

Nordea Denmark's disclosure of personal information

Date: 28-05-2021

Decision

Public authorities

As a result of a self-employment case, the Danish Data Protection Agency has assessed that Nordea's disclosure of personal information about the bank's customers in connection with The sale of receivables has taken place in accordance with the rules on data protection.

Journal number: 2019-431-0034

Summary

The Danish Data Protection Agency has made a decision in a case in which the Authority of its own motion in October 2019 chose to investigate Nordea Danmark's (Nordea) disclosure of personal information about the bank's customers in connection with the sale of receivables to the Luxembourg company Ultimo Portfolio SA (UPI) in October 2018. became aware of the matter after processing a specific complaint.

During the case, it emerged that Nordea i.a. had passed on information about the bank's customers' social security numbers in connection with the sale.

After a review of the case, the Danish Data Protection Agency found, among other things, has obtained two statements from the Danish Tax Agency that Nordea's disclosure of its customers' social security numbers has taken place in accordance with the law, as the disclosure of the information was necessary for UPI's - as acquiring creditor of the receivables - reporting obligation under the Tax Reporting Act.

The Danish Data Protection Agency also found that Nordea's other processing of personal data has taken place in accordance with the rules, as Nordea has been legally obliged to disclose identification information about their customers in connection with the sale of receivables pursuant to the rules of the Tax Reporting Act.

The decision

The Danish Data Protection Agency hereby returns to the case of Nordea Danmark's (Nordea) transfer of personal data about the bank's customers in connection with the bank's sale of receivables to the Luxembourg company Ultimo Portfolio S.A (UPI) in October 2018.

Decision

Following a review of the case, the Danish Data Protection Agency finds that Nordea's disclosure of its customers' social security numbers has taken place in accordance with the Data Protection Act [1], section 11, subsection. 2, no. 1. The Danish Data Protection Agency also finds that Nordea's other processing of personal data has taken place in accordance with the rules in the Data Protection Regulation [2], cf. Article 6 (1) of the Regulation. 1. Below is a more detailed review of the case and a justification for the Danish Data Protection Agency's decision.

2. Case presentation

In connection with the processing of a specific appeal case, the Danish Data Protection Agency has become aware that in October 2018, Nordea sold a number of receivables to UPI. It appears that Nordea is a Danish branch of the Finnish bank Nordea Bank Plc.

It also appears that it has been agreed between Nordea and UPI that UPI will use Nordic Debt Collection A / S as a debt collection company in Denmark, so that Nordic Debt Collection A / S will both collect and administer the sold receivables on behalf of UPI. Nordea has been informed by Nordic Debt Collection A / S that UPI and Nordic Debt Collection A / S have entered into a co-operation agreement and a data processor agreement.

By letter dated 3 October 2019, the Danish Data Protection Agency has asked Nordea a number of questions with a view to the Danish Data Protection Agency's processing of the case. On 31 October 2019, Nordea submitted its comments to the Authority, which the Danish Data Protection Agency received on 7 November 2019.

On 11 February 2020, Nordea issued a supplementary statement to the Danish Data Protection Agency.

2.1. Nordea's comments

Ad opinion of 7 November 2019

Nordea has generally stated that the transfer of personal information about the bank's customers to UPI and Nordic Debt Collection A / S has taken place in order to be able to document Nordea's receivables, which is why it was necessary to pass on personal information as part of the sales process. The disclosure of personal data was necessary for the buyer to pursue a legitimate interest and the consideration of the data subjects did not exceed this interest.

The disclosure of information about the bank's customers is made on the basis of Article 6 (1) of the Data Protection Regulation. 1, letters b and letters f, for the purpose of being able to document Nordea's receivables and enable Nordic Debt

Collection A / S to recover customers' debts on behalf of UPI. The specific personal information about Nordea's claims against the covered customers has been necessary to carry out ordinary debt collection processing and to document claims in connection with any enforcement.

Regarding the disclosure of customers' social security numbers, Nordea has initially stated that the information has been disclosed pursuant to section 11 (1) of the Data Protection Act. 2, no. 3. In this connection, Nordea has referred to the general remarks on the proposal for a law on the processing of personal data to the repealed Personal Data Act of 1999, from which the following appears:

"[...], Disclosure of personal identity numbers, just as under the current law on private registers, should be able to take place without consent, when the disclosure is a natural part of the normal operation of companies, etc. of the kind in question, and when the disclosure is essential to ensure the unambiguous identification of the data subject, or the disclosure is required by a public authority. "

Nordea has also referred to the majority in report no. 1345 from 1997 on the processing of personal data, which states that it should generally be permitted for private companies, etc. to process social security numbers if it is objectively justified and of significance for a unique identification. The report further states:

"Other examples include traders who receive a claim against a person transferred, warning registers and credit information agencies, as in such cases it must be considered important to have a unique identification of the debtor in question, etc., but where obtaining consent for registration of social security number in practice will be difficult and in many cases impossible. "

Nordea has stated that disclosure of the first six digits of a social security number alone will not be able to ensure unambiguous identification of the person, which is why such disclosure will not be sufficient in connection with the recovery of a specific claim and possible subsequent court proceedings.

Ad opinion of 11 February 2020

In a supplementary statement of 11 February 2020 to Nordatilsynet, Nordea has generally stated that sections 13 (1) of the Tax Reporting Act. 2, and 52, para. 1, authorizes a right for Nordea to disclose information on social security numbers.

In this connection, Nordea has referred to the fact that the previous Tax Control Act contained a large number of reporting rules that the person to be reported must provide the taxable person with information to identify the person in question. The current Tax Control Act entered into force on 1 January 2019 and a number of rules from the previous Tax Control Act were

continued in the new Tax Reporting Act, which also entered into force on 1 January 2019.

Nordea has stated that the Tax Reporting Act is structured in the same way as the previous Tax Control Act, and that section 13 (1) of the Act 2, it follows that the obligation to report to the customs and tax administration entails that the reporting entity must provide information to identify each individual borrower and information on the account and loan relationship.

Nordea has further stated that it of the Tax Reporting Act § 52, paragraph. 1, it appears that the person who is to be reported in accordance with the law or rules issued pursuant to it, must inform the person required to report about his identification information, including his civil registration number.

Against this background, Nordea has argued that it has long been applicable law that the reporting of a person's civil registration number is decisive for a unique identification, and that Nordea, by virtue of the rules of the Tax Reporting Act, is legally obliged to disclose information about their customers' social security numbers.

Nordea has stated that the starting point in Danish law is that a change of creditor does not require the debtor's consent, as it does not make any difference to the debtor whether he or she must fulfill an obligation to one or the other creditor. When selling defaulted receivables, Nordea agrees with the buyer that the buyer enters on the same terms as when Nordea was the creditor. This means that the buyer is transferred all loan and creditor rights, and that the reporting obligation as a result is taken over by the person who receives loan and creditor rights regarding the defaulted claims.

Against this background, Nordea has stated that it is necessary for the buyer to receive information about the borrower's civil registration number, as the buyer otherwise does not have the opportunity to report in accordance with the tax reporting rules.

2.2. Statement from the Danish Tax Agency

In connection with the processing of the case, the Danish Data Protection Agency has by letter of 20 August 2020 obtained a statement from the Danish Tax Agency.

By letter dated 26 August 2020, the Danish Tax Agency has issued a statement in the case, in which i.a. the following appears:

“The reporting obligation according to SIL § 13 [the Tax Reporting Act]

The Danish Tax Agency notes that it appears from SIL § 13 that anyone who, as part of their business, provides or arranges loans, must annually report a number of information about the loan relationship, including the interest on the loan, the size of the debt, etc. to the Tax Administration.

The reporting entity must report on the identification of each individual borrower and information on the account and loan

relationship. For the individual loan relationship and the individual borrowers, e.g. provide information on accrued or overdue interest, mark interest on loan relationships where there is unpaid interest due regarding the previous calendar year, and whether debt has been forgiven, etc. See SIL § 13.

Borrower identification information

It must be assumed that a creditor, based on the civil law loan relationship between the parties, has an interest in securing correct and fully sufficient identification information about the borrower, and that the creditor does not grant a loan or wishes to acquire a claim / take over the loan before sufficient information about the debtor and the consequent assurance that the loan, interest, fees, etc. can be paid by and recovered from this.

In addition to the creditor's own interest in being in possession of identification information about the borrower, SIL (Tax Reporting Act) § 52 requires that the person being reported (the borrower) must inform the taxpayer of his identification information, including his social security number, etc.

It further appears from the Executive Order on Tax Reporting, cf. Executive Order no. 888 of 1 June 2020 on tax reporting, etc. (SIB) that the person who is to be reported in accordance with SIL § 13 etc., for the purpose of the report must inform the reporting entity of name, address - at foreign address also home country - and civil registration number, or if he or she does not have a civil registration number, information must be provided about cvr number, SE number, identification number according to the rules in the person's state of residence, date of birth, place of birth, etc. When submitting identification information, the necessary identification must be presented.

The reporting agent must ensure this information about the borrower that is to be reported, and must ensure its accuracy by requiring the presentation of the necessary identification.

Creation and takeover of loans

It is further in SIL § 52, para. 2, stipulates that the person about whom the matter is to be reported does not provide identification information, a loan covered by SIL §§ 13 or 15 may not be established or taken over. Thus, the creditor may not create a loan until the required identification information has been obtained.

...

A creditor who acquires a claim is, like the original lender, obliged to report on the loan in accordance with SIL § 13, as the reporting provision also covers the cases where the creditor rights have been acquired. The new creditor must, like a previous

creditor, report on the loan, and in this connection, the borrower's identity must also be reported, including his or her social security number.

The possibilities of the Tax Reporting Act for orders and sanctions

When a company in breach of SIL § 52 has either established or taken over a loan, the Tax Administration may, pursuant to SIL § 57, subsection 3, order the person liable to report to obtain the missing identification information and impose coercive fines if he does not obtain the required identification information. "

[...]

On 8 March 2021, the Danish Data Protection Agency requested a supplementary opinion from the Danish Tax Agency. This shows, among other things:

"Fsva. The Danish Data Protection Agency's question 3, whether there may thus be some third parties - who acquire a claim - that will not be covered by section 13 of the Tax Reporting Act, the Danish Tax Agency must state that it is a prerequisite for reporting that an interest rate loan agreement has been entered into, and where lending and acquisition of creditor rights also fall under the provision. However, the lending must be part of the lender's or intermediary's business, ie. as part of the creditor's business activity. The reporting provision for the loan applies regardless of whether the business is carried out by a natural or legal person.

It follows that in the case of a person's lending or acquisition of a receivable without the loan being related to the person's business activity, the creditor will not be covered by the reporting obligation pursuant to section 13 of the Tax Reporting Act. shall not be covered by section 13 of the Tax Reporting Act.

[...]

A copy of the Danish Tax Agency's statements is attached to this decision.

Justification for the Danish Data Protection Agency's decision

3.1. The Danish Data Protection Agency assumes that in transferring the receivables to UPI, Nordea passed on personal information about its customers covered by Article 6 of the Data Protection Regulation, and information about customers' personal numbers covered by section 11 of the Data Protection Act.

The Danish Data Protection Agency finds that Nordea's processing of personal data covered by Article 6 of the Data Protection Regulation must be assessed in accordance with Article 6 (1) of the Regulation. 1, letter c.

In order for a processing of personal data to be considered as authorized in Article 6 (1) of the Data Protection Regulation 1, letter c, the processing must be necessary to comply with a legal obligation incumbent on the data controller.

Of the Tax Reporting Act, section 13, subsection 2 [3], it follows that the report to be made to the customs and tax administration when granting or arranging a loan must contain information for the identification of each individual borrower and information about the account and loan relationship.

It also follows from the Tax Reporting Act, section 52, subsection. 1, that the person who is to be reported in accordance with this Act or rules issued in pursuance thereof, must inform the reporting entity of his identification information, including his civil registration number.

The Danish Data Protection Agency finds that when selling the receivables to UPI, Nordea has passed on personal information about its customers, which has been necessary to comply with a legal obligation in the form of the rules of the Tax Reporting Act.

On this basis, the Danish Data Protection Agency finds that Nordea disclosed its customers' personal data in accordance with Article 6 (1) of the Data Protection Regulation. 1, letter c, cf. the Tax Reporting Act §§ 13, paragraph. 2 and 52, para. 1.

3.2. With regard to Nordea's processing of the debtors' social security numbers, it follows from the Tax Collection Act and the previously corresponding rules that Nordea as a creditor has been obliged to report the loan conditions to the Tax Administration, and that Nordea could therefore process information about the debtors' social security numbers on the basis of the Data Protection Act, section 11, subsection 2, No. 1.

On the basis of the information in the case, the Danish Data Protection Agency has assumed that UPI became a creditor in connection with the change of creditor on similar terms as Nordea, as Nordea transferred all loan and creditor rights, so that the reporting obligation was taken over by UPI regarding the defaulted claims.

It appears from the Danish Tax Agency's statement in the case that a creditor who acquires a claim, like the original lender, is obliged to report the loan pursuant to section 13 of the Tax Collection Act, as the reporting provision also covers cases where the creditor rights have been acquired. The new creditor must, like a previous creditor, report on the loan, and in this connection, the borrower's identity must be reported, including his or her social security number.

Against this background, the Danish Data Protection Agency is of the opinion that Nordea's disclosure of its customers' social security numbers must be assessed in accordance with section 11 (1) of the Data Protection Act. 2, no. 1, which states that

private individuals may process information on social security numbers when it follows from the legislation.

The Danish Data Protection Agency thus finds that Nordea in the sale of receivables to UPI on the basis of the Data Protection Act, section 11, subsection 2, no. 1, could pass on information about the bank's customers' social security numbers in consideration of the new creditor's fulfillment of the accompanying reporting obligation, cf. section 13 (1) of the Tax Recovery Act, 2, and 52, para. 1.

[1] Act No. 502 of 23 May 2018 on supplementary provisions to the Regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data (the Data Protection Act).

[2] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals 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] Act No. 1536 of 19 December 2017