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n° 2021-091 of July 22, 2021 providing an opinion on a draft decree issued pursuant to Articles L. 1115-10 and L. 1115-11 of

the Transport Code ... Deliberation No. 2021-091 of July 22, 2021 providing an opinion on a draft decree issued pursuant to

Articles L. 1115-10 and L. 1115-11 of the Transport Code (request for opinion no. 21009183) The National Commission for

Computing and Liberties,

Seizure by the Ministry responsible for transport of a request for an opinion concerning a draft decree relating to digital

multimodal information and ticketing services;

Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 on the protection

of individuals with regard to the processing of personal data and on the free movement of such data (GDPR);

Having regard to the transport code in its articles L. 1115-10 and L. 1115-11;

Considering the modified law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms, in particular its

article 8-I-4°-a, After having heard the report of Mrs Isabelle LATOURNARIE-WILLEMS, commissioner , and the observations

of Mr. Benjamin TOUZANNE, Government Commissioner; Issues the following opinion: The Commission has been asked for

an opinion on a draft decree relating to multimodal information and ticketing services, adopted for the application of articles L.

1115-10 and L. 1115-11 of the transport code. These articles are taken from law n° 2019-1428 of December 24, 2019 on the

orientation of mobility, the objective of which is to reform mobility policies , by including environmental and climate issues in

particular. These digital services aim to promote the use of multimodal and alternative modes of transport to the private car, by

informing the user in real time of all means of transport (referred to as mobility services in the draft decree), parking or services

provided by a reservation center (in particular taxis and VTC) available to him to carry out a specific journey, and by offering

him the sale of all the tickets thanks to a single payment (article L. 1115-10 of the Transport Code). The draft decree provides

for the collection or transmission of personal data by the multimodal digital service provider to mobility service managers for

the purposes of statistical knowledge of travel, the fight against fraud, as well as in the context of the after-sales service of the

service sold. PRELIMINARY OBSERVATIONS On the processing necessary for the performance of the service n numeric

multimodal It follows from 6° of II of article L. 1115-10 of the transport code that the digital multimodal service offers the user

travel solutions according to criteria linked directly or indirectly to the profile of the user. The draft decree does not specify the

nature of the criteria linked directly or indirectly to the profile of the user. The Commission notes that the recording of criteria linked directly or indirectly to the profile of the user by the digital multimodal service, with the aim to determine the characteristics of a journey, constitutes a processing of personal data. It notes that the multimodal digital service is thus likely to define criteria relating to the nature of a possible pathology of the user, with the aim to adapt the travel solution proposed and to provide specific services, adapted to the needs of the person concerned. The Commission points out that the data revealing the nature of a pathology constitute data relating to health, within the meaning of article 9 of the GDPR, and that the processing of this type of data requires obtaining the explicit consent of the user, in application of a ) of 2. of Article 9 of the GDPR. On the reference of the decree to the contractual freedom of the digital multimodal service and the mobility serviceThe Commission observes that the draft decree refers several times to the contract concluded between the multimodal service provider and the mobility service manager to determine the nature of the data processed, the conditions of implementation, in particular technical, of the processing, as well as the distribution of roles between the multimodal service provider and the mobility service manager and, therefore , their respective qualification as controller or processor within the meaning of 7) and 8) of Article 4 of the GDPR. The Commission further notes that if the text submitted to it specifies, on certain points, the conditions for the exchange of information between the digital multimodal service and the digital sales service of the service manager, as required by IV of the aforementioned article L. 1115-10, it does not enact on the other hand, no provision relating to the aspects, mentioned in the same IV, related to digital security, and refers the actors to their contractual freedom with regard to the management of the digital identity. In the absence of textual precision as to the applicable conditions to data processing, and given the recurring references to the contractual freedom of multimodal digital service providers and mobility service managers to regulate the data processing carried out, the Commission recalls that the GDPR is fully applicable to them. Service providers digital multimodal will therefore have to contractually qualify their role as data controller or subcontractor with regard to the real ity of the processing implemented. Data controllers will also be required to comply, in particular, with the principles of purpose limitation and data minimization laid down in b) and c) of 1. of Article 5 of the GDPR, and to put in place safety adapted in all circumstances. It will also be up to the multimodal service providers, as well as the mobility service managers, to be able to demonstrate that they have complied with the regulations, in accordance with the principle of accountability laid down by 2. of article 5 of the GDPR. Finally, the ministry indicates that it plans to participate in the development of standard contracts proposing good practices in terms of data exchange. The Commission encourages this

approach in order to guarantee, in particular, standardization of the provisions relating to data protection, and stands at the disposal of the Ministry to support it. for purposes of statistical knowledge of travel Draft Article R. 1115-13 of the Transport Code provides for the obligation, for the multimodal digital service provider, to transmit to the mobility service managers concerned and, where applicable, to the competent local authority, data relating to travel by mode and by category of user, as well as information on the modes of travel used immediately before and after the service in question, for the purposes of statistical knowledge of travel. The draft text specifies that this data must be transmitted regularly, at reasonable intervals and at least once a year, and that the categories of users must be determined in the contract concluded between the multimodal digital service provider and the mobility service manager. Firstly, with regard to the purpose pursued by the processing, the Commission takes note of the commitment of the ministry to insert in the draft decree details relating to the particular purposes pursued by the processing of data relating to information on the modes of travel used immediately before and after the service, based on the examples that it cite, namely improving the service, optimizing investments in new offers, designing new services, sizing services and infrastructures. It notes, however, that processing carried out in this context with the aim of knowing the users, as indicated by the Ministry, would be contrary to the statistical purpose. Secondly, concerning the nature of the processing to be implemented by the multimodal service provider, the draft text provides for the obligation to transmit information relating to trips by category of users using the service in question as well as the modes of travel used immediately before and after the service in question. The Commission notes the details of the ministry indicating that the mode of transport used immediately before and after the service in question concerns journeys made during the same journey, and that the order of magnitude of the delay between journeys is one hour. It invites the Ministry to include these elements in the draft text, in order to limit the collection to trips on the same route, while meeting the intended purpose. Thirdly, the Commission considers it necessary to strengthen the guarantees in terms of security and confidentiality of the processing carried out for the purposes of statistical knowledge of movements. In the context of the obligations imposed by Article 32 of the GDPR, and in view of the sensitivity and the number of persons concerned, the Commission takes note of the commitment of the ministry to add in the text the obligation, at the expense of the multimodal service, to aggregate and anonymize the personal data prior to their transmission to the managers of the mobility services concerned. It also notes that the ministry undertakes to provide in the decree that this anonymization must take place without delay and that, for it to be effective, it must be impossible to re-identify the persons concerned, in particular within the framework of the definition of the categories of users. It also takes note of the

commitment of the ministry to include in the text legal and technical limitations aimed at avoiding the misappropriation of the purpose of collection of these data, such as decentralized storage of data processed for statistical purposes on the user's device. These safeguards shall be reinforced by the following operational measures. be reduced. For example, the anonymization can take place not on the exact location of departure and arrival of the user, but on a wider departure and arrival area. Similarly, the processing of the exact schedule of the trip is not necessary, the aggregation of the data can be carried out on the basis of categories of schedules (such as peak periods, or off-peak). Finally, the data not aggregated must be deleted immediately after the calculation of the statistics.

On the processing of data carried out for the purposes of the fight against fraud

The draft article. R. 1115-12 of the Transport Code provides that the contract entered into between the digital multimodal service and the mobility service concerned must include the necessary provisions for the fight against fraud, as well as, where applicable, the control of supporting documents. According to the Ministry, the digital multimodal service can, for example, be responsible for checking certain supporting documents necessary for booking the service (driving license for booking a vehicle or reduction or student card to benefit from a specific tariff offer). The Commission takes note of the clarifications provided by the Ministry on the different types of fraud covered by the text, namely identity or driving license fraud, breach of trust, contesting a fine or theft fuel. It recalls, on the one hand, that, in accordance with the provisions of Article 10 of the GDPR and Article 46 of Law No. 78-17 of January 6, 1978 relating to data processing, files and to freedoms, this processing may not concern personal data relating to criminal offenses and, on the other hand, that the data processed for this purpose must be adequate, relevant and limited to what is necessary for the regard to the type of fraud considered, in accordance with the principle of minimization laid down in c) of 1 of Article 5 of the GDPR.

Finally, it notes the intention of the Ministry to include in the text a retention period for these data , as well as the supporting documents transmitted, limited to one year. On the processing of data carried out for the purposes of after-sales service of the tariff products sold

The draft article R. 1115-11 of the transport code provides for the mandatory transmission, by the supplier of the digital multimodal service to the managers of mobility services, of the data necessary for the after-sales service of the services and products sold by the digital multimodal service. It specifies the data that must imperatively be communicated in this respect, namely the customer's contact details (surname, first name, and e-mail or telephone address), the type of pass or service purchased and its description, as well as the processing history. after-sales service of each file and the follow-up given, and leaves the contract the possibility of providing for the transmission of other types of data. Conversely, the draft decree provides that the supplier of the multimodal

digital service is the recipient of the history the after-sales service processing of each file and the follow-up given by the mobility services manager. ) of 1 of article 5 of the GDPR. In this respect, the Commission takes note of the Ministry's commitment to specify in the draft text that only data useful for resolving the difficulties encountered may be collected and transmitted, for after-sales service purposes, by the supplier multimodal digital service to the mobility service manager.

President M.-L. DENIS