# Joint statement welcoming CJEU judgment to halt unlawful gender title collection

article, non-discrimination

**Today marks a historic win for non-binary rights. The EU Court of Justice has ruled against mandatory gendered titles on train tickets**.

The EU Court of Justice has judged that it is unlawful for France's national railway company to force passengers to choose between 'Mr' and 'Ms' when purchasing train tickets.

Today, the CJEU issued a judgment in the case C-394/23 initiated by the *Mousse* Association, saying that it is unlawful for a railway company to collect a customer's gender marker, saying this personal data is not necessary for the purchase of a train ticket and may create a risk of discrimination on grounds of gender identity.

The judgment concerns a case initiated by Mousse representing 64 individuals against France's national state-owned railway company (SNCF) practice of forcing passengers to choose between the civil titles "Mr" or "Ms" when purchasing train tickets. The train company does not offer a third option and alleged that this data was necessary to personalise its commercial communication based on customers' presumed gender identity.

The case relies on the General Data Protection Regulation (GDPR)'s principles of data minimisation and accuracy, as well as the fundamental EU law principle of non-discrimination.

The French court asked the CJEU to clarify if common practices in civil, commercial, and administrative communications can help determine whether data collection meets the GDPR's requirements for being adequate, relevant, and necessary under Article 5(1)(c), and lawful under Article 6(1)(b) and (f). If so, collecting only customers' titles like "Mr" or "Ms" might be considered necessary and compliant with the principle of data minimisation.

The CJEU was also asked whether the right of individuals to object to the use of their personal data by relying on their specific situation under Article 21 GDPR should be a determining factor in assessing the necessity of the mandatory data collection.

## CJEU decision

The CJEU recalled that the principle of data minimisation requires that collected data be adequate, relevant and limited to what is necessary for the purposes for which those data are processed. The processing of personal data is lawful only if it is necessary for the performance of a contract or for the purposes of a legitimate interest

In this respect, the Court ruled that the personalisation of commercial communications based on presumed gender identity according to a customer civil title is not necessary as it is not objectively indispensable to the performance of a rail transport contract, contrary to what the SNCF and the French State alleged in this case. The Court stated that the railway company could opt for generic and inclusive terms, which are not linked to presumed gender identity, when addressing customers, as this would be a less intrusive solution.

Additionally, the Court rebutted SNCF's argument that it pursued a "legitimate interest" as it did not comply with

the conditions under GDPR to do so. Notably, collecting gender markers cannot be regarded as necessary when the fundamental freedoms and rights of customers prevail over the legitimate interest of data processors.

Importantly, the Court ruled that processing civil titles of customers can in some cases create a risk of discrimination on grounds of gender identity. This is the first time that the CJEU evokes the fundamental EU law principle of non-discrimination to protect the ground of gender identity for trans and non-binary people.

## Impact

The importance of this judgement therefore extends beyond the applicant's individual circumstances. All public and private organisations that are required to comply with GDPR in the EU will need to comply with this judgment and stop collecting gender markers when it is not strictly necessary in the light of the purposes for which this data is processed.

The judgment also underscores the broader issue faced by trans and non-binary people who are constantly forced to choose in their everyday lives between two options that do not correspond to their identity. Also, binary trans people, whose identity documents do not match their gender identity, will benefit from fewer mandatory forms asking for a gender marker, when it is not necessary to the service or contract at hand.

According to the EU Fundamental Rights Agency LGBTI survey 2023, almost two-thirds (64 per cent) of trans respondents felt discriminated against in the year before the survey, followed by more than half (51 per cent) of non-binary and gender-diverse respondents, where every second respondent experienced discrimination in the same period,. The survey also found that 15 per cent of non-binary and 35 per cent of trans people said they experienced discrimination when they had to show their ID. In contrast, only one per cent of cisgender endosex respondents reported such issues. Non-binary people make up the largest compound (65 per cent) of the trans community and tend to be younger.

## Reactions

According to the claimant's legal representative, Etienne Deshoulières: "The CJEU's decision marks a significant shift in the relationship between the State and citizens. Previously, the State "owned" the data in civil-status records and prohibited people from modifying that data, except in exceptional circumstances. Now, each citizen "owns" their personal data and grants the State permission to process it within the limits set by the GDPR, including the principles of minimisation and accuracy. The binary distinction of gender under the law has long been the cornerstone of the system that discriminates against sexual and gender minorities. If this legal binary no longer exists, then a broad array of legal discriminations disappears. It would represent the culmination of decades of advocacy for LGBT+ rights."

TGEU Expert Advisor, Richard Köhler, comments: "Sixty-five per cent of trans people in Europe identify as non-binary, a young and mobile group forced to navigate systems that don't match their identity. This case signals progress: less paperwork, fewer binary boxes, and a future where EU law finally recognises and protects non-binary and trans lives. The next generation deserves nothing less."

ILGA-Europe Senior Strategic Litigation Officer, Marie-Hélène Ludwig added: "Today's ruling is crucial in putting an end to the discrimination on the grounds of gender identity faced by non-binary persons and all who do not identify within the gender binary, and who are forced to choose in their day-to-day lives between two options that do not correspond to their identity. This judgment will have far-reaching effects, as it clearly states that collecting gender markers when it is not strictly needed is not only unlawful but also potentially discriminatory. The judgement clearly sets an obligation for all businesses, organisations and public services to do away with unnecessary binary data collection, according to EU law."

TGEU and ILGA-Europe provided support to Association Mousse and its lawyers, Etienne Deshoulières from Deshoulières Avocats and Johan Heymans, Yasmina El Kaddouri and Delphine Holemans from VS Advocaten, in this case.Read Association Mousse's full statement here.