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Advocate General's Opinion in Case C-693/22 | I. (Sale of a database)

According to Advocate General Priit Pikamäe, a database containing personal data may, under certain conditions, be sold in enforcement proceedings, even if the data subjects have not consented to the sale

This is the case where the processing of data associated with such a sale is necessary and proportionate in a democratic society to ensure the enforcement of a civil law claim

A Polish court is ruling on a dispute between a company and a member of the board of directors of another company that specialises in online sales and against which the first company has a debt claim. That member may be personally liable where the debtor company does not have assets to satisfy the creditor company's claim. However, that member is of the opinion that this is not the case because the debtor company has, among other assets, two databases of users of the online platform it had created. They contain personal data of hundreds of thousands of people who have not consented to the processing of their data in the form of making those data available to third parties outside that platform.

The Polish court has doubts as to whether the General Data Protection Regulation (GDPR) ¹ allows a court enforcement officer to sell those databases, in the context of enforcement proceedings, without the consent of the data subjects and has referred the matter to the Court of Justice.

In his opinion, Advocate General Priit Pikamäe proposes that the Court should answer in the affirmative.

In his view, **the operations carried out by the court enforcement officer for the purposes of estimating the value of the databases concerned and selling them by public auction come within the scope of the GDPR.** They include, at the very least, the retrieval, consultation, use and making available to the purchaser of those personal data and, consequently, must be regarded as a 'processing' of those data within the meaning of that regulation. Furthermore, the Advocate General takes the view that the **court enforcement officer must be regarded as the controller of the personal data.**

Furthermore, the Advocate General concludes that **the processing in question is lawful where it is necessary for the performance of a task carried out in the exercise of official authority vested in the court enforcement officer.**

Lastly, the Advocate General notes that the purpose of the processing carried out by the court enforcement officer differs from the initial purpose of enabling the use of the online sales platform concerned. In order for such further processing to be regarded as being compatible with the GDPR, it must **constitute a necessary and proportionate measure in a democratic society to achieve one of the objectives of general interest pursued by that regulation.** According to the Advocate General, of those objectives, the objective of ensuring the enforcement of civil law claims may, in principle, justify the processing of the data at issue in the present case. He also states that the assessment of whether a measure is proportionate, which the Polish court must carry out, involves balancing the creditor company's right to property and the right to protection of personal data of the users of the online

platform concerned.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355.

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¹ [Regulation \(EU\) 2016/679](#) of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.