Recovery of claims in the GDPR (General Data Protection Regulation) era

Lecturer **Dragoș MĂNESCU**[1]

Abstract

The processing of personal information, including the one relating to financial data, is subject to the legislation on personal data protection, covering both individuals, creditors and credit registrars, as well as European supervisory authorities. This study looks at ways of debt recovery within the limits of the European Personal Data Protection Regulation. The first part of the study presents, ratione materiae, the considerations envisaged for the adoption of the Regulation, but also the way its limitations capture the recovery procedure. The second part of the study takes into account the prerequisites for the adoption of codes of conduct in the field of debt recovery, and in the last part of this study there are presented a number of limitations imposed by the provisions of the Regulation in the debt recovery process.

Keywords: *personal information, personal data protection, GDPR, financial data, debt recovery, codes of conduct, European Personal Data Protection Regulation*.

JEL Classification: K22, K23

1. Introductory considerations

The processing of personal information, including the one relating to financial data, is subject to the legislation on personal data protection[2], covering both individuals[3], creditors and debt collectors, as well as European supervisory authorities.

By processing, we understand, in accordance with Regulation (EU) 679/2016 also referred to as GDPR[4], any operation or set of operations relating to personal data, whether or not using automated means, like collecting, recording, organizing, structuring, storing, adapting, modifying, extracting, consulting, using,

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[1] Dragoș Mănescu – Department of Law, Bucharest University of Economic Studies, dragos_mihail @yahoo.com.

[2] Article 2, paragraph 1 of Regulation (EU) No. 679/2016 (GDPR): This Regulation applies to the processing of personal data wholly or partly by automated means and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.

[3] Regulation (EU) No. 679/2016 (GDPR), Preamble, point 14: The protection afforded by this Regulation should apply to natural persons, whatever their nationality or place of residence, in relation to the processing of their personal data. This Regulation does not cover the processing of personal data which concerns legal persons and in particular undertakings established as legal persons, including the name and the form of the legal person and the contact details of the legal person.

[4] Article 4, point 2.

disclosure, dissemination or making available, otherwise aligning or combining, restricting, deleting or destroying such data or data sets.

These provisions make us affirm that each debt reclamator/collector is affected by GDPR, even those located outside the European Union who process the data of European citizens[5] or persons located within the European Union borders[6].

Protection of individuals with regard to personal data processing is a fundamental right[7] established, alongside other rights and freedoms, by the Treaty on the Functioning of the European Union (TFEU) and the Charter of Fundamental Rights of the European Union ("Charter") and is considered as distinct[8] from the right to privacy[9]. Thus, art. 8 of the Charter provides in par. 1 that "any person has the right to the protection of personal data concerning him" while art. 16 TFEU comes to reinforce this idea[10] and, at the same time, to create in paragraph 2 the obligation for the legislator (the European Parliament and the Council) to "lay down rules on the protection of individuals with regard to the processing of personal data by Union institutions, bodies, offices and agencies and by Member States in carrying out their activities as part of the scope of Union law and the rules on the free movement of such data".

These provisions apply regardless of the personal attributes of the subject of law such as: domicile, residence or nationality, etc. but respecting the other fundamental rights and freedoms of the individual[11], as well as considering that

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[5] Věra Jourová, European Commissioner for Justice, Consumer Protection and Gender Equality, 25.05.2018: "The new regulations provide the guarantee that personal information is better protected - no matter where it is sent, processed or stored - even when this happens outside the EU".

[6] Regulation (EU) No. 679/2016 (GDPR), Preamble: Point 22: Any processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union should be carried out in accordance with this Regulation, regardless of whether the processing itself takes place within the Union. Establishment implies the effective and real exercise of activity through stable arrangements. The legal form of such arrangements, whether through a branch or a subsidiary with a legal personality, is not the determining factor in that respect. Point 23: In order to ensure that natural persons are not deprived of the protection to which they are entitled under this Regulation, the processing of personal data of data subjects who are in the Union by a controller or a processor not established in the Union should be subject to this Regulation where the processing activities are related to offering goods or services to such data subjects irrespective of whether connected to a payment.

[7] 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 (General Data Protection Regulation), Preamble, par. 1.

[8] The Charter of Fundamental Rights of the European Union provides for art. 7 one of the freedoms considered fundamental, namely Respect for private and family life. At the same time, Article 8 establishes another fundamental right, namely the protection of personal data.

[9] Theresa Papademetriou, Senior Foreign Law Specialist, European Union: Online Privacy Law – June 2012, updated 2014, The Law Library of Congress, Global Legal Research Center, pg. 1

[10] Treaty on the Functioning of the European Union, Art. 16 par. 1: Everyone has the right to the protection of their personal data.

[11] Charter of Fundamental Rights of the European Union, Preamble: "The Union is founded on the indivisible and universal values of human dignity, freedom, equality and solidarity; this is based on the principles of democracy and the rule of law. The Union places the person at the heart of its action, establishing citizenship of the Union and creating an area of freedom, security and justice".

"the right to the protection of personal data is not an absolute right; it must be taken into account in relation to the function it performs in society and in balance with other fundamental rights, in accordance with the principle of proportionality[12].

Moreover, we can consider that personal data protection is a personal right of the individual[13] who has been consecrated as a fundamental right of the European Union meant to protect the honor, dignity, privacy of its citizens in relation to economic life and business interests, but also to prevent any trace of state abuse on individuals based on information obtained from their behavioral profiles. Anonymisation[14] of individuals' personal data is likely to enable them to develop independently without external pressure or interference from any public or private actor that forces them to line up with generally accepted behavior and, at the same time, prevents data from being traded depending on the commercial interests of private entities.

At the same time, the regulation of access to personal data of individuals aims at preventing[15] and combating discrimination and social exclusion on the basis of social and economic behavior or achieved by standardization, categorization[16] (reducing the plurality of the environment to classes in order to easily process the large amount of information), sorting and classification.

Nevertheless, credit institutions perform the profile of various categories of creditors through the processing and automated analysis of personal data, with the aim of identifying their financial needs and predicting their economic behavior so that they can enter the market with attractive financial products. However, these products often address a general need identified by the before mentioned automated analysis and processing, without addressing the individual needs of consumers, which will lead to discrimination of those who do not fit the profile and to the creation/modification of economic/financial behaviors, considering that banks or IFNs have a legal monopoly in this area.

Moreover, the risk is that, based on the information thus obtained and the analytical profile of the consumer:

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[12] General Data Protection and Related Legislation: Updated August 2018. - Bucharest: C.H. Beck, 2018, Preamble, par. 4, p. 3

[13] In that regard, it must be borne in mind that, according to the settled case-law of the Court, in all cases where the provisions of a directive appear, unconditional and sufficiently precise in terms of content, individuals are entitled to rely on them before national courts either when he refrained from transposing the Directive into national law or when he transposed the Directive incorrectly (see Case C-226/07 Flughafen Köln v Bonn [2008] Paragraph 5, paragraph 23; Case C-138/07 Cobelfret [2007] ECR I-731, paragraph 58, and Case C 243/09 Fuß [2010] paragraph 56).

[14] GDPR, Preamble, point 26: this Regulation does not apply to the processing of anonymous information, including when used for statistical or research purposes.

[15] Springer Briefs in Law: Federico Ferretti, EU Competition Law, Consumer Interest and Data Protection. "The protection of the individual consumer is a fundamental part of the maintenance of human dignity and a prerequisite condition for his participation in the economic, social and democratic life of society."

[16] Categorization is a process of creating classes that allow us to access the desired/required information depending on one or more of them.

- packages of financial services are more expensive for those with a higher default risk (as is the case in the insurance industry whose operation is based, however, on risk assessment) or those who are willing to pay/have greater financial possibilities;
- to identify those debtors who tend to delay reimbursement of maturity rates and to receive additional penalties for them against other debtors;
- to allocate those loans that pose a default risk to recovery firms to clear the balance sheet of credit institutions and increase their solvency ratio;
- to identify those consumers who, from convenience or lack of interest / time, become captives of credit institutions, etc.

Credit institutions and credit consumers will thus find themselves in a vicious circle with unwanted results in terms of consumer protection as it is drafted by European legislation[17].

As regards processing, per se, art. 4. of Law no. 190/2018[18] provides for clear rules when it involves a national identification number and requires that the personal data controller establish safeguards such as:

a) the implementation of appropriate technical and organizational measures to respect, in particular, the principle of minimizing data and to ensure the security and confidentiality of personal data processing, in accordance with the provisions of Art. 32 of the General Data Protection Regulation;

b) appointing a Data Protection Officer

c) the setting of storage times according to the nature of the data and the purpose of the processing, as well as specific deadlines in which personal data must be erased or revised for deletion.

In this context, this study aims to address the activity of debt recovery claimants from the perspective of access to individuals' personal data and not in terms of the legality or legitimacy of their action in the debt collection and recovery process itself.

2. Codes of conduct in the field of debt recovery

It should be noted that GDPR encourages the development of codes of conduct on the protection of personal data by associations and other bodies representing categories of operators or persons empowered by operators[19] or

[17] Article 169 (1) TFEU (ex. Article 153 TEC): "In order to promote consumer interests and to ensure a high level of consumer protection, the Union shall contribute to the protection of the health, safety and economic interests of consumers and to the promotion of their rights to information, education and organization to defend their interests".

[18] Law no. 190/2018 on measures implementing 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 of Directive 95/46/EC (General Data Protection Regulation).

[19] Article 40 of Regulation (EU) No. 679/2016.

mandatory corporate rules[20]. It is worth mentioning that the term "encourages" is rather an obligation imposed on the above mentioned. We can even say that, indirectly, it obliges them to join (in the case of existing ones), or the grouping of operators (for those that are now being established) in associations and other bodies like those mentioned above.

In addition, according to art. 40 par. 3 of the GDPR, GDPR-compliant codes of conduct, which are generally valid[21], may also be joined by operators or persons empowered by non-GDPR operators (from third countries or international organizations) to provide appropriate safeguards for shipments of personal data to them. In order to do so, they must make binding and enforceable commitments by means of contractual instruments or other legally binding instruments.

As a result, a professional category that works directly with personal data, that is, credit recovery, has its own code of conduct designed to establish clear rules of conduct in relation to debtors on how to comply with GDPR. In fact, this code of conduct also represents self-regulation based on a concrete legal text. At the same time, this code represents, first of all, a deontological code in line with the provisions of the Federation of European National Association Associations (FENCA)[22] Code of Conduct. Secondly, it should be noted that, as a result of its abstract regulations specific to the European regulation, GDPR has created a sometimes not very well defined legal framework characterized by legal uncertainty or whose concrete application in certain sectors of activity is more difficult to achieve (operational uncertainties), which leads to the need to interpret certain legal provisions in terms of recovery of claims.

Last but not least, a code of conduct also has the role of facilitating better understanding by supervisors of the specific nature of personal data processing in the context of a business such as, for example, the recovery of claims.

The Code of Conduct is endorsed by the European Data Protection Committee[23] as provided by Art. 70 par. 1 lit. n, x and becomes mandatory for both the receivers and the supervisors. This is also the result of following the procedure for endorsing and adopting the code of conduct, a procedure in which the national supervisory authority[24] plays a key role.

Thus, according to art. 40 par. 5-8 of the GDPR, the competent Supervisory Authority, within the meaning of the above, issues an opinion on the

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[20] Article 47 of Regulation (EU) No. 679/2016.

[21] Art. 40 para. 9 of Regulation (EU) No. 679/2016: The Commission may adopt implementing acts in order to decide that the Code of Conduct, Amendment or Extension granted to it pursuant to paragraph 8 of this Article shall be of general application in the Union.

[22] FENCA, the Federation of European National Collective Associations, represents the interests of credit management, debt collection and debt acquisitions at European level. The association liaises with the European Union institutions, stakeholders in the European financial services industry, consumer groups and the general public.

[23] https://edpb.europa.eu/, consulted on 10.10.2018.

[24] It should be noted that the Supervisory Authority means the independent public authority responsible for monitoring the implementation of GDPR in order to protect the fundamental rights and freedoms of individuals with regard to processing and to facilitate the free movement of personal data within the Union and not a body to authorize basic or prudential supervision.

compliance with the GDPR of the draft Code, amendment or extension and approves it if it is found that it provides adequate and sufficient guarantees. Furthermore, if the draft code regarding the modification or extension of the code is approved and it is not related to the processing activities in several Member States, the supervising authority shall register and publish the code.

3. Recovery of claims under GDPR

As far as debt recovery is concerned, it should be noted that there is a practice among collector to display notifications and payment summons/subpoenas (other than those required for enforced recovery of debt[25] or in the event of refusal to accept summons[26] or other forms of display callout[27]) with sensitive data on block staircase doors or handing them to neighbors. This practice is a reinterpretation or rather an adaptation of the provisions of the quote provided by the Code of Civil Procedure and must be stated to be in breach of the rules on the protection of personal data. Moreover, there is also the practice of making phone calls to bosses or colleagues at the workplace, giving them data on employees debs. It is no less true that GEO no. 52/2016 on consumer credit agreements for immovable property, as well as for amending and completing of GEO no. 50/2010 on credit agreements for consumers has brought some rigor in the debt recovery process or, rather, the borrowers' awareness of their rights and greater accountability on the part of the collectors.

Regarding this, it should be noted that in the year 2013, Expert Global Solution, the world's largest debt collector in the world, was fined by the US Federal Trade Commission with $ 3.2 million[28]. The retriever was sanctioned, among other reasons, for the following illegal practices:

- contacting people at work, although they asked not to be called at work;
- disclosure of the debtor's situation to third parties.

At the same time, it should be noted that there is no question of a contract assignment so that the transferee takes over the executory amount, but only a debt

[25] Court of Appeal Cluj, Civil Section, Civil Decision no. 401/2013. Appeal to forced execution. Public hearing on 17 June 2013: As regards to the assignment, the tribunal notes that this is the transaction whereby the assigning creditor delivers, for consideration or free of charge, the claim to another person, called the transferee who becomes a creditor in his place, but, what is transmitted is the claim that is not to be confused with the enforceable title, and the latter can not be transferred by assignment of debt. Moreover, the provisions of art. 120 of Government Emergency Ordinance no. 199/2006, according to which credit agreements, including real or personal guarantee contracts, concluded by a credit institution are enforceable titles, are unambiguous and confer the character of enforceable title only to those contracts that are concluded by a credit institution.

[26] Articles 163 and 164 of the New Civil Code.

[27] Article 44, paragraphs 2 and 21 of Government Ordinance no. 92/2003. For par. 3 of the same article should also be taken into consideration the Decision no. 536 of 28 April 2011 on the objection of unconstitutionality of the provisions of Article 44 paragraph (3) of the Government Ordinance no.92 / 2003 on the Code of fiscal procedure.

[28] https://www.ftc.gov/news-events/press-releases/2013/07/worlds-largest-debt-collection-operation-settles-ftc-charges-will, consulted on 10.10.2018.

assignment under which the transferee only assumed the right to claim repayment of the loan from the debtor without the possibility that he could also enjoy the enforceable force of the bank loan agreement[29] and, as a consequence, the entire legal procedure for obtaining an enforceable title would have to be followed. As a result, notifying the debtor and respecting his rights with regard to the protection of his personal data is absolutely mandatory.

We can have two situations:

1. Expression of the agreement: a situation where the person undergoing the recovery process has agreed to the processing of his data by the recovery firm. In this case it applies the provisions of art. 6 par. 1 lit. a, b of GDPR. However, we believe that the appearance of the summons on the doors of the debtors can be done only for the acts of execution and then only if refusal is received. Otherwise, it constitutes a violation of the individual's right to both personal data processing and privacy. Moreover, it is forbidden to display data on the value of the credit/debt under the legitimate right of the debt collector and invoking art. 163 Cpc. Hereinafter, we believe that legitimate interest can no longer be invoked, under no circumstances, when discussing a prescribed credit.

We need to further discuss on the legitimacy set by the law. Thus, art. 6 par. 1 lit. f of Regulation (EU) No. 679/2016 (GDPR) takes over the text of art. 7 par. 1 lit. f of DIRECTIVE 95/46/EC[30]. Regarding these provisions, we consider that Opinion 06/April 9, 2014 on the notion of legitimate interest[31] formulated by the independent working group established at European Commission level[32], especially in this regard, should also be considered. The elaborated document analyzes the scope and use of this notion and it also includes a series of examples regarding the application of the notion in various situations and makes a series of recommendations. It should be noted that the provisions of point „f" should not be used for situations not specifically provided for in the legislation on the protection of personal data. They should also not be used predominantly because they set limits more relaxed or less restrictive than the other criteria set out in the other paragraphs of the above article. As a result, they should not be considered a legal basis to legitimize all processing of personal data that is not covered by other legal provisions[33].

It is necessary to clarify: the legitimate interest invoked by the personal data providers varies from the need to execute the contract, to the legitimate interest in ensuring the politeness of the conversation with a client (in the transactional or informational situations that it initiates), as well as to the legitimate

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[29] Civil decision no. 401/2013. Appeal to forced execution. Public meeting on 17 June 2013.

[30] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

[31] http://www.dataprotection.ro/servlet/ViewDocument?id=1086 (consulted on 10.10.2018). Opinion 06/2014 on the notion of legitimate interests of the data controller under Article 7 of Directive 95/46/EC.

[32] According to art. 29 of Directive 95/46/EC.

[33] *Idem*, p. 49.

interest to ensure the personalization of information products, the legitimate interest in ensuring customer loyalty or the legitimate interest in connecting customers. A notice displayed in this way should contain the name, surname and address of the summoned (home or residence) as well as other details of the summons procedure, but no other personal details or the value of the claim.

The correspondence between the credit recovery company and the debtor will also have to comply with the provisions of Art. 163 par. 3 of the CPS and will be made, in accordance with the AMCC Code of Conduct[34], in a sealed envelope without any notes or signs on the envelope, indicating that the letter refers to the debit of the consignee[35]. By extrapolating, however, it should be noted that the European Court of Human Rights (ECHR) has determined that mere display is not equivalent to disclosing to a party involved in a civil / criminal or enforcement process, a term or measure taken against him in the case of forced execution and has not received enforcement or has not been notified of the trial[36].

Talks should be conducted in a way that ensures the protection and non-disclosure of third party information about the debtor's payment obligations and personal data.

2. Lack of agreement: however, the question arises as to what happens when the debtor person concerned has entered into a credit agreement with a banking institution[37], in which case the processing of personal data may be applied without reservation of art. 6 par. 1 letter b) and the bank unit subsequently sold the claim to a recovery firm. From a legal point of view, Law no. 93/2009 on non-banking financial institutions is the one regulating the assignments, which are allowed by the mentioned normative act. At the same time, art. 2 par. (3) of that law allows, in the event that the divested credits are classified as loss, to be acquired by entities other than those carrying out professional lending activity. This is where the retreaders are also targeting. Furthermore, the law does not lay down specific requirements for the assignment. However, the claim collector must prove

[34] AMCC (Commercial Credit Management Association) was established in 2007 at the initiative of Coface, EOS KSI and Creditreform and currently has 17 members. AMCC is a full-fledged member of the European Federation of National Collectibles Associations, the supreme governing body of the profession at European level. Through AMCC, Romania became the 15th European country member of the FEC.

[35] http://amcc.ro/cod-de-conduita/, consulted on 10.10.2018.

[36] Judgment (ECHR) of 7 January 2014 in the Timar case and Others v. Romania (Applications No 26.856/06 and seven others) - M. Of. no. 577 of July 19, 2017: The applicants were quoted exclusively by displaying their domicile or headquarters and pointed out that they had not received the summons. Therefore, they did not get acquainted with the terms of court sessions and could not appear in court. Despite the applicants' absence from the proceedings, the national courts have in no way attempted to ensure that they were informed of the terms of the hearings and that they could participate in civil-rights proceedings, in particular by ordering the postponement sessions and repeating the communication procedure.

[37] Law no. 58 of March 5, 1998: Art. 1. - Banking activity in Romania is carried out through the National Bank of Romania and through banks. The law may authorize the conduct of banking activities and other legal entities, in compliance with the principles of this law. Art. 2. - The present law applies to banks, Romanian legal persons, constituted as commercial companies, as well as to branches in Romania of banks, foreign legal persons.

that it is registered for the purpose of carrying out banking activities. Otherwise, it has no right to behave as a banking institution or to charge the bank interest rates established by law.

However, if we look at this situation from the point of view of accessing and processing personal data, it applies the provisions of Regulation (EU) No. 679/2016. In the case of the divestment transaction, there is no agreement between the debtor and the new creditor to process his personal data. Moreover, regardless of whether or not a credit is declared to be non-performing before the assignment, we will have to deal with a change to the initial agreement who's parties were a bank/non-bank financial institution, on one hand, and a debtor, on the other.

As a result, any assignment changes the initial contract, so we should, in our opinion, only hand over the personal data to the recovery firm on the basis of its consent, as well as its further processing. Especially because, in relation to the bank, the individual has the quality of consumer, which brings with him a lot of legal provisions in order to protect his rights[38], as the National Bank of Romania (NBR) has also stated[39]. Thus, the NBR has pointed out that the National Authority for Consumer Protection (ANPC) is the institution that deals with consumer rights. In the case of mortgage loans, the NBR states that the provisions of Law no. 190/1999 regarding the mortgage loan for real estate investments, which has a special character in the matter. In this respect, Art. 24 paragraph 1[40] of the mentioned normative act specifies that mortgage receivables may be divested only to entities of the same type or authorized and regulated by special laws, whether or not they fall into the category of loss.

In the mentioned case (the transfer of the claim to a non-bank entity), a commercial company, other than the bank that granted the credit and not subject to regulations and banking supervision, is banked and becomes a creditor instead of the transferor. All rights of the bank are taken over. As the assignor who takes over the claim is not subject to the bank's specific regulations, it may unilaterally modify the terms of the contract, including interest and commissions. It can also change the way personal data is used. As a result, we consider that the processing of the personal data of the person concerned by the debt recovery process should only be done on the basis of an agreement/consent, provided that, according to the law[41], the assignment will be notified to the debtor.

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[38] http://www.paginadebanci.ro/recuperatorii-o-afacere-fara-lege-ii-apara-cineva-pe-datornici-de-abuzuri/, consulted on 10.10.2018.

[39] http://www.paginadebanci.ro/raspunsul-bnr-la-cesionarea-creditelor-de-catre-banci-in-strainatate/, consulted on 10.10.2018.

[40] Article 24 of Law no. 190/1999: (1) The mortgage and privileged claims according to art. 1737 of the Civil Code, which are part of the portfolio of a financial institution authorized by law, may be assigned to financial institutions authorized to act on the capital markets. (2) The assignment relates only to mortgage claims in the holding portfolio, which have common characters in respect of their nature, origin and risks.

[41] Art. 26 of the Law no. 190/1999 on the mortgage credit for real estate investments: The assignment of the mortgage receivables shall be notified, within 10 days after its execution, by registered letter, by the financial institution transferring the debtor to the debtor.

We maintain our view even if the transferee is a fully-owned company controlled by the lending institution/bank. This is because the commercial company, although it is owned by the transferring bank, is a totally different entity and as a personal data collector, the transferee is a third party that entered into the debtor-bank relationship. Moreover, if we extrapolate reasoning to the situation provided in art. 1 of Ordinance no. 13/2011[42] on the legal interest payable and penalizing for money obligations, as well as for the regulation of some financial and fiscal measures in the banking field, we can conclude that, according to the law, there must be a direct contractual relationship between the parties.

As a result, we consider that the provision in art. 1 of the Ordinance no. 13/2011 comes to reinforce the above mentioned, namely that the personal data of the data subject of the debt recovery process should be processed only on the basis of a consent/consent given to the new creditor. This will establish a direct relationship between the parties that is customer service provider/customer[43].

At the same time, according to art. 15 of the GDPR, the data subject has the right to obtain from the operator the rectification or deletion of personal data or the restriction of the processing of personal data related to himself, or he can oppose the processing. He also has the right to file a complaint with a supervisory authority.

4. Conclusions

Under the aforementioned code of conduct, debt collection companies are required to protect confidentiality and to ensure the technical and legal certainty of all information obtained from the contracting parties regarding the negotiation, execution and performance of contracts.

Moreover, companies should not use this information for purposes other than legal purposes, for which they have been provided or made available, shall not disclose or make them available to third parties, unless the disclosure is necessary to carry out collection activities within the limits allowed by law (authorities, law firms and legal advice, courts, bailiffs etc.).

Debt collection companies have the duty to protect the confidentiality and to ensure full protection of the debtors' personal data, both the data provided to them with regard to the transfer of claims and the data made available for the purpose of providing debt collection services, in accordance with the law. In this context, it is forbidden to disclose debit information and the evolution of debt

[42] Article 1: 1. The parties are free to set the interest rate in the conventions both for the repayment of a loan of a sum of money and for the delay in the payment of a monetary obligation.

[43] With regard to the above, it is worth mentioning the example of the transfer of credit agreements by OTP Bank Romania to OTP Nyrt in Hungary and then to OTP Financing Solutions BV in the Netherlands without any notification to the debtor. Furthermore, the latter company was not authorized to operate as a banking institution. A similar situation was recorded in the assignment of loans by BankPost SA to a Dutch entity, a limited liability company, not authorized to operate on the banking market. Each time the assignment was made without the consent of the debtors (http://contrabanci.com/wp-content/uploads/2018/04/2.jpg - consulted on 10.10.2018).

collection activities to unauthorized third parties, especially minor members of the debtor's family. If such a fact occurs, Art. 253 The Penal Code allows a natural person whose non-pecuniary rights have been violated or threatened to ask the court at any time:

a) forbidding the commission of the illicit deed, if it is imminent;
b) ending the violation and banning it for the future if it still lapses;
c) to ascertain the unlawfulness of the committed deed, if the disorder that it has sustained persists.

At the same time, art. 12 of the Law no. 190/2018 establishes corrective measures and sanctions, as follows: Violation of the provisions listed in art. 83 par. (4) to (6) of the General Data Protection Regulation is a contravention. Among the provisions of art. 83, are particularly interested, from the point of view of this work and of the receivers, of the provisions relating to the infringement:

(a) the basic principles for processing, including the conditions of consent, in accordance with Articles 5, 6, 7 and 9. Regarding the need for consent in the recovery process, we have talked extensively above.

(b) the rights[44] of the data subject in accordance with Articles 12 to 22;

(c) transfers of personal data to a recipient of a third country or an international organization in accordance with Articles 44 to 49;

(2) The main contravention sanctions are the warning and the fine for the contravention.

(3) Infringement of the provisions of art. 3-9 is a contravention and is sanctioned under the conditions stipulated in art. 83 par. (5)[45] of the General Data Protection Regulation.

(4) The finding of the contraventions provided by the present law and the application of the sanctions of contravention, as well as of the other corrective measures provided by art. Article 58 of the General Data Protection Regulation is made by the National Supervisory Authority.

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[44] Article 12 of the GDPR: Transparency of information, communications and ways of exercising the rights of the data subject. 1. The operator shall take appropriate measures to provide the data subject with any information referred to in Articles 13 and 14 and any communications under Articles 15 to 22 and 34 relating to processing, in a concise, transparent, intelligible and easily accessible manner, using a clear and simple language, especially for any information specifically addressed to a child. The information shall be provided in writing or by other means, including, where appropriate, electronically. At the request of the data subject, the information may be provided verbally, provided that the identity of the data subject is proven by other means.

[45] 5. For infringements of the following provisions, in accordance with paragraph 2, administrative fines of up to EUR 20 000 000 or, in the case of an undertaking, up to 4% of the total annual global turnover for the preceding financial year, taking into account the highest value: (a) the basic principles for processing, including the conditions of consent, in accordance with Articles 5, 6, 7 and 9; (b) the rights of the data subject in accordance with Articles 12 to 22; (c) transfers of personal data to a recipient of a third country or an international organization in accordance with Articles 44 to 49;(d) any obligations under national law adopted under Chapter IX; (e) failure to comply with a temporary or definitive order or limitation on the processing or suspension of data flows issued by the supervisory authority pursuant to Article 58 (2) or granting access in violation of Article 58 (1).

The main novelty that GDPR brings with regard to the protection of personal data in the debt recovery process is, in our view, represented by the principle of accountability. At present, personal data operators are required, on the one hand, to observe the principles established by the GDPR, but at the same time to demonstrate how their activities comply with the principles of personal data processing provided in Art. 5. At the same time, there are established rights and obligations for national or supranational authorities in terms of competence, regulation, supervision and sanction (if applicable). Last but not least, it brings rigor in the relations between these entities: the data subjects, the personal data operators and the regulators.

Bibliography

1. Federico Ferretti, *EU Competition Law, the Consumer Interest and Data Protection. The Exchange of Consumer Information in the Retail Financial Sector*, Springer, 2014.
2. General Data Protection and Related Legislation: Updated August 2018, Bucharest: C.H. Beck, 2018.
3. 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).
4. The Charter of Fundamental Rights of the European Union.
5. Treaty on the Functioning of the European Union.