

# Collaborating with collection service providers in Germany

## Impact of the new General Data Protection Regulation



Financial Solutions

**The new EU General Data Protection Regulation (EU GDPR) will be coming into effect on 25 May 2018. As a regulation, it does not require implementation into national law, and as such applies directly and with priority over all national laws. However, open clauses allow the Member States to fill loopholes with national laws. This is the basis for the new Federal Data Protection Act (BDSG), which shall also take effect on 25 May 2018.**

With the adoption of the EU General Data Protection Act, legislators aim to harmonise data processing throughout Europe. It applies to companies with branches in the EU and to companies that offer goods or services to natural persons domiciled or habitually resident in the EU. This means the EU GDPR will have a specific impact on the collaboration of companies with collection and debt service providers.

### **The assertion of claims explicitly regulated**

The good news is: Anyone who has already taken data protection seriously in the past will not need to make any major adjustments in the area of receivable management. The principles of data processing and the rights of data subjects were regulated in the old BDSG in a similar way. The data acquisition and transfer for the assertion of legal claims from outstanding receivables, the sale of accounts receivable and credit agency data delivery will still be very clearly allowed.

*The biggest impact on receivable management will be the extended obligations to disclose information - and this is where the greatest adjustments in communication will be required: Data subjects will in future have to actively and quickly be informed of collected data. The information must be easily understood and precisely formulated.*

### **Extended obligations to disclose**

The obligations concerning the information to be provided in accordance with Article 13 EU GDPR are greatly extended, which will in the future offer data subjects full transparency on the processing of their data. When collecting personal data relating to a natural person, companies must ensure that they actively inform them of this within one month. This includes, for example, the category, the purpose of the collection and the recipients of the data. Debtor data subjects, but also third parties (such as witnesses or parents of minors) must also be informed of their rights under the EU GDPR.



Overall, companies must adjust the communication process, particularly where this comprises various media and the data subject is contacted by letter, e-mail, telephone and SMS or online.

There are specific provisions for the timing of the information: Where data is collected from the data subject themselves, such as by telephone, they must be immediately informed of whether they are obliged to disclose their data and what the consequences are if they do not provide the data. Such consequences may include additional costs for an address inquiry. Collection service providers work on the individual process and communication steps in order to establish clarity and legal certainty for all parties.

### International transfer of data

Companies operating internationally who need to transfer data on outstanding receivables to non-EU countries or third countries can continue doing so without restriction.

*The assertion of legal claims abroad is also expressly allowed in the EU GDPR.*

### Documentation of the data processing is now an obligation

Full accountability is introduced in Article 5(2) GDPR. This means that companies will in the future have to document in detail whether and how they ensure that personal data is processed in compliance with data protection regulations. In particular, they must maintain a record of processing activities (Art. 30 GDPR), where these are described in general.

### Contractual amendments with service providers

In order to ensure that the collaboration with service providers meets the provisions of the EU GDPR, the data processing agreements will have to be amended by May. The new legal terminology will have to be taken into account and the contractual regulations will have to be adapted to the amended framework conditions.

#### Most important in brief:

- ✓ Collection and debt services in collaboration with collection companies are still allowed.
- ✓ The extended obligations to disclose information will require an adjustment to the entire communication chain: Data subjects will have to be informed immediately if the data is collected from them directly; otherwise within one month.
- ✓ The data processing must be documented in a record of processing activities.
- ✓ Companies operating internationally may transfer debtor data to third countries in order to assert legal claims.

### Contact:

Arvato Financial Solutions | Legal affairs and data protection  
dsgvo-info-ifm@arvato.com | finance.arvato.com  
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**arvato**  
BERTELSMANN