

Decision

Diary no

2020-10-09

DI-2020-4958

Swedish Europainkasso AB

Box 1187

432 36 Varberg

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

Swedish Europainkasso AB

The Swedish Data Protection Authority's decision

Svenska Europainkasso AB has violated Section 4 of the Debt Collection Act by wrongly process selection.

The Data Inspectorate assumes that Svenska Europainkasso AB takes measures to ensure that objections received during the election are taken into account in the future of process form.

The case is closed.

Account of the supervisory matter

Datainspektionen has received a complaint against Svenska Europainkasso AB.

According to the complainant, the debt collection company has applied for a payment order with

The enforcement authority despite the fact that the claim has been disputed.

The Data Inspectorate has initiated supervision of Svenska Europainkasso AB for review the company's routines when choosing a process form and what happened in it individual case.

Svenska Europainkasso AB has submitted its general procedures for elections of process form as well as in an opinion to the Data Inspectorate stated, among other things following.

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On 13 November 2019, Svenska Europainkasso AB took by email

against an objection to a debt collection claim as Swedish

Europainkasso AB sent out to the debtor on 11 November

2019. Svenska Europainkasso AB assessed that the objection was

a contestation.

In subsequent phone calls, a man identifies himself as being

agent for the debtor and Svenska Europainkasso AB requests

during the phone call, submit a power of attorney for the representative. At

preparation of summons against the debtor goes Swedish

Europainkasso AB through all documents and contacts

the client. Still no one has been received then

proxy. For that reason, it cannot be ruled out that it is

a person other than the debtor who brought the action. All of them

email conversation comes from email address that can be assumed not

belong to the debtor. In case of contact with the client, notice is given

also that there have never been any problems with the debtor,

on the other hand, it is a relative of the debtor who had another

perception.

Due to the uncertainty about whether it was the debtor

which presented its position assessed Swedish Europainkasso

AB that an application for a payment order with

The enforcement authority was the most suitable for the debtor

the form of the process because the Swedish Crown Enforcement Agency must serve

the debtor payment order which then, if uninformed,

can take a stand himself. If Svenska Europainkasso AB had chosen

to file the suit the appellant could have argued

that Svenska Europainkasso AB did not follow the good collection oath

to accept a claim that did not come from the debtor.

After the application for a payment order was made, Svenska

Europainkasso AB in the email mentioned power of attorney and in the same email

incorrectly notified that there is no "ground for the dispute" when

it would be that there is a lack of "power of attorney for the contestation".

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Reason for the decision

Applicable regulations, etc.

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.

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 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).

The Swedish Data Protection Authority's assessment

It is undisputed that what Svenska Europainkasso AB has received is a such factually based objection that deprives the debt collection company of the opportunity to use the summary process and means that the debt collection company must instead bring an action in court by means of a summons. The question is about the circumstances reported by Svenska Europainkasso AB really gives a collection agency the right to apply anyway payment order.

A good debt collection oath does not set any special requirements on the forms for one contestation or on identification in connection with a contestation. One debt collection companies should normally assume that it is the debtor who has presented an objection when it is stated to come from the debtor.

As the Swedish Data Protection Authority has understood it, Svenska Europainkasso AB has stated three circumstances in support of his assumption that the debtor himself did not stands behind the objection made. The objection has been submitted via a

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email address that appears to be linked to a person other than the debtor,
someone other than the debtor has later raised the objection by telephone
without presenting a power of attorney and the client claims never to have had
problems with the debtor but with a person close to the debtor.

The Swedish Data Protection Authority considers that none of these circumstances, or
the circumstances taken together, give reason to assume that the debtor himself
does not stand behind the objection made. The objection would thus have
taken into account when choosing the process form and thereby led to an application for
summons instead of an application for a payment order.

The Data Inspectorate states that Svenska Europainkasso AB through its
wrong assumption also made a wrong process choice. The action is contradictory
against good debt collection oath and thus also against § 4 of the Debt Collection Act.

The Swedish Data Protection Authority assumes that the company takes measures to ensure that
from now on, objections received will be taken into account when choosing the form of process.

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.

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 Karin Ekström.

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Catharina Fernquist, 2020-10-09 (This is an electronic signature)

Copy to:

The appellant

The Chancellor of Justice

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