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Judgment of the Court in Case C-394/23 | Mousse

GDPR and rail transport: a customer's gender identity is not necessary data for the purchase of a transport ticket

The collection of data regarding customers' titles is not objectively indispensable, in particular where its purpose is to personalise commercial communication

The association Mousse challenged, before the French data protection authority (the CNIL),¹ the practice of the French railway undertaking SNCF Connect whereby the latter systematically requires its customers to indicate their title ('Monsieur' or 'Madame') ('Mr' or 'Ms') when purchasing transport tickets online. That association takes the view that that requirement infringes the General Data Protection Regulation (GDPR),² in particular in the light of the principle of data minimisation, because an indication of the title, which corresponds to a gender identity, does not appear to be necessary for the purchase of a rail transport ticket. In 2021, the CNIL decided to reject that complaint, finding that that practice did not constitute an infringement of the GDPR.

Mousse disagreed with that decision and brought an action before the French Council of State seeking to have the decision annulled. The Council of State asks the Court of Justice whether, in particular, the collection of data regarding customers' titles, limited to the titles 'Monsieur' and 'Madame' ('Mr' and 'Ms'), can be classified as lawful and consistent with, in particular, the principle of data minimisation, where that collection is aimed at enabling personalised commercial communication with those customers, in accordance with commonly accepted practices in that field.

The Court reiterates that, in accordance with the principle of data minimisation, which gives expression to the principle of proportionality, the data collected must be **adequate, relevant and limited to what is necessary** in the light of the purposes for which those data are processed.

The Court also reiterates that the GDPR sets out an **exhaustive and restrictive list** of the cases in which processing of personal data can be regarded as **lawful**: that is so, inter alia, where it is (i) necessary for the performance of a contract to which the data subject is party, or (ii) necessary for the purposes of the legitimate interests pursued by the controller or by a third party.³

As regards the first of those two justifications, the Court reiterates that, for data processing to be regarded as necessary for the performance of a contract, that processing must be **objectively indispensable** in order to enable the proper performance of that contract. In that context, the Court finds that **personalisation** of the commercial communication based on **presumed gender identity according to a customer's title does not appear to be objectively indispensable in order to enable the proper performance of a rail transport contract**. The railway undertaking could choose to communicate based on **generic, inclusive expressions when addressing a customer, which have no correlation with the presumed gender identity of those customers**. That would be a workable and less intrusive solution.

As regards the second justification, the Court, whilst referring to its settled case-law on the matter, states that the

processing of data regarding the title of customers of a transport undertaking, the purpose of which is to personalise the commercial communication based on their gender identity, cannot be regarded as necessary (i) where those customers were not **informed** of the legitimate interest pursued **when those data were collected**; (ii) where the processing is not carried out **only in so far as is strictly necessary** for the attainment of that legitimate interest; or (iii) where, in the light of all of the relevant circumstances, the fundamental freedoms and rights of those customers can prevail over that legitimate interest, in particular where there is a **risk of discrimination** on grounds of gender identity.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice. The presentation of the facts and of the legal context refers to the relevant time and is based on the case file.

The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ Commission Nationale de l'Informatique et des Libertés.

² [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).

³ The GDPR contains other grounds on which processing of data can be regarded as lawful. However, the French Council of State refers exclusively to those two justifications.