of sanctioning procedure no. 80/2020, relating to the Department of Territory and Sustainability.
2. Transfer the referenced actions to the Spanish Data Protection Agency, with a certificate of this resolution translated into Spanish.



3. Notify this resolution to the Department of Territory and Sustainability and to the reporting person.

4. Order that this resolution be published 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 articles 26.2 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, and 14.3 of Decree 48/2003, of February 20, by which the Statute of the Catalan Data Protection Agency is approved, the imputed entity can file, with discretion, an appeal for reinstatement before the director of the Catalan Data Protection Authority Data, within one month from the day after its notification, in accordance with what they provide article 123 et seq. of the LPAC. You can also directly file an administrative contentious appeal 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, regulating the administrative contentious jurisdiction.

If the imputed entity expresses to the Authority its intention to file an administrative contentious appeal against the final administrative decision, the decision will be provisionally suspended in the terms provided for in article 90.3 of the LPAC.

Likewise, the imputed entity can file any other appeal it deems appropriate to defend its interests.

The director,(...)