

CPR no. – Can traders lawfully require customers to state their CPR no.¹

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¹ *The memorandum's last paragraph was clarified on 20 February 2015*

The Danish Consumer Ombudsman

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Introduction

Private businesses often request customers' civil registration (CPR) no. for registration and use for various purposes. This raises the question of the lawfulness both of requiring that customers state their CPR no. and of registering and using it. This memorandum describes in what instances it is lawful to require customers to state their CPR no.

Two different sets of rules

There are two Danish acts regulating this area: the Act on Processing of Personal Data and the Marketing Practices Act.

The Act on Processing of Personal Data is the central statute governing the area

The Act on Processing of Personal Data contains rules on when private businesses are allowed to process (i.e. collect, register and use) information about a customer's CPR no. It does not, however, regulate when a business is entitled to require the customer's CPR no. Therefore, it is not possible under the Act on Processing of Personal Data to determine whether a business can refuse a sale, for example, if a customer does not consent to the registration and use of his CPR no.

The Danish Data Protection Agency supervises compliance with the rules of the Act on Processing of Personal Data.

Marketing Practices Act

Pursuant to the provision in section 1 of the Marketing Practices Act, private businesses must exercise good marketing practice in consideration of consumers, other traders and public interests. When a business believes to be entitled to require customers to state their CPR no. on entering into an agreement, it must be assessed whether this is in accordance with good marketing practice or whether it is unlawful to request CPR no. information.

The Consumer Ombudsman supervises compliance with the rules of the Marketing Practices Act.

Rules of the Act on Processing of Personal Data – when are private businesses entitled to process CPR nos.

A private business may process a customer's CPR no. when it is permitted by law (1) or the customer has explicitly consented to such processing and it is for a relevant and legitimate purpose (2). This follows from section 11(2)(i) and (ii) and section 5(2) of the Act on Processing of Personal Data.

1. It is permitted by law

Businesses are generally entitled to register a customer's CPR no. if this is provided in other legislation (special legislation).

Examples from case law:

Businesses required to report CPR nos. to the Danish tax authorities – for example as employers, bankers or the like.

2. Consent and the legitimate purpose requirement

Section 3(viii) of the Act on Processing of Personal Data defines the data subject's consent as any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed.

The provision implies that it must be clearly and unambiguously stated that the customer consents to his CPR no. being processed, who may carry out such processing and for what purposes. The customer must have been sufficiently informed to be able to assess whether such consent should be given.

However, the business may only process the CPR no. if, in addition to the customer consenting to registration or use of his CPR no., the business has a relevant and legitimate purpose in requesting registration.

One relevant and legitimate purpose according to the Data Protection Agency is ongoing accounts, such as subscriptions or memberships, between the customer and the business where registration of the CPR no. is required for practical or administrative purposes. Ongoing accounts may exist between customer and business even where the customer has prepaid a subscription, for example.

Specific examples from the Data Protection Agency:

- » Mobile telephone company subscriptions, fitness centre memberships (unambiguous identification of the customer is required, for example in relation to payments).
- » Leases (the leased item is not returned and the lessor must be able to find the lessee).

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- » A business making a product available to the customer, which the customer must return to the business, for example a digital TV programme card.

By contrast, the Agency takes the view that it would not as a general rule be considered relevant and legitimate for businesses to register a customer's CPR no. if an item is paid in cash and delivered and there is no subsequent contact between the customer and the business.

The Data Protection Agency requires private businesses to encrypt the transfer of CPR nos. via websites.

For further information on the registration and use of CPR nos., see the website of the Data Protection Agency: www.datatilsynet.dk.

Marketing Practices Act – when are private businesses entitled to require customers to state their CPR no.?

The Consumer Ombudsman regularly receives enquiries about businesses requiring a customer's CPR no. as a precondition for entering into an agreement with the customer or supplying an agreed service. This raises the question if the business is acting in accordance with good marketing practice.

In its assessment of this issue, the Consumer Ombudsman has attached importance to the practice applied by the Data Protection Agency on registration and use of CPR nos. in accordance with the Act on Processing of Personal Data. Assessment under the Marketing Practices Act is thus made against the background of the rules of the Act on Processing of Personal Data.

Legislation prescribes that CPR nos. may be registered or used

Where other legislation prescribes that a business may process CPR nos., the business will also be entitled to require customers to state their CPR no. without this being contrary to good marketing practice.

Examples from case law:

- » Pursuant to the Danish Anti-Money Laundering Act, Rejsekortet may require customers to state their CPR no. when purchasing certain of the card types on offer. Similarly, the post office is entitled to request CPR no. on cash payment of bills.
- » To gamble in an online casino, customers are required to inform the game provider of their CPR no.
- » Media licence – on subscribing, the holder/user of a device must inform DR Licens of his CPR no.

No legislation – the business must obtain consent

If a business is not able to refer to legislation prescribing that CPR nos. may be processed, it must be assessed what is required in order for the business to be entitled to require that a customer state his CPR no.

Section 1 of the Marketing Practices Act also contains a legitimacy requirement, although this is not put into statutory form as in the Act on Processing of Personal Data. A business may only request the customer's consent to registration of his CPR no. if the purpose of the request can be considered legitimate in view of the contractual relationship, etc. For example in connection with ongoing accounts such as subscriptions and leases or where, under the agreement, a product is placed at the customer's disposal that is to be returned to the business – such as a digital TV programme card.

Purposes that cannot be considered relevant and legitimate under the Act on Processing of Personal Data will generally not be considered relevant and legitimate under the Marketing Practices Act, either.

The next question is whether there may be cases in which the business may register CPR nos. under the rules of the Act on Processing of Personal Data, but where the requirement that the customer state his CPR no. (consent to registration) must be considered contrary to good marketing practice.

The assessment under the Marketing Practices Act being made against the background of the rules of the Act on Processing of Personal Data means that action will be taken under section 1 of the Marketing Practices Act only in cases where it is evident that there is no legitimate reason for requesting the customer's CPR no.

In the assessment of whether the requirement for customers to state their CPR no. is contrary to good marketing practice, it will be taken into account what purpose is being pursued, including the business's indication of administrative considerations, and whether such purpose can be served relatively easily by other means.

Examples from case law where the business generally does not have a legitimate reason to require CPR nos.

- » Cash purchases in physical shops where the product (not a subscription or the like) is handed over to the customer in the shop or is delivered to the customer's address.
- » Purchases using special payment instruments in a shop or online (for example payment cards or mobile telephones), where the purchase is not in the nature of an ongoing account.
- » Reimbursement in connection with the settlement of energy consumption or a residual amount on a transport card that is not attached to a specific person, such as the so-called anonymous Rejsekort.
- » Delivery of goods/reimbursement on return of goods.
- » Credit assessment in credit reference agencies (the Data Protection Agency does not allow CPR nos. to be used for this purpose).
- » Discussions with potential/existing customer about sales/additional sales (for example broadband)

Special enquiries to the Consumer Ombudsman

- Insurance companies often request potential customers to state their CPR no. in connection with the preparation of a specific insurance offer. The Consumer Ombudsman refers to the FSA, which is the first instance in assessing generally accepted practice for financial businesses, including insurance companies (www.finanstilsynet.dk).

Where the business intends to and is entitled to make sales etc. subject to customers stating their CPR no.

Where a business has a legitimate and relevant reason for requesting the customer's CPR no. and can thus lawfully do so, the business must – where justified by the circumstances – clearly state in its marketing material that, for example, the agreement is subject to customers stating their CPR no.