

Decision

Diary no

2020-10-14

DI-2019-11314

Sergel Kredittjänster AB

Supervision according to the Debt Collection Act (1974:182) – Sergel

Kredittjänster AB

The Swedish Data Protection Authority's decision

The Swedish Data Protection Authority notes that Sergel Kredittjänster AB has violated § 4

the debt collection act through

- to have as a routine to send debt collection claims via digital mailbox even if

a debtor has informed the company that he is unable or unwilling to take

part of consignments via that channel,

- to encourage in response to so-called simple objections

debtors to substantiate their objection to the debt collection company and submit

evidence, as well as through

- extensive deficiencies regarding accessibility for debtors.

The Swedish Data Protection Authority assumes that Sergel Kredittjänster AB takes measures to

to address the identified deficiencies. The management of digital

mailings and simple objections may be followed up. Sergel

Kredittjänster AB's measures to improve accessibility for

debtors will be followed up through renewed supervision.

The case is closed.

Account of the supervisory matter

On 24 October 2019, the Data Inspection Authority carried out an inspection at Sergel

Kredittjänster AB (hereinafter Sergel). The inspection was carried out with

reason for the fact that the Swedish Data Protection Authority routinely audits large players such as
has a debt collection permit.

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The purpose of the inspection was to investigate how the business is conducted and that
review Sergel's routines for the debt collection procedure. Issues raised at
the inspection included, among other things, changes in the business, initial
controls, mutual information, design of debt collection claims, periodically
recurring claims, reporting of settled amounts,
the use of digital mailboxes, debtor contact, choice of process form,
amortization plans and long-term monitoring.

After the inspection, the Data Inspectorate received many complaints against
Sergel from debtors who claimed difficulties in getting in touch
with Sergel, both by phone and through My Pages. Therefore extended
Datainspektionen supervision on March 26, 2020 to also include
debtors' opportunities to get in touch with the company.

Reason for the decision

Applicable regulations

Debt collection operations must be conducted in accordance with good debt collection practices (section 4 of the Debt
Collection Act).

What constitutes a good debt collection oath can be seen from §§ 5–11 of the Debt Collection Act,

The Swedish Data Protection Authority's general advice "Application of the Debt Collection Act" and

The Swedish Data Protection Authority's practice in debt collection matters.

Digitized mailings of debt collection claims

Applicable regulations, etc.

Legal action in connection with the claim may not be taken until the debtor

the requirements referred to in § 5 of the Debt Collection Act have been met and the specified time has expired (§ 6 of the Debt Collection Act). Section 5 of the Debt Collection Act requires that debt collection claims be made in writing and have a certain content.

In preparatory work for the debt collection act, it is stated that the provision that the debtor must have served claim does not mean anything other than that the creditor or his representative must have taken reasonable measures to ensure that the debtor receives the claim. Normally should it be sufficient that the letter of demand is sent by post during the debtor's normal time address (prop. 1974:42 p. 110).

According to good debt collection law, mail to a debtor, who is not a trader, should be sent to his civil registration address or the special postal address which

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has been registered with the Tax Agency, provided that the debtor has not disclosed that he or she can be reached at another address or that this has been established another way (Datainspektionen's general advice, pp. 31.-32).

It may be considered contrary to Section 6 of the Debt Collection Act to take legal action about it if it has become known to the debt collection company that the claim has been sent to a wrong one address, unless the debt collection company knows that the claim has actually reached the debtor (Datainspektionen's general advice p. 17).

Background

Since 2018, Sergel has been using the digital mailbox service Kivra as supplier for sending digital debt collection claims. Today, about 50% of all are sent debt collection claims via Kivra.

Sergel considers that the company meets the requirement that the debtor must have been served the debt collection claim by the debtor himself joining the service and authenticated via BankID. Sergel equates the service with an ordinary mailbox and uses the same deadline as for regular mailings in the debt collection claims which is sent digitally, i.e. eight calendar days.

Sergel currently offers no option for debtors who are connected to Kivra to receive debt collection claims by post instead of via Kivra. Sergel can, however inform the debtor of his possibility to remove Sergel himself sender in Kivra, which means that future letters from Sergel will be sent by post.

In the event that a debtor turns to Sergel and states that he does not has received a debt collection claim, for example due to restricted access to the Kivra service, it is possible to send the current debt collection claim via mail.

Sergel has an ongoing discussion with his new debt collection system provider and print supplier that Sergel will in future have the opportunity to on debtors the request themselves stop future digital shipments. However, Sergel feels that questions or requests regarding this are unusual.

The Swedish Data Protection Authority has taken note of the general terms and conditions for the Kivra service. In those the general conditions state, among other things, that a user can at any time notify Kivra that it no longer wishes to receive e-mails from you or multiple senders. After such notification, the user may continue to receive e-mails from the sender in question for a maximum of fifty-two days.

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Sergel has been given the opportunity to comment on the current writing in the conditions. Sergel has stated that Sergel makes checks against Kivra before each separate debt collection request, that Kivra's register with deregistrations be updated once a week and that a debtor can therefore receive debt collection claims from Sergel via Kivra at the latest one week after the deregistration event.

The Swedish Data Protection Authority's assessment

By joining the digital mailbox Kivra, companies and authorities, instead of sending letters in paper form by physical post, send letters as electronic shipments to private individuals and companies that have registered an account with Kivra.

In a decision on 28 August 2019, the Data Inspection Authority has in the matter with diary number DI-2019-5660 assessed a debt collection company's mailing by debt collection claims via Kivra. In the decision it was found that there is no requirement in Section 5 of the Debt Collection Act that a debt collection claim must be sent to the debtor in paper form. The Swedish Data Protection Authority further considered that the digital mailbox Kivra is such a place that can be equated with the debtor's address if the debtor voluntarily joined Kivra and did not notify the debt collection company or Kivra that the digital mailbox may not be used for mailings by the debt collection company debt collection claims. The Swedish Data Protection Authority found that the sending of a debt collection claim via the digital mailbox, under the circumstances that existed in the case, could be considered served on the debtor in accordance with Section 6 of the Debt Collection Act. The Swedish Data Protection Authority thus considers that a debt collection company, under such circumstances, can be considered to have taken reasonable steps for the debtor to receive information about the claim when a debt collection claim is sent via a digital mailbox. The

assumes, however, that the conditions for the letterbox service are such that the debtor has committed to monitoring the digital mailbox and to take part in the shipments sent to it. For a collection agency to be able to issue notices from the debtor guarding his digital mailbox, one must therefore, at the time of the election of a digital mailbox service as well as ongoing during the contract period, in particular review the terms governing the user's obligation to take part in shipments.

If a debtor turns to the debt collection company and informs them that they do not want future debt collection claims to be sent via a digital mailbox has one of the debt collection companies, however, according to the Swedish Data Protection Authority, no longer reason to expect that the debtor will take part in shipments that are nevertheless sent on this

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way. After the time a collection agency has actual knowledge that a debtor cannot or does not wish to take part in shipments from the company in it the digital mailbox, the Swedish Data Protection Authority considers that the debt collection company cannot be considered to have taken reasonable measures to ensure that the debtor receives collection claims which are still sent to the digital mailbox. In that situation should the debt collection company send shipments via physical mail to the debtor's civil registry address or the special postal address that has been registered with The Tax Agency, provided that the debtor has not disclosed that he or she can be reached at another address or this has been discovered in another way.

The Data Inspectorate further considers that it is contrary to Section 6 of the Debt Collection Act to take legal action if it has become known to the debt collection company that the claim has been sent to a digital mailbox that the debtor has stated that he

does not monitor, unless the debt collection company knows that the claim has actually arrived to the debtor.

Sergel currently lacks the ability to stop future digital mailings

debtors' request without referring to Kivra. This means a risk that

In certain situations, Sergel may take legal action in violation of 6

§ the Debt Collection Act. The Swedish Data Protection Authority therefore assesses that Sergel's routines for

sending debt collection claims via digital mailbox, when a debtor has given notice

that he cannot or does not wish to take part in shipments in this way, is in violation

with good debt collection.

In light of what Sergel has stated that the request from debtors for

other mailing methods are unusual, that debtors can deregister from mailing

via Kivra and then Sergel intends to offer this opportunity in the future

The Swedish Data Protection Authority does not see the need to take any measures at this time.

The handling of digital mailings may, however, be followed up within

the framework for future supervision.

Handling simple objections

Applicable regulations, etc.

A summary process does not make sense when the debtor has made a substantive one

objection which means that the claim must be tested substantively. If

it clearly appears that the debtor's objection is factually based should a

any action instead is brought to court by means of a summons.

According to good debt collection law, an application for a payment order is therefore not accepted

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submitted if the debtor has made it clear that the claim is contested and has indicated a

factual basis for its objection (Datainspektionen's general advice p. 36 f.).

An incorrect choice of process form can further lead to an application or a decision in cases of payment orders, which in turn means that the debtor on incorrect grounds are noted in the credit information register (Datainspektionens general advice p. 37).

Background

In the case, it has emerged that when a debtor objects to a debt collection claim Sergel handles the case in different ways, depending on the objection classified as a simple objection or not. Examples of simpler objections are that the debtor claims that he has paid but that Sergel's client has stated that payment has not been received.

After Sergel has obtained the client's attitude to a dispute of a simpler nature, and considers the matter investigated, Sergel tries as much as possible to meet the debtor. In these cases, Sergel informs the debtor the client's response and that the debtor can return if he wishes maintain the contestation. If the debtor does not return after Sergel has responded in the case, the company may proceed with the application for payment order, which the debtor was also informed about earlier. At more qualified objections, the matter is handled directly by Sergel's legal department.

Sergel has submitted the following template for dealing with an objection payment.

The Swedish Data Protection Authority's assessment

In connection with previous supervision of Sergel, the Swedish Data Protection Authority has made a statement regarding Sergel's handling of so-called simpler objections, see

The Swedish Data Protection Authority's decision on 23 March 2012 in the matter of diary numbers

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1901-2011.

In the decision, the Swedish Data Protection Authority emphasized that it is important for legal certainty to debt collection companies do not themselves act as a court, but rather let the court decide whether the debtor is liable for payment or not. To be able to use it summary process after the debtor has made a factually based objection is required because the debtor withdraws his objection or that the debt collection company in any case clearly invites the debtor to return for it if he maintains his objection and in connection with that informs about his intention to otherwise turn to the Swedish Enforcement Agency and then give the debtor reasonable time to respond. The Swedish Data Protection Authority assumed that Sergel would follow these instructions so as not to cause debtors unnecessary inconvenience.

The Swedish Data Protection Authority can initially state that the example of treatment that Sergel gives in largely follows the instructions that Datainspektionen left in the previous decision. In the treatment as Sergel now submitted, however, the debtor is also invited to substantiate his objection by to submit proof that payment has been made.

It is the courts that must finally examine the obligation to pay with reason of an objection and in connection with this examine the probative value of it documents submitted by the parties. The debt collection company does not have the authority to themselves settle a dispute that has arisen, nor to decide how the evidence should be presented assessed in a future dispute in court. Debt collection companies should therefore avoid that use words and phrases that may give the impression that the debtor need to substantiate their objection to the debt collection company. It must be made clear that in

and in itself there is no obstacle for a debt collection company to ask the debtor if he or she can submit certain documentation. However, such a question should be worded so that it is clear that it is voluntary for the debtor to submit the document.

To, in dealing with so-called simple objections, urge debtors to the debt collection company substantiate their objection and submit proof of conflict therefore against good debt collection.

The Swedish Data Protection Authority assumes that SerGel reviews and clarifies the writings which is used to respond to objections to avoid any misunderstandings from debtors and to ensure that the format of the letters is compatible with good debt collection.

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Debtor contact - availability

Applicable regulations, etc.

A good debt collection oath means that the debt collection company should respond without delay the debtor's questions about the claim and the legal basis for it.

The debt collection company should also be available to the debtor for at least one fixed telephone time all non-holiday Mondays-Fridays. (The Data Inspectorate general advice p.31-32)

It is not good debt collection practice to take a debt collection action if there are objections from the debtor or otherwise it appears that the claim lacks a legal basis.

According to good debt collection law, the debt collection company should therefore investigate as soon as possible objection from the debtor is valid in its own right. (The Swedish Data Protection Authority's general advice p. 19).

Background

Since mid-December 2019, the Swedish Data Protection Authority has received many written complaints where the complainant states that he or she has difficulty in get in touch with Sergel, both by phone and through Sergel's web service "My pages". The appellants allege, among other things, that it has been impossible to get a place in the telephone queue, or that they had to wait several hours for to arrive. Several have also stated that they have had difficulty getting in on My pages when they were met with error messages about temporary interruption or maintenance. Several of the complainants have also claimed that they sent several messages via My Pages that are answered only after a long time, or not at all. A complainant has further stated that she sent an email to Sergel which was answered with that automatic default response.

In addition to the written complaints, the Data Protection Authority has received several phone calls regarding difficulties in getting in touch with Sergel.

Furthermore, in June 2020, the Data Inspectorate drew attention to the fact that the phone number for Sergel's customer service has been removed from the company's website. Instead, visitors to the website were directed to find the phone number on their debt collection claims.

Sergel has essentially stated the following in his statements.

Sergel has had some problems with accessibility both via debtor web and customer service via phone. However, Sergel has taken one

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several measures to address accessibility and

call times and availability have improved significantly since the beginning

of the month of March. During December through February it has been unusually long response times on the phone. This is partly due to the debtors web had accessibility problems, partly for longer processing times and call times during the transition to the new debt collection system. In addition, one of Sergel's larger customers has sent one out several unplanned reminder mailings, which meant heavy duty load on Sergel's telephony resources. One of Sergel's customers also has transferred larger volumes than Sergel had the opportunity to plan for in May, June and July.

The telephony solution that Sergel uses has a limitation to prevent the system from becoming overloaded and crashing. In case of long queue times the lines are instead "busy". When it occurs and Sergel has not option to receive more calls, the caller is greeted by one message that reads: "We are currently unable to receive your call, please call again at a later time. For more information about your matters, you can log in to My Pages via www.sergel.se."

On December 1, 2019, Sergel launched a new debtor website - "Mina Pages" - at the same time as Sergel implemented a new debt collection system.

During December, the debtor's website was closed for 10 days a week and on a further number of occasions due to maintenance and troubleshooting.

There have also been operational disruptions due to updates.

This in turn has contributed to very heavy pressure on incoming conversation by phone.

Sergel's new debtors website currently works stably and is available. Sergel and its suppliers have prioritized troubleshooting for to stabilize the debt collection system and the debtors web. Sergel also has

carried out an update of the telephony platform on 27 February which meant an improvement in the capacity for incoming traffic.

Sergel's telephony solution has not been overloaded since then. The number incoming calls and response times have decreased and returned to normal inflow and call times. Since mid-February, Sergel has expanded its staffing with 23 case managers and a further 12 case managers shall start during the month of May. Sergel has during the period of shortage 9 (14)

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availability has been very restrictive in forwarding matters to The enforcement agency.

Sergel plans to introduce a chat function under My Pages as one alternative channel. The chat requires authentication via BankID. Sergel sees the chat as a supplement to telephony when the debtor needs it quick, easy feedback. Some of the information from the chat is recorded in the debt collection system. Sergel will also wind down its ledger management which can prevent certain disruptions and variations of volumes from these calls.

Sergel has chosen to minimize its communication with debtors via e-mail as such communication involves data protection risks. Sergel has three public email addresses which, since October 7, 2019, no longer used for communication with debtors but who still can found on the internet and in old letters. Sergel intends to manage in the long term remove the traffic from these email addresses. Until that can happen have Sergel as a routine to answer incoming emails from debtors the same

day, with the following default response:

"ATTENTION! Important information for you!

The communication channel via this email address has ended. Your errand will therefore not be answered here. This means that from now on you ask us questions, and see our answer at [Sergel.se/loggain](https://sergel.se/loggain). This because further increase the security in the handling of data and personal data then we comply with the General Data Protection Regulation (GDPR), and that is the change we are making because we protect your privacy. Another step in increasing your security is that we delete the original message in this conversation.

Welcome to [Sergel.se](https://sergel.se)"

Disputes received are documented in the debt collection system and answered via "My Pages" or by letter.

Sergel can state that the routine description has not been followed for two of the public email addresses. Incoming email to these addresses has in most cases only been answered with a standard answer with reference to other channels, which were then unfortunately lacking

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availability during December through February. Sergel sees seriously on what has occurred.

Sergel intends to clarify its routine description and ensure the handling of disputes until they can close the current ones the email mailboxes. Sergel will also review the content of the standard answer and enter all channels the debtor can use for

to get in touch with Sergel.

In connection with Sergel's website and all its content being moved to a new IT platform on June 10, 2020, the phone number was not included in the new text introduced regarding "Contact with Customer Service" on the debtor website. It has not been preceded by any special ones discussions or considerations. Sergel has corrected this on July 8th 2020.

Sergel's management has the highest priority to ensure a stable, simple and secure delivery of debt collection services with high availability.

The Swedish Data Protection Authority's assessment

A prerequisite for a debt collection company to be able to fulfill its obligations to quickly answer debtors' questions and deal with objections in time is that it is easy for debtors to get in touch with the company. With taking into account that the normal deadline for objection or payment in one debt collection claims are short, it is very important that the debtor is given the opportunity to get in touch with the company within a reasonable time, partly to be able to take a position to whether the claim is correct, partly to be able to object in time.

Sergel offers contact options via its debtor website and by telephone. Of Sergel's opinion states that the company has had problems with technical access to its debtor's website and long response times on the phone during one and the same period.

The response also shows that Sergel has removed the option for debtors to communicate with the company via e-mail, while e-mail addresses such as previously used for this purpose are still active.

The Swedish Data Protection Authority, which in this decision does not take a position on questions concerning personal data processing, have an understanding that debt collection companies want to use

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secure and appropriate communication channels. To refer to only logging on to debtorsweb, which for private individuals requires a BankID, risks however, to exclude many debtors who do not hold BankID from the possibility to contact the company. Such a communication channel must therefore supplemented by other appropriate channels.

The Swedish Data Protection Authority wants to emphasize that a debt collection company should deal with those issues and objections received by the company regardless of the contact channels the debtor uses. This means, for example, that a question or a objection received in the wrong department at the company should be forwarded to the department that can answer the debtor's questions. Although a debtor uses a contact route that is not indicated, the company should therefore handle the issue or the objection. It does not mean that the question needs to be answered in the same channel that the question was asked, but the company can choose the communication method which is most appropriate in the individual case.

Sergel states that it is their routine to respond to objections from debtors even when they arrive via e-mail but that this routine has broken down. Sergel has further stated that they will refer to more contact routes i the default response.

Sergel has also for a period removed the telephone number for customer service from its website. Instead, website visitors were directed to find phone number on your debt collection claim. The Swedish Data Protection Authority considers that a debt collection companies should make it easier for debtors to get in touch with the company.

By only referring to the debt collection claim to find phone numbers

availability for debtors deteriorates. In this context, it should be taken into account that a debt collection case can last for several years and that a long time may have passed since the debtor received a debt collection claim. It is therefore not certain that the debtor even has access to this information. As previously stated is not rather, gäldenärweb is a contact route that suits all debtors. The debtor also cannot contact Sergel via e-mail, e.g. to ask about the phone number.

The Swedish Data Protection Authority can state that Sergel has, or has had, several deficiencies regarding the accessibility relating to

- limited access to the debtor's web,
- long response times or the possibility of reaching customer service via phone,

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failure in some cases to deal with questions and objections which received by e-mail, and difficulties for debtors to find different contact routes to the company.

The Swedish Data Protection Authority states in a balanced assessment that they the shortcomings listed are so extensive that Sergel cannot be considered to have lived up to it to the requirements for availability and the obligation to respond without delay debtors' questions and to quickly investigate objections that follow from good debt collection oath. Sergel has taken measures regarding some of the deficiencies. Certain of the problems still remain, however, and the Data Protection Authority still receives complaint against Sergel regarding availability for debtors.

The Swedish Data Protection Authority, which takes a serious view of the shortcomings regarding accessibility, assumes that Sergel takes measures to further improve the availability for debtors. The Swedish Data Protection Authority therefore does not consider it so necessary to take some measures against Sergel at the present time. The Swedish Data Protection Authority however, will follow the development of incoming complaints regarding the availability of Sergel. The issue of availability for debtors will come also be followed up within the framework of future supervision of the company.

Miscellaneous

What otherwise occurred in the matter does not cause any further measures from The Swedish Data Protection Authority.

How to appeal

If you want to appeal the decision, you must write to the Swedish Data Protection Authority. Enter in the letter which decision is being appealed and the change you are requesting.

The appeal must have been received by the Swedish Data Protection Authority no later than three weeks from the day you were informed of the decision. The Swedish Data Protection Authority sends the appeal further to the Administrative Court in Stockholm for examination, if the inspection does not itself changes the decision in the way you have requested. Even the Chancellor of Justice can appeal the decision to safeguard public interests. Time for however, appeals before the Chancellor of Justice are counted from the day the decision is made was announced.

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Provided that the appeal does not contain any sensitive to privacy personal data or information that can be covered by confidentiality, you can e-mail the appeal to datainspektionen@datainspektionen.se.

This decision has been made by the unit manager Catharina Fernquist after
presentation by lawyer Evelin Palmér.

Catharina Fernquist, 2020-10-14 (This is an electronic signature)

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