The Regulation of Collection Agencies – A Comparative Analysis of the Law of the United States of America and Germany

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ABSTRACT

The thesis analyzes and compares the sector-specific regulations applicable to private debt collection agencies in the United States of America (hereinafter: U.S.) and Germany. The key proposition the thesis aims to demonstrate is, first, based on the increased practice of debt collection agencies, for what and for whom it is important to have sector-specific regulations? Secondly, deriving from the legislation of the US and Germany, what measures can one country impose to create a regulatory framework under which abuses and overreaches of private debt collection agencies would be minimized. Finally, based on the juxtaposition of the two most developed jurisdictions' laws and practices, the thesis aims to list not only the key differences that exist between the two models but also the most egregious problematic issues that should be taken into account by such emerging regulatory systems as Georgia. The thesis departs from the point of view that proper regulation of the sector is in the interest of both sides.

Germany and U.S. – federal and state – regulations and cases are in the focus as two top regulatory models today, representing common law and civil law legal systems. The common thing between those two legislations is that they both regulate private debt collection agencies though not necessarily similarly. It is also crucial that both jurisdictions are not only aiming to protect the debtor's rights but also to generate fair competition between the agencies. While as far as Germany is concerned, the 2008 Act on '*Out-of-Court Legal Services'* ('*Rechstdienstlestungsgesetz'*–hereinafter: RDG) is at the center of observations, in the U.S. the federal *'Fair Debt Collection Practice Act'* (hereinafter: FDCPA), and the State-level mini-FDCPAs fulfill the role, which is the main legal body designed in order to eliminate abusive and unfair debt collection practices. The analysis of those two jurisdictions will serve the purpose to understand which criteria should be applied to eliminate abusive practices of private

debt collection. On the other hand, the available case law will provide information about whether those legislations can be used as flawless models or whether are there gaps, misunderstandings, or weaknesses that be taken into account by other countries, such as Georgia. Finally, case law will be mainly used to identify how the law is applied in practice.

1. INTRODUCTION

1.1. On the importance of regulated Private Debt Collection Agencies

Due to causes such as the 2008 financial crisis and the COVID-19 epidemic, private debt collection has become a big issue in most regions of the world. The 2008 financial crisis resulted in a high unemployment rate, which caused high consumer default rates as well. This enhanced the incentive for banks and credit card issuers to sell off delinquent accounts to third-party debt collectors. Following this, the pandemic occurred, during which time thousands of customers lost the jobs they had, resulting in a decline in income and, as a result, an inability to repay their obligations. All of these interconnected reasons have created a thriving and increasingly aggressive debt-collecting business.[1] As the private debt collection brings out the ugliness in people[2] and as the creditors want their loans repaid, problems arise. Hence, when the debt cannot be repaid, debt collectors start to use often inhuman methods, such as multiple phone calls, embarrassing emails [3], or showing up on the debtor's doorstep.[4]

For instance, the US private debt collector agency 'Davenport, IA (UPI),' consists of two businessmen, Kenneth Fitzpatrick, better known as Doc, and Maurice Holst – also known as Trammp. Dressed in leather jackets over Harley-Davidson T-shirts, they are going after the debtors in order to collect the unpaid loans. Despite not using violence or threatening language, people are still afraid of them. Perhaps due to the fact that they may look like 'Easy Riders'. One of the debtors confided that even nonetheless debt collectors doing nothing, they still

[1] Matthew R. Bremner, 'The Fair Debt Collection Practice Act: The Need for Reform in the Age of Financial Chaos' (2011) 76 Brook L Rev, 1554, 1555.
See also Cătălin Gabriel Stănescu, 'A Critical Assessment of the Need for Harmonization of the Legal Framework Concerning Abusive Informal Debt Collection Practices in the European Union, Is Harmonization Possible and How can it Best Be Attained?' (2021) Journal of Consumer Policy 531.
[2] Douglas J. Whaley, *Problems and Materials on Consumer Law* (9th edn, Aspen Publishers 2020) 785.
[3] *ibid.*
[4] Warren Westbrook, *The law of Debtors and Creditors* (Aspen Publishers 2009) 25.

scared the hell out of him. Similarly, to him, others also get petrified just by looking at them and the feeling of fear drove them into taking out another loan just to give money to Trammp and Doc. The debtor collectors admitted that their business, collecting bad checks, started with phone calls and sometimes ended with personal visits, which occurred a few times.[5]

However, as the debt collection agencies continue to function more and more frequently[6] as the need for the services of private debt collection agencies is steadily increasing. Although, the abusive practices also get harsher and harsher. US reports showed that other debt collectors were not as nice as Trammp and Doc. To be more specific, other agencies intentionally harassed debtors at work and threatened them not only by arrest but even with physical violence. [7] Therefore, private debt collection agencies need to be regulated to avoid excessive human rights violations in the debt collection process.

Furthermore, by implementing sector-specific rules, not solely debtors but also collection agencies will see improvements. To be more explicit, one can establish the licensing obligation through legislation, which will protect licensed debt collectors from competitive disadvantages arising from unknown organizations engaged in unfair practices.

1.2 The Jurisdictions Covered

Nowadays, German and U.S. regulations are in the focus as two top regulatory models and represent common law and civil law legal systems. The common thing between those two

[5] *ibid.*
[6] Available at <https://finance.yahoo.com/news/debt-collection-services-market-2022-113200100.html> accessed 15 June 2023.
[7] Matthew R. Bremner, 'The Fair Debt Collection Practice Act: The Need for Reform in the Age of Financial Chaos' (2011) 76 Brook L Rev. 1553.

legislations is that they both have sector-specific regulations regarding private debt collection agencies, however not necessarily similar.

As far as Germany is concerned, the RDG is regulating private debt collection tightly, mainly because it is deemed not exclusively as a financial service but rather as an out-of-court 'legal service'. However, German sector-specific regulation still has gone into turmoil. The abusive practice caused major concerns and the legislators were subsequently forced to revamp the Act and find appropriate measures on how to react.[8]

The U.S. regulates private debt collection practices on the federal and state levels. While the FDCPA is a *de minimis* rule, mini-FDCPAs aim to offer debtors more protection; therefore, most of them include the licensing requirement. [9] Hence, both are designed to punish and disincentivize abusive and unfair debt collection practices while providing different degrees of protection.

After several government agencies gathered data demonstrating credit collection abuses in the 1970s, Congress enacted 'The Fair Debt Collection Practices Act'. The statute reflects a significant attempt to address debt collection challenges and ban the industry's most abusive practices without excessively restricting the rights of "ethical debt collectors." Hence, Congress designed the FDCPA with the intention to protect the debtors from abusive practices, while allowing ethical debt collectors to function in a fair marketplace.[10]

[8] David Markworth, 'Debt collection services in Germany' in Cătălin Gabriel Stănescu (ed), *Regulation of Debt Collection in Europe* (1st edn, Routledge 2022) 81.
[9] Cătălin Gabriel Stănescu, *Self-Help, Private Debt Collection and the Concomitant Risks. A comparative Analysis* (Springer Law 2015) 218.
[10] Warren, Westbrook, 'The law of Debtors and Creditors' (2009) Aspen Publishers, p.14
See also Matthew R. Bremner, 'The Fair Debt Collection Practice Act: The Need for Reform in the Age of Financial Chaos' (2011) 76 Brook L Rev 1553, 1557, 1558.

Therefore, the analysis of civil and common law systems will serve the purpose to identify the possible best measures to eliminate private debt collection agencies' abusive practices and to determine whether there are egregious problematic issues that should be taken into consideration by emerging regulatory systems.

1.3 Research and Methodology Issues

One of the methodologies used in the thesis will be deep research of the regulations in order to examine the legal environment in which the collection agencies are operating in the US and Germany. Since the law does not exist in a void disconnected from real life, a thorough examination will also apply to case law to ascertain whether the regulations are functioning flawlessly or whether there are still some imperfections. Therefore, the thesis will be based on normative and statutory analysis. Furthermore, the comparative approach is included because the thesis compares the law and practice in the chosen jurisdictions of the United States and Germany. Finally, in spite of the fact that the area is not relatively new and has been explored to some extent (more in the US compared to Germany), still, the literature relevant to German legislation is difficult to obtain in English. Therefore, it will have an influence on using the somewhat unorthodox literature in the thesis.

1.4 The Roadmap to the Thesis

The topics discussed in the thesis are selected on the basis of what is problematic in practice and therefore needs to be regulated by the legislation. Hence, the first chapter will tackle the definition of a private debt collection agency. The second one will go over the list of prohibited practices, and the third will go through the licensing requirement set for private debt collection agencies. All three chapters will contain the US and German legislation. During discussing the US legislation, we will discuss the FDCPA and the mini-FDCPAs as they create the legislative

framework concerning private debt collection agencies. As for Germany, the main legal source will be the 2008 Act on 'Out-of-Court Legal Services'. In addition to the two legislations, each chapter will contain the case law in order to examine the practical efficiency of the stated acts. Finally, the thesis will provide a thorough conclusion and the lessons that should be taken into account by such emerging regulatory systems as Georgia.

2. THE DEFINITION OF THE 'DEBT COLLECTION AGENCY'

A creditor who has faced a debtor's default has numerous options for collecting the debt: collecting it personally, hiring a specialized debt collection agency or law firm, or selling or assigning the debt to a third party. [11] As a result, there might be several subjects who can be involved in debt collection. Additionally, it is noteworthy that debt collection is a generic term that may encompass various activities and services aimed at making the debtor pay. Hence, the stronger companies enter the market, the different tactics they use and as a result, the types of services offered by the private debt collector are expanding[12]. Due to all these reasons, it is vital to address who can be classified as a private debt collection agency under U.S. and German regulations. Last but not least, the definition will be crucial in the process of applying all the administrative control or other requirements that create different layers of protection for the subjects engaged in private debt collection activities.

2.1 U.S. Legislation

The FDCPA defines a debt collector as:

'Any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. […] [T]he term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. […]

[11] Cătălin Gabriel Stănescu, *Self-Help, Private Debt Collection and the Concomitant Risks. A comparative Analysis* (Springer Law 2015) 192.
[12] Tibor Tajti, 'A holistic approach to extra-judicial enforcement and private debt collection: A comparative account of trends, empirical evidences, and the connected regulatory challenges' (2019) Pravni Zapisi 287.

Such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests.' [13]

Therefore, the FDCPA sets a benchmark definition of private debt collectors, which includes two categories of collectors. The first consists of the ones whose principal purpose of business is the collection of any debts. The second category includes those who only on a regular bases attempt to collect debts.[14] Consequently, according to the FDCPA, a debt collector typically includes a third-party agency with a predominant and regular scope of business of collecting debts, or its agents/employees who engage mainly and on a regular basis in debt collection, regardless of whether the actual collection occurs outside or inside the United States.[15] In regards to this definition, an increasing number of private debt collectors and their evolving collection practices have revealed a significant loophole. Specifically, when private debt collectors purchase debts and become creditors themselves, they are able to exploit this loophole by misapplication of the term 'creditor'. This way, they are able to create confusion and avoid the liabilities that derive from the FDCPA.[16]

This loophole has led to different approaches to addressing the issue, that derive mostly from case law. One such approach is the 'Mutually Exclusive' approach, which states that an entity can only be either creditor or a private debt collector, as those two are considered mutually exclusive. [17] According to this approach, if not the only one, the primary criterion for determining whether an entity is a creditor or debt collector, lies in the characteristics of the

[13] 15 U.S.C. §1692a.
[14] Shep Russel 'Fair Debt Collection Practices Act: New Protection for Consumers' (1978-1979), Ark.L.Rev 32, 509.
[15] Cătălin Gabriel Stănescu, *Self-Help, Private Debt Collection and the Concomitant Risks. A comparative Analysis* (Springer Law 2015) 192.
See more Ian Liberty, 'From Debt Collection to Debt Slavery' (2014) 15 Rutgers Race & L Rev 281, 294
[16] Young Walgenkim, 'Killing "Zombie Debt" through Clarity and Consistency in the Fair Debt Collection Practices Act' (2011) 24 Loy.Consumer L. Rev. 65 73.
[17] *Schlosser v. Fairbanks Capital Corp.*, 323 F.3d 534 (7th Cir. 2003)
See also Jolina Cuaresma, Katherine Lamberth & Brent Yarborough, 'Do You Think Banks Are Debt Collectors? The CFPB and the FTC Do' (2016) Bus L Today 1, 2.

debt itself.[18] Hence, it is important to establish whether the debt was in default at the time of purchase or not. If the debt was in default, the entity is presumed to be a debt collector, and vice versa. Importantly, the 'Mutually Exclusive' puts such a strong emphasis on whether the debt is default or not, that it does not apply nor 'principal purpose' or 'regularly collects' tests. [19]

The second approach, known as 'The Other Approach'[20], goes against the previous one by proposing the idea that creditor and debt collector are not mutually exclusive. According to 'The Other Approach', an entity can be regarded as a private debt collector if it satisfies any of the following tests: 'principal purpose', 'regularly collects', or 'false name'.[21]

According to this approach, in order to determine whether an entity is a debt collector does not depend on the default status of the debt or whether the entity is a third party, but rather on whether the collection of debts is the either predominant or regular scope of business of collecting debts. Therefore, unlike the 'Mutually Exclusive' approach, this viewpoint does not rely solely on the debt's default status.[22] For instance, in the case of *Davidson v. Capital One Bank,* [23] the Eleventh Circuit ruled that the FDCPA should not be interpreted in a way that would allow identification of the entities as debt collectors merely because the debt they seek to collect was in default at the time of acquisition. [24]

Consequently, due to the aforementioned loophole, various approaches and interpretations have emerged within the legal system. This has resulted in different judgments and therefore

[18] Jolina Cuaresma, Katherine Lamberth & Brent Yarborough, 'Do You Think Banks Are Debt Collectors? The CFPB and the FTC Do' (2016) Bus L Today 1, 2.
[19] *Ibid.*
[20] *Ibid.*
[21] *Ibid*.
[22] *Ibid.*
[23] *Davidson v. Capital One Bank (Usa), N.A.*, 1:13-cv-2307-WSD-ECS (N.D. Ga. Feb. 27, 2014).
See also Jolina Cuaresma, Katherine Lamberth & Brent Yarborough, 'Do You Think Banks Are Debt Collectors? The CFPB and the FTC Do' (2016) Bus L Today 1, 3.
[24] See also Carmen H. Thomas, Graham R. Billings & Donna O. Tillis, 'Defining Debt Collector under the FDCPA: The Eleventh and Fourth Circuits Reject the Acquired-in-Default Test' (2017) 72 Bus Law 487

confusion regarding identifying whether a creditor can be a debt collector. [25] It is also noteworthy that the loophole became apparent after debt collectors employed new strategies to collect the debts and circumvent the FDCPA at the same time. However, it must be mentioned that many of the existing mini-FDCPAs include the original creditors within the 'debt collection agency' definition. [26] Therefore, we can assume that suggesting that one can be both, a creditor and debt collector, will provide more protection.

In the process of identifying the debt collectors, the FDCPA also establishes who is not to be considered as one even if his activity involves the collection of debts. These legal exceptions set clear limits for the application of the Act. Public personnel collecting state debt or taxes are not considered debt collectors, nor are those who serve debtors with debt-related paperwork. Private individuals and NGOs providing collecting services are also excluded. The last clause excludes those collecting debts that have not yet been defaulted and those collecting secured commercial debts.[27]

2.1.1 Attorneys as private debt collectors

Initially, attorneys were also excluded from the definition of "debt collectors." However, Congress repealed the attorney exception in 1986. The legislative history of the amendment indicates that collection attorneys were not being successfully policed by the legal profession

[25] See also Antonia Edwards, 'Banks that Collect Debt on their Own Account are not Debt Collectors under the FDCPA', (2017) 10 St. John's Bankr.Research Libr. No.9
Henry C. Kevane, 'Does the FDCPA Cover a Party That Purchases Defaulted Debt for Its Own Account: Henson v. Santander Consumer USA, Inc.' (17) 44 Preview US Sup Ct Cas 218
[26] Cătălin Gabriel Stănescu, *Self-Help, Private Debt Collection and the Concomitant Risks. A comparative Analysis* (Springer Law 2015) 192.
[27] ibid.

and courts and that the exemption needed to be removed in order to 'stop the vicious and harassing strategies of attorney debt collectors.'[28]

The U.S. Supreme Court in *Heintz v. Jenkins* stated two reasons for believing that the Act applies to the litigation activities of lawyers. [29]

The first reason is based on the definition that is provided in the FDCPA. The Act defines the 'debt collectors' to whom it applies, including those who 'regularly collect or attempt to collect, directly or indirectly.' [30] In ordinary English, a lawyer who through legal proceedings, regularly tries to obtain payment of consumer debts is a lawyer who regularly 'attempts' to 'collect' those consumer debts. [31]

According to the second reasoning, congress enacted FDCPA's earlier version, which contained an express exemption for lawyers. The exemption clearly stated that the term 'debt collector' did not include 'any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client.' Nevertheless, Congress repealed this exemption without creating a narrower exemption to fill the void. Therefore, one would think that Congress intended that lawyers be subject to the Act whenever they meet the general definition of the 'debt collector.' The court agreed with the Seventh Circuit that the Act applies to attorneys who 'regularly' engage in consumer debt collection activities even when it does not involve litigation.[32]

[28] Heintz v. Jenkins, 514 U.S. 291 (1995).
See also Randolph o. Bragg, Daniel A. Edelman, 'Fair Debt Collection – The need for private enforcement' (1995) Loy, Consumer L. Rep. 7.
[29] Lawrence P. King, Michael L. Cook, *'Creditors' Rights, Debtors' Protection and Bankruptcy'* (3rd ed, M. Bender 1996) 36-40.
[30] ibid
[31] See, e.g., Black's Law Dictionary (6th ed. 1990 «To collect a debt or claim is to obtain payment or liquidation of it, either by personal solicitation or legal proceedings.") 263.
[32] Heintz v. Jenkins, 514 U.S. 291 (1995).
See also Lawrence P. King, Michael L. Cook, *'Creditors' Rights, Debtors' Protection and Bankruptcy'* (3rd ed, M. Bender 1996) 36-40.

2.2 German Legislation

Germany may have one of the most rigorous debt collection regulations in the world, if not the harshest. The rigid regulation seems reasonable since the activity is seen as an out-of-court 'legal service,' approximately between what attorneys do and daily legal counseling. [33] However, unlike the FDCPA, RDG does not have an explicit article defining the collecting agency. The Act merely contains clauses that allow us to deduce that a debt collection agency might be either a natural or legal person or a company without legal personality. However, the RDG establishes one more significant requirement: registration with the authorities.[34]

Under German law, defining and providing a list of who is entitled to and ought not to be a private debt collector is less significant than setting the requirements that one must follow, such as an obligatory license to operate. As a result, we may conclude that RDG concentrates on debt collection registration and debt collecting practice instead of developing a distinct private debt collection agency's definition. This is similar to the FDCPA in the sense that it also explicitly says any person can be a private debt collector if they engage in the activities outlined in the Act.

When it comes to 'debt collection practice', RDG defines it as 'the collection of third-party claims or claims assigned for the purpose of collection for the account of a third party'. [35] Therefore, the German Act also sets out the activities that one has to conduct which are, collecting third-party claims, or claims assigned for the purpose of collection for the account of a third party. Hence, one can assume that the abovementioned loophole exists even in German legislation. Specifically, RDG's provisions will not be applicable to the private debt collector that start to buy the debts in order to become creditors. Presumably, the German

[33] David Markworth, 'Debt collection services in Germany' in Cătălin Gabriel Stănescu (ed), *Regulation of Debt Collection in Europe* (1st edn, Routledge 2022) 67.
[34] Out-of-Court Legal Services Act [2007] Art 10 para 2.
[35] Out-of-Court Legal Services Act [2007] Art 2 para 2.

private debt collectors by buying the debts also have the chance to avoid all the obligations that are outlined by the RDG.

2.2.1. Attorneys as private debt collectors

According to the German *'Federal Lawyers'* (Bundesrechtsanwaltsordnung - BRAO) Act,[36] lawyers are appointed independent advisors and representatives in all legal matters.[37] In addition, they also have the right to appear before courts, arbitral tribunals, or authorities in legal matters of any kind.[38] Apart from these, it is indisputable, unlike the U.S., that attorneys have the capacity to engage in various debt collection services.[39] As a result, under German law, attorneys are inherently presumed to also function as debt collectors.

While U.S. legislation faces the problem of whether attorneys still should be excluded from the definition of debt collectors or not, German legislators decided to identify attorneys as debt collectors. However, they still face some problems. The issue surrounding attorneys and private debt collectors arises from the challenge to distinguish between the two. To be more specific, in recent times, private debt collectors' rights have been growing. For instance, the German Federal Court of Justice (Bundesgerichtshof – BGH) [40] stated that the debt collection companies must first strive for extrajudicial collection and only if this fails, then they can proceed to legal enforcement with the involvement of a lawyer. Hence, it is no more questionable that registered private debt collection service providers not only can offer

[36] Federal Code for Lawyers Art 3.
Available at <https://www.gesetze-im-internet.de/englisch_brao/englisch_brao.html> accessed 15 June 2023.
[37] Federal Code for Lawyers Art 3 para 1.
[38] Federal Code for Lawyers Art 3 para 2.
[39] David Markworth, 'Debt collection services in Germany' in Cătălin Gabriel Stănescu (ed), *Regulation of Debt Collection in Europe* (1st edn, Routledge 2022) 67.
[40] BGH, judgment of July 13, 2021 – II ZR 84/20
available at <https://openjur.de/u/2363030.html> accessed 15 June 2023.

extrajudicial service but also may assert assigned claims in their own name for the account of others by being represented by a lawyer.

Therefore, there might be a problem with the inappropriate regulations. The attorneys are able to compete in the debt collection market, while private debt collectors are also becoming eligible to seek legal enforcement with the involvement of a lawyer.[41] However, the regulations applicable to them are not the same. Attorneys are subject to stricter regulation due to their professional status and the obligations that derive from their legal profession. [42] For instance, debt collectors have minimal restrictions when it comes to their fee arrangements, including the ability to negotiate contingency fees. The policymakers tried to regulate and balance this disparity by allowing lawyers to negotiate contingency fees. However, with the limit, the debt amount must be below 2.000 Euros.[43] Despite this, it is still visible that the boundaries between lawyers and debt collector are becoming blurrier and blurrier, while the regulations applicable to them is still disproportionate. Hence, as these two exist in the same market it can badly impact the dynamics of it.

[41] ibid.
[42] David Markworth, 'Debt collection services in Germany' in Cătălin Gabriel Stănescu (ed), *Regulation of Debt Collection in Europe* (1st edn, Routledge 2022) 68, 69.
[43] ibid.

3. LIST OF PROHIBITED PRACTICES

The list of prohibited practices can be found in the FDCPA, while it is not present in the RDG. Consequently, it can be assumed that unlike the FDCPA, which targets specific practices [44] in addition to providing some other additional layers of protection such as administrative enforcement,[45] the RDG aims to safeguard consumers by preventing unqualified or unsuitable individuals from entering the legal services market related to private debt collection. [46] Hence, German legislation mainly focuses on the administrative aspects of the debt collection industry, such as licensing[47], which will be discussed in the next chapter.

3.1. U.S. Legislation

The FDCPA outlines prohibited practices and categorizes them into three main groups: harassing or abusive practices, false or misleading representations, and unfair practices.[48] While the provision provides a list of specific violations, it also has the nature of an open-ended provision, indicating that its application is not limited to the examples provided but extends to a broader scope.[49]

Harassing or abusive practices also include the 'placement of telephone calls without meaningful disclosure of the caller's identity.'[50] Case law demonstrates that in determining whether the caller has provided significant information for identification purposes, the focus

[44] 15 U.S.C. § 1692d, §1692e, §1692f.
[45] 15 U.S.C. §1692l.
[46] Out-of-Court Legal Services Act [2007] Art 12, Art 13a, Art 13b.
See also Tibor Tajti, 'A holistic approach to extra-judicial enforcement and private debt collection: A comparative account of trends, empirical evidences, and the connected regulatory challenges' (2019) Pravni Zapisi 303.
See also Cătălin Gabriel Stănescu, 'Factoring, Bad Debt and Collection Agencies. In Self-Help, Private Debt Collection and the Concomitant Risks' (2015 Springer) 197.
[47] Out-of-Court Legal Services Act [2007] Art 10.
[48] 15 U.S.C. §1692d, §1692e, §1692f.
[49] 15 U.S.C. §1692d.
[50] ibid.

within the legal framework of FDCPA is shifting from the specific words used to the manner in which those words were conveyed. [51]

As an illustration, in the first case, *Biggs v. Credit Collections, Inc*[52]., the court determined that the absence of disclosing the information, related to the caller's identification as a debt collector did not constitute a violation of the FDCPA. The court's decision was based on the fact that the message in question was not mentioning any explicit information concerning the debt. Therefore, the court decided to not address the FDCPA's requirement regarding the necessity of a 'meaningful disclosure'. [53]

In the second case, *Costa v. National Action Financial Services,*[54] the court examined the message which was left for Jessica Costa. In the message, after the caller introduced herself as 'Elizabeth", and referenced having received a phone call which was intended for Jessica, therefore Elizabeth was asking her to call back. In this case, while recognizing that district courts in California have been applying various definitions to the term 'meaningful disclosure,' the court in Costa adopted the definition, that was established in '*Hossãnzadeh v. M.R.S. Associates, Inc'* case. The specified definition asserts that 'meaningful disclosure' entails that 'the caller states his or her name and capacity, and discloses enough information so as not to mislead the recipient as to the purpose of the call.' Hence, the court decided that Costa failed to meet the requirements which were set out in the 'Elizabeth' test.[55]

[51] Bruce Menkes, Anna-Katrina S. Christakis, 'Fair Debt Collections Update: Communications and Other Issues' (2009) The Business Lawyer 64 (2) 667.
[52] *Biggs v. Credit Collections, Inc.*, Case No. CIV-07-0053-F (W.D. Okla. Nov. 15, 2007).
[53] Bruce Menkes, Anna-Katrina S. Christakis, 'Fair Debt Collections Update: Communications and Other Issues' (2009) The Business Lawyer 64 (2) 666.
[54] *Costa v. National Action Financial Services*, NO. CIV. S-05-2084 FCD/KJM (E.D. Cal. Apr. 30, 2008).
[55] Bruce Menkes, Anna-Katrina S. Christakis, 'Fair Debt Collections Update: Communications and Other Issues' (2009) The Business Lawyer 64 (2) 666.

The third case[56], a more recent one, involves a plaintiff's motion for summary judgment on a similar claim. In this case, during the message, the private debt collector identified itself as a 'Global Acceptance Credit Company' and then proceeded to request the plaintiff to contact them. The message was also providing a toll-free number for the contact. The court, in its decision, concluded that the private debt collectors company name, along with the prior communications and totality of the circumstances, would reasonably suggest that a consumer would have knowledge about the nature and identity of the message. [57]

In the matter of false or misleading representations provision, it incorporates several prohibited practices. These contain the prohibition of threats to take any action that is not legal or intended. It also forbids false representation or implication that nonpayment of any debt will result in the arrest. Additionally, it prohibits distributing written communications that are designed to mimic or to falsely represent documents that are authorized, issued, or approved by any court, official, or agency of the U.S. or any state. The prohibition also applies when the appearance or wording of such documentation would create a false impression regarding the source, or approval of the document. [58]

West v. Costen [59] is a case that illustrates how those different prohibited activities can be conducted by collection agents. The plaintiffs, who are all natural persons, brought a class action. They were alleging that several debt collector agents, Multi-Service Factors, Inc (MSF),

[56] *Reed v. Global Acceptance Credit Co.*, 2008 WL 3330165 (N.D. Cal. Aug. 12, 2008).
[57] Bruce Menkes, Anna-Katrina S. Christakis, 'Fair Debt Collections Update: Communications and Other Issues' (2009) The Business Lawyer 64 (2) 667.
[58] 15 U.S.C. §1692e.
[59] *West v. Costen*, 826 F.2d 1376 (4th Cir. 1987).

and C. Costen violated the FDCPA.[60] Costen was a president of the MSF, the corporation that was paying the other defendants, collection agents, on a commission basis.

According to the facts of the case, different collection agents were using the same prohibited methods. To be more specific, private debt collectors were sending the payment demand notice which included the notation 'criminal warrant pending'. This was accompanied by home visits or phone calls, with the aim to threaten the debtors and make them repay the debts. Once, the private debt collector threatened not the debtor but the grandmother of the debtor, that in case of not repay the debt, the consumer would end up in jail. [61] Hence, private debt collectors were using all the tactics to threaten the debtors with criminal sanctions in order to make them repay all the debts, even though they had no legal basis for using criminal sanctions.

Based on the court's judgment, it can be understood that holding private debt collectors liable for making threats depends on certain criteria. [62] If a debt collector threatens a debtor by issuing a warrant of arrest in case of non-repayment, it would be violating the FDCPA. This is because the debt collector is making a threat that they are not legally allowed to carry out.[63]

On the other hand, if the debt collector threatens the consumer with the possibility of creditors using criminal sanctions against them, the threat has a legal basis. Therefore, the threat might be justified. However, in this case, it is important to consider the criterion of "intended to be taken" as well.[64] In other words, if the debt collector threatens the consumer with creditors issuing the arrest warrant, while creditors do not intend to do, it would still be a violation of

[60] Lawrence P. King, Michael L. Cook, *'Creditors' Rights, Debtors' Protection and Bankruptcy'* (3rd ed, M. Bender 1996) 8.
[61] *West v. Costen*, 826 F.2d 1376 (4th Cir. 1987).
[62] *ibid*.
[63] 15 U.S.C. §1692e.
See more *West v. Costen*, 826 F.2d 1376 (4th Cir. 1987).
[64] 15 U.S.C. §1692e.

the FDCPA.[65] Additionally, it is crucial for consumers to have gathered the evidence that would support and establish that the private debt collectors were acting in violation of the Act.[66]

In regard to prohibiting false or misleading representation, it appears that FDCPA has the capability to address zombie-debt concerns. [67] Since, zombie debt by its definition is 'a debt that you think is dead, gone, and forgotten, but has somehow come back to life.' [68] Hence, the debt that is typically considered unenforceable is revived by aggressive collectors. More specifically, collectors purchase previously paid or settled debts, debts that have been discharged through bankruptcy, debts for which the statutory period of collection has expired, or debts that do not belong to the alleged debtor (due to mistaken identity).[69] Despite FDCPA's good intentions and prohibiting debt collectors from falsely representing the 'character, amount, or legal status of any debt'[70], private debt collector agencies still go after the zombie debts and resurrect them.[71] Therefore, zombie debts might be indicating that FDCPA has some flaws with respect to regulating it. This can be due to several reasons: debt collection agencies not having enough information[72] and debt buyers acting as debt collector agencies not identifiable according to the FDCPA.[73]

Firstly, most zombie debts arise after debt buyer agencies' acquisition. The debt buyers purchase the debts based on insufficient or inaccurate information provided by the sellers. Therefore, the debt buyers usually receive only summary data.[74] As the limited information can

[65] *West v. Costen*, 826 F.2d 1376 (4th Cir. 1987).
[66] *Ibid.*
[67] Neil L. Sobol, 'Protecting Consumers from Zombie-Debt Collectors' (2014) 44 NM L Rev 327, 364.
[68] Fall River Law Library, 'What Is Zombie Debt' (11 April 2015) <https://www.mass.gov/news/what-is-zombie-debt> accessed 15 June 2023.
[69] ibid.
See also Neil L. Sobol, 'Protecting Consumers from Zombie-Debt Collectors' (2014) 44 NM L Rev 327, 330.
[70] 15 U.S.C. §1692e.
[71] Neil L. Sobol, 'Protecting Consumers from Zombie-Debt Collectors' (2014) 44 NM L Rev 327, 331.
[72] ibid.
[73] See generally Young Walgenkim, 'Killing "Zombie Debt" through Clarity and Consistency in the Fair Debt Collection Practices Act' (2011) 24 Loy.Consumer L. Rev. 65.
[74] Neil L. Sobol, 'Protecting Consumers from Zombie-Debt Collectors' (2014) 44 NM L Rev 327, 331.

be inaccurate, the debt collection agencies that go after the debtor often make mistakes. For instance, they contact the wrong person and ask them to pay the owed money. The 'asking to pay money' means phone calls and disturbing the wrong person.[75]

The second reason is based on the argument that debt buyers might not be identified as debt collector agencies as they are collecting the debts for their own good, instead of a third party. The debt buyers in some cases co-operate with private debt collector agencies in order to collect all the debts. However, there might be cases when they decided to collect all the debts they purchased by themselves.[76] In this case, as there exist different approaches to whether debt buyers should or should not be identified as debt collector agencies, the debt buyers might seize the chance and try to avoid the FDCPA's obligations, such as the prohibition of false representation. [77]

Consequently, FDCPA's prohibition of false or misleading representation is not always effective in regard to debtors' protection. Additionally, zombie debt evidently showcases how all the provisions of the Act are blocks, building the legal frame. Hence, the loophole in the definition can create greater issues later.

3.2. German Legislation

According to German legislation, except for the license requirement, in the absence provision with a list of prohibited practices, there are other effective strategies to protect debtors from abusive debt collection practices. Such as setting strict limitations on the fees charged for debt

[75] Ibid., 339-341.
[76] See generally Young Walgenkim, 'Killing "Zombie Debt" through Clarity and Consistency in the Fair Debt Collection Practices Act' (2011) 24 Loy.Consumer L. Rev. 65.
[77] Ibid.

collection that can be imposed on debtors and the extensive information obligations. However, the latter one may seem more fitting when it comes to the protection of consumer creditors. [78]

German regulation of debt collection services includes measures to set strict limits on the fees charged for debt collection that can be imposed on debtors. [79] The provisions relating to collection fees, which can be passed on from creditor to debtor, have been expanding over time. Due to the legislator recognizing that private debt collection costs are usually too high compared to the efforts that collection agents put into the process. Additionally, it was deemed unsatisfactory that some debtors had to pay these costs even when they were fully willing to repay the debt. Furthermore, in the past times, debtors had to face collection costs that exceeded the amount they owed, and if they agreed to installment payments, they risked never fully recovering. [80]

Therefore, the legislators came up with two general rules regarding passing on debt collection fees. Firstly, the claimant–creditor is not entitled to pass on the fee if their claim does not exist. Secondly, for passing on the debt collection costs, claimants need to demonstrate that damages on their part exist. Theoretically, the second rule serves in order to stop claiming higher costs as it is regarded as a fraud. Furthermore, if a debt is outstanding but the debtor is not in default, consumers are only required to pay the outstanding debt, without costs associated with the debt collector. Due to the belief that, firstly, the creditor has to attempt to collect the debt and only if they fail to get the debt back, then they can use the help of the private debt collector and ask for the reimbursement of its cost.[81]

[78] David Markworth, 'Debt collection services in Germany' in Cătălin Gabriel Stănescu (ed), *Regulation of Debt Collection in Europe* (1st edn, Routledge 2022) 81.
[79] Ibid., 76.
[80] Ibid., 76, 77.
[81] ibid.

In Germany, there is also Legal Services Register that allows anyone to inspect private debt collection agencies, free of charge. [82] The register provides information to consumers of legal services, persons providing legal services, public agencies, and the general public regarding legal relationships. In the case of licensed debt collectors, the register contains information such as their family and first name, company name (including the legal representatives and the court of registration), registry number, year of establishment of the debt collection service, business address (including branch offices), and the names of qualified persons designated under the law.[83] The register also makes publicly accessible the specific content and scope of the authorization to provide legal services, including any requirements imposed. [84] With the debt collector's consent, their telephone number and email address may also be included in the register. In addition, the register provides information about licensed debt collectors who have been temporarily banned from providing their services for a period of up to five years. [85]

The building block of Germany's information model for debt collection services includes information requirements that licensed debt collectors must fulfill toward both debtors and creditors. In recent years, the legislators have been focusing on improving the transparency of claims asserted by debt collectors. The goal has been to ensure that debtors have sufficient information about the claims being made against them. Amendments to the obligations for presenting and providing information were introduced in 2013 and have been further amended recently to address ongoing concerns about transparency[86]. Debt collectors must now provide clear and comprehensible information when asserting a claim against a natural person who is

[82] Out-of-Court Legal Services Act [2007] Art 16 para 1.
[83] Out-of-Court Legal Services Act [2007] Art 16.
[84] ibid.
[85] ibid.
[86] David Markworth, 'Debt collection services in Germany' in Cătălin Gabriel Stănescu (ed), *Regulation of Debt Collection in Europe* (1st edn, Routledge 2022) 74, 75.

not engaged in commercial or independent professional activity. This information includes the client's name, address (unless disclosure would prejudice overriding protected interests), the basis of the claim, contact details (if applicable), interest calculations, details of any additional costs, information on value-added tax, disclosure of how the debtor's address was obtained, and contact details of the supervisory authority responsible for the debt collector. In certain circumstances, additional information must be provided, such as in cases involving deferral or installment agreements or an acknowledgment of the debt.

These new information requirements aim to reduce cases in which debt collectors threaten or intimidate debtors while still allowing collectors to demonstrate the seriousness of the debtor's situation. Some additional pieces of information may only need to be provided upon request by a private individual.

4. LICENSING REQUIREMENT

The additional layer of shield that both, German and U.S. legislation are providing is the license requirement. However, in the U.S. the license is required on a state level, by the mini-FDCPAs, while in Germany it is a requirement set out in the RDG[87].

4.1. U.S. Legislation

As we have mentioned beforehand, FDCPA is the federal regulation that sets the benchmark for regulation of regulating private debt collection agencies. As the license requirement is assumed to be an additional regulatory tool, it is regulated by the mini-FDCPAs as well. Hence, the majority of the states decided to enact licensing laws. The states that do not license private debt collection agencies include Delaware, Missouri, Alabama and etc. [88]

4.1.1. New York City

One notable case among states that do not require a license to operate debt collection agencies is New York. While the state itself is not in need of licensing, its largest cities, such as New York City and Buffalo, have implemented their own requirements for private debt collection agencies to register and obtain a license, in order to operate within the city.[89] According to regulations in New York City, businesses whose primary purpose involves regular debt collection, including attorneys and law firms, are subject to licensing[90]. It is also noteworthy that even though a debt collector might be registered in another state where the license is not

[87] Out-of-Court Legal Services Act [2007] Art 10.
[88] Available at <https://www.collectionlicenses.com/all-collection-licensing-states/ > accessed 15 June 2023.
[89] Available at <https://www.jdsupra.com/legalnews/collection-agency-licensing-and-7611051/> accessed 15 June 2023.
[90]<https://www.nyc.gov/site/dca/businesses/license-checklist-debt-collection-agency.page#requirements> accessed 15 June 2023.

required, it still needs to acquire one in order to go after the debtor who is presiding in New York City.[91]

When applying for registration, private debt collectors in New York City are required to provide various pieces of information. This includes general details about the business, information confirming its compliance with consumer data privacy regulations, and disclosure of any information regarding license revocation, denial, or suspension.[92]

The Department of Consumer Affairs is the state authority responsible for issuing debt collection licenses. They are also in charge of assisting consumers in verifying whether a collection agency possesses a valid license and ensuring that debtors have the ability to file complaints. The department plays a crucial role in overseeing the debt collection industry and safeguarding consumer interests in New York.

4.1.2. California's Example

As previously mentioned, some mini-FDCPAs do not require collection agencies to have licenses.[93] California was no exception until it amended its regulations a few years ago.[94]

California serves as an important example to showcase the significance of licensing requirements.

Over a period of six to seven years, the Consumer Financial Protection Bureau received approximately half a million complaints regarding debt collection, accounting for nearly one-

[91]2023 Debt Collection Agency New & Renewal License Application Supplement available at <https://www.nyc.gov/site/dca/businesses/license-checklist-debt-collection-agency.page> accessed 15 June 2023.
[92] Consumers-Debt-Collection-Guide available at <https://www.nyc.gov/assets/dca/downloads/pdf/consumers/Consumers-Debt-Collection-Guide-English.pdf> accessed 15 June 2023.
[93]Available at < https://www.collectionlicenses.com/all-collection-licensing-states/ > accessed 15 June 2023.
[94] SB 908 – the Debt Collection Licensing Act (2019)

third of all complaints received in total.[95] Receiving all these consumer complaints, the California Attorney General faced challenges in taking enforcement action for every alleged violation, mainly due to the high volume of complaints and limited or inadequate legal tools available[96]. Hence, it also showcases that there might be a problem when the consumer is only able to depend on the authoritative agency. Consequently, policymakers decided to amend the law by introducing a licensing requirement for debt collectors to address this issue[97].

Implementing this administrative control through licensing was expected to provide greater consumer protection by enabling enhanced oversight over private debt collectors. By amending the law, the state can now have a clearer understanding of the number of debt collectors operating within its jurisdiction and their qualifications, among other relevant information[98]. This change aims to improve the overall regulation and supervision of the debt collection industry in California. However, it must be noted that through licensing, not only California, or other states, but even other countries, are able to control who will enter the market. Therefore, policymakers should bear in mind that requiring the licensing and then formulation of the requirements needed for registration will help them to raise the standards of the entrants. However, it is still disputable whether a license is strong enough to solve the problem that California Attorney General faced, not having enough sources to take enforcement action for

[95] Senate Rules Committee, Office of Senate Floor Analyses (about SB 908, 2020), Senate Committee on Banking and Financial Institutions, Debt Collectors: Licensing and regulation: Debt Collection Licensing Act (about SB 908, 2020).
[96] Senate Committee on Banking and Financial Institutions, Debt Collectors: Licensing and regulation: Debt Collection Licensing Act (SB 908, 2020).
[97] Senate Rules Committee, Office of Senate Floor Analyses (about SB 908, 2020, Senate Committee on Banking and Financial Institutions, Debt Collectors: Licensing and regulation: Debt Collection Licensing Act (SB 908, 2020).
[98] Senate Floor Analysis, Senate Committee on Banking and Financial Institutions, Debt Collectors: Licensing and regulation: Debt Collection Licensing Act (SB 908, 2020).

every alleged violation. Hence, setting license requirements with more layers of shield, such as private cause of action, might be a better solution[99].

4.2. German Legislation

4.2.1. Requirements

According to German legislation, the pre-requisite for natural and legal persons, and companies without the legal personality to provide the debt collection services is the registration with the competent authority. [100] Hence, the need for a license in order to operate.

Article 12 of RDG outlines the requirements that must be met for a debt collector to be able to register[101]. These requirements can be divided into three categories: personal suitability and reliability, theoretical and practical experience, and the need for professional indemnity insurance.[102]

Personal reliability is considered to be lacking and absent when an individual is permanently unable to adequately perform the debt collection activities due to health reasons. [103] Additionally, reliability and suitability is deemed insufficient in the case of a final sentence for a serious criminal offense or for a less serious criminal offense. However, the final sentence should be issued in regard to a criminal offense committed in the exercise of their profession.[104] The time limit for considering such convictions is three years before submitting the registration application. [105] Furthermore, the legislator also established the financial requirement.[106] To be

[99] Tibor Tajti, 'A holistic approach to extra-judicial enforcement and private debt collection: A comparative account of trends, empirical evidences, and the connected regulatory challenges' (2019) Pravni Zapisi 321.
[100] Out-of-Court Legal Services Act [2007] Art 10.
[101] Out-of-Court Legal Services Act [2007] Art 12.
[102] David Markworth, 'Debt collection services in Germany' in Cătălin Gabriel Stănescu (ed), *Regulation of Debt Collection in Europe* (1st edn, Routledge 2022) 71.
[103] Out-of-Court Legal Services Act [2007] Art 12 para 1.
[104] Out-of-Court Legal Services Act [2007] Art 12 para 1 sub-para e.
[105] ibid.
[106] Out-of-Court Legal Services Act [2007] Art 12 para 1 sub-para c.

more precise, according to the act, the person's finances should be in order. Thereupon, if the case of insolvency has been opened against a person's assets or the insolvency court has refused a request to open an insolvency proceeding due to the insufficiency of the person's assets, then the debt collector does not meet the suitability and reliability requirements. [107] Hence, the legislator aimed to make sure that entrants would be in a mentally good condition to use adequate tactics while collecting the debts to ensure the debtor's rights will not be breached. Additionally, it can be presumed that policymakers were trying to also protect creditors. For instance, if the debt collection agency has financial problems, it may misuse the finances which were acquired while being in the creditor's shoes. Hence, harm the interest of the original creditor.

Regarding theoretical and practical expertise, the legislation states that applicants must demonstrate special knowledge in the fields of law which are related to the collection activity for which the application is being made.[108] The fields of law may include civil law, commercial law, securities law, and company law. In addition to this, the law of civil procedure, debt recovery law, and insolvency law. [109] Theoretical knowledge needs to be proved through the certificates. [110]

In terms of practical expertise, a minimum of two years of professional activity or practical professional training is generally required. [111] Typically, the professional activity or professional training should have been pursued in Germany for at least 12 months.[112]

[107] David Markworth, 'Debt collection services in Germany' in Cătălin Gabriel Stănescu (ed), *Regulation of Debt Collection in Europe* (1st edn, Routledge 2022) 71.
[108] Out-of-Court Legal Services Act [2007] Art 12, Art 10.
[109] Out-of-Court Legal Services Act [2007] Art 11 para 1.
[110] Out-of-Court Legal Services Act [2007] Art 12 para 3.
[111] ibid.
[112] ibid.

Therefore, to summarize the requirements set out by German legislators, such as having practical experience, theoretical knowledge, and so on is setting a high standard for the entrants. It ensures that private debt collection agencies have all the capacity to maintain a proper collection behavior and hence the debtor's or creditor's rights to not be violated. On the other hand, it might also ensure better competition between the debt collection agencies. Hence, as private debt collection agencies are in a position to compete with other ones they will be in a permanent need to upgrade their service, knowledge and develop better experience.

4.2.2. Authority and its Duties

As registration and getting the license is one of the main requirements for private debt collectors it is important to analyze who is the authority in charge and if it has some other duties, except registration.

RDG states the that Department of Justice is in charge of overseeing the private debt collectors' compliance with the provisions. [113] However, since each German state has its own Department of Justice, they have the authority and possibility to assign different governmental agencies for this purpose. As a result, there are approximately 36 different government agencies involved in the oversight procedures, including courts.[114]

Critics argue that the decentralized nature of enforcement has its drawbacks, and there are calls for a single centralized agency that is presumed to operate more efficiently. The first argument states that the number of licensed debt collectors in Germany has never been very high, therefore, one agency would be able to keep up with the market's development.[115] The second argument derives from the idea of forum shopping, which is the result of the fragmentation of

[113] Out-of-Court Legal Services Act [2007] Art 13a para 1, Art 19 para 1.
[114] David Markworth, 'Debt collection services in Germany' in Cătălin Gabriel Stănescu (ed), *Regulation of Debt Collection in Europe* (1st edn, Routledge 2022) 78.
[115] ibid.

control. Hence, private debt collection agencies that have been denied registration by one agency, have turned to another one in order to seek a license.[116]

However, while discussing the drawbacks of the decentralized nature of agencies it is worth mentioning what duties they have.

The governmental agencies' right of overseeing the private debt collectors' compliance with the provisions, also includes other duties, such as registering them, stopping unlicensed debt collectors, and supervising the licensed ones. Hence, governmental agencies have three categories of duty. Therefore, it might be disputable whether a centralized enforcement agency would be effective. It is important to consider practical considerations. For instance, giving the supervising authority licensing-cum-disciplinary powers will slow down the process of the agency's work as it will increase the administrative burdens. Therefore, the agency might experience potential delays in decision-making processes, such as imposing disciplinary sanctions. This inevitably leads to the conclusion that the agency would probably fail to regulate not only the existing tactics that are in violation of existing laws but also the future tactics that collectors may employ. [117]

[116] ibid.
[117] Tibor Tajti, 'A holistic approach to extra-judicial enforcement and private debt collection: A comparative account of trends, empirical evidences, and the connected regulatory challenges' (2019) Pravni Zapisi 297, 298.

RECOMMENDATIONS AND CONCLUSION

The thesis showcased that, over time, as the debt collection agencies' market expands, and problematic practices emerge due to improper regulation. The new practices become more and more exceptional. As a result, the US FDCPA, which can be considered to be one of the most efficient sector-specific regulations might also need to be updated to address the challenges resulting from the distinctive nature of current debt collection practices. Hence, nowadays, as sector-specific regulations face difficulties in addressing these practice challenges, it became undeniable that the private debt collection market cannot be effectively regulated merely through general laws. For example, in Georgia, there is an ethics code that regulates the collection practices of financial organizations, outlining requirements for how they should conduct debt collection from consumers.[118] However, Georgian legislation is silent when it comes to regulating individuals and non-financial organizations acting as debt collection agencies. The primary, if not the only, regulation that offers some protection to consumers from abusive debt collection practices is the Consumer Rights Protection Act.[119] Consequently, the Georgian case illustrates the insufficiency of such general sectoral regulations. Despite the fact that debt collectors have faced sanctions under the Consumer Rights Protection Act[120], the abusive practices not only persist but have even worsened.[121] Furthermore, it is also unfair for

[118] Code of Ethics related to credit collection by Financial Organizations, No.14/04 (2022) <https://matsne.gov.ge/ka/document/view/5384943?publication=0> accessed 15 June 2023.
[119] Law of Georgia on Consumer Rights Protection, No. 1455-VIIIმს-Xმპ (2022) <https://matsne.gov.ge/ka/document/view/5420598?publication=0> accessed 15 June 2023.
[120] see more: 'The Debt Collection Agencies were fined for disclosing the Personal Data' <https://bm.ge/ka/article/sesx-is-amomgebi-kompaniebi-personaluri-infor-maciis-gamjgavnebistvis-daajarimes/17015> accessed 15 June 2023.
[121] 'What general information is prohibited to be given to the creditor on problematic loans' (*PrimeTime*, 11 Aug 2022) <https://primetime.ge/news/finansebi/ra-informatsiis-gatsema-ekrdzaleba-kreditors-movalis-problemur-seskhebze> accessed 15 June 2023.

financial organizations to compete in a market where there is little to no regulation imposed on other competing entities.

Based on this, it is crucial to not only have sector-specific regulations but also formulate provisions to establish an efficient regulatory system. Therefore, it is advantageous to have provisions that are open-ended. For instance, the definition should be broad, and legislators can provide a list of specific subjects that must be excluded. This approach would be helpful because, as mentioned earlier, debt collection practices are constantly evolving, with debt collectors attempting to find loopholes to avoid regulation. The same logic should be applied to the list of prohibited activities. For example, the FDCPA includes a list of prohibited activities but also includes a notion stating that any other action with a similar effect can be added to the list. Additionally, as demonstrated in the thesis, it would offer greater protection if debt collection agencies were required to provide specific information during communication with debtors. Moreover, German legislation establishes a registry where consumers and other debt collectors can access publicly disclosed information about specific debt collectors. This enables consumers to have more information and avoid being the victim of false information. Finally, the last building block of an effective regulation discussed in the thesis is the requirement for licensing, combined with stiff terms and conditions as well as rigorous monitoring and due time reaction to wrongdoings. The licensing system, as an administrative control, helps regulate the market by setting conditions for entrants. This could be beneficial for both, other debt collectors and consumers. Other private debt collectors benefit from fair competition, while consumers benefit from higher standards imposed through licensing, resulting in enhanced protection. Therefore, licensing is another example of how emerging regulatory systems should focus more on creating ex-ante protection rather than relying on provisions that offer ex-post effects.

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