

The Curia has decided:
Legitimate interest is required for
processing data for claims
management

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Claims management - possible legal bases for the processing

The issue of the legal basis for the data processing of companies' claims management was preceded by long-lasting discussions even before the introduction of the General Data Protection Regulation ("GDPR"). Most companies, especially debt collection agencies, may be involved in the issue, given that non-performing claims can occur at any company that has business relationships with natural persons. There are two clear positions on the legal bases:

Contract

(GDPR Article 6 (1) b))

According to one interpretation, the data processed in the management of claims are necessary for the performance of the contract concluded by the debtor. Termination of the contract due to non-performance does not terminate the contract itself immediately, as certain parts of the contract can only take effect and have legal effect in the event of termination. Thus, **the contract is dissolved by termination for the future when the parties have fully complied with their settlement obligations**. In this case, the possible assignment of the claim does not change the situation either, as only the identity of the creditor changes during the assignment.

Legitimate interest

(GDPR Article 6 (1) f))

According to the other position, a contractual legal basis can be invoked only in the case of a valid and effective contract, and upon dissolution, this contract is terminated on the date specified in the dissolution. The claim is separate from the underlying legal relationship, so **the contractual legal basis cannot be extended to data processing necessary to take steps beyond the normal obligation of cooperation of the parties to remedy the situation caused by the debtor's non-performance of the contract**. As a result, the only available legal basis for the creditor's data processing is legitimate interest.



The judgment of the Curia

Since 2018, the National Authority for Data Protection and Freedom of Information (“NAIH”) has imposed fines in a number of cases where the data controller has indicated the performance of the contract as the legal basis for data processed for the purpose of managing claims. According to the NAIH, only a legal basis of legitimate interest is applicable to the management of claims. In contrast, most companies dealing with a large number of debts (eg. banks, insurance companies, telecommunications and debt management agencies) typically considered the application of a contractual legal basis to be applicable.

According to the latest decision of the Curia:

- **The performance of the contract cannot be invoked as a legal basis for recovery for debt management purposes. The contractual legal basis can only be used in the case of an existing contract, so the data controller can only indicate legitimate interest as the legal basis.**
- **In the case of an assignment, the assignee acts in his own interest and not for the performance of the previous contract.**
- **The contractual legal basis may still be used at the time of the payment notice, but not thereafter.**





Contradictions in the Curia's reasoning

I. The loan contract is terminated in its entirety by dissolution. Only an accounting relationship remains, which does not qualify as a contractual relationship.

BUT! The accounting relationship itself derives directly from the contract. Some of its details are also set out in the contract.

II. There is no contractual relationship between the assignee and the debtor.

BUT! The assignment does not affect the substantial terms of the contract, only a change takes place in the person of the obligee which is stipulated in the Civil Code and its Commentary as well.

III. According to the guidelines of the EDPB and WP29, the contractual legal basis can be applied only in the case of a payment notice or administration directly related to the loan contract or immediately following its termination.

In addition, the Curia did not take into account:

- the difficulties encountered by the debt management industry or, in general, the party enforcing its claim in the transition to a legitimate interest in the event of default; and
- the foreign case law and the observations of the international legal literature.

BUT! Restrictive interpretation. The EDPB states that if the contract is terminated, this may lead to additional payments, in which case the contractual legal basis may apply. In the case of WP29, the judgment completely ignores the difference between debt management based on assignment and agency.



Actions to be taken following the decision of the Curia

In the light of the Curia's decision, all data processing companies are encouraged to review their data processing practices for managing their claims and, if necessary, take the following steps. It is important to note that the decision has not yet been published by the Curia, so it does not constitute a precedent. Some companies may, in view of their own specific circumstances and the contradictions indicated earlier, continue to seek to protect the lawfulness of the use of a contractual legal basis in connection with certain data processing activities in case of an investigation by the NAIH.



Reviewing the data controller's debt management processes



Modifying the data processing database



In the case of data processed on a contractual legal basis, shifting to a legitimate interest legal basis



Amending the relevant data processing information and internal policies



Performing the necessary legitimate interest balancing tests



Informing the data subjects



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