

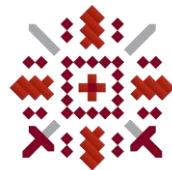


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Legislative updates on credit agreements for consumers regarding immovable assets

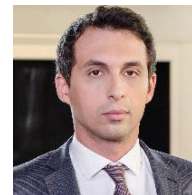


Legislative updates on credit agreements for consumers regarding immovable assets

On September 20th, 2016, Emergency Ordinance no. 52/2016 on credit agreements for consumers regarding immovable assets and amending and supplementing Government Emergency Ordinance no. 50/2010 on consumer credit has been published in the Official Gazette (the "Ordinance"), which will enter into force on September 30th, 2016.

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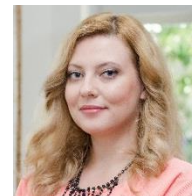
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Legislative updates on credit agreements for consumers regarding immovable assets

1. Legislative updates on credit agreements for consumers regarding immovable assets

The Ordinance is regulating the rights and obligations of the parties in relation with *credit agreements for consumers on the sale or purchase of immovable assets* and *credit agreements secured by a mortgage on immovable assets*.

Consumers are defined as individuals, including co-debtors, who are acting for purposes that are outside of their trade or profession.

The normative act transposes at national level the provisions of Directive 2014/17/UE on credit agreements for consumers relating to residential immovable property, based on the specific aspects of the national market and it.

2. Pre-contractual aspects

The Ordinance contains provisions on accurate and complete informing of consumers regarding advertising and promoting credit agreements. At the same time, personalized information that the consumer needs in order to be able to compare credit products available on the market are to be offered through *European Standardised Information Sheet (ESIS)* in due time, but not sooner than 15 calendar days before signing a contract (reflection period for the consumer). During the reflection period, the information contained in the ESIS cannot be altered and represent a firm commitment for the creditor.

On the other hand, the normative act is regulating a number of *prohibitions for creditors*, such as tying practices (offering or selling the credit agreement in a package with other financial products or services, the credit agreement not being made available to the consumer separately), imposing a company to the consumer for concluding the insurance contract, requesting the conclusion of an insurance contract which is not of use to the credit agreement, charging a commission for file analysis when the loan is not granted etc.

3. Applicable fees

In terms of *costs for consumers during the course of the credit agreement*, the ordinance prohibits creditors to raise their fees, to introduce new fees (excluding specific costs for additional products and services specifically requested by the consumer), to charge fees for cash deposits for loan payments or for withdrawing amounts of money from the credit granted.

At the same time, it prohibits the creditor to charge new fees in case of rescheduling or restructuring the installments or granting a grace period, as well as charging fees in situations where consumers are demanding a change of the securities (given that the consumer pays all costs associated with the creation and evaluation of new securities).



4. Unilateral amendment of the agreement

In relation with contractual clauses, *it is forbidden the unilateral amendment made by the creditor without concluding an addendum* accepted by the consumer. Any proposal to amend the content of the contract terms will be submitted to the consumer at least 30 days prior to its implementation, the consumer having a period of 15 days to communicate its choice of acceptance or non-acceptance of the new conditions. *Failure to send an answer is not considered a tacit acceptance*, and the contract will remain unchanged.

5. Converting the credit in foreign currency

The Ordinance regulates the *consumer's right to convert, at any time during the contractual relationship, a credit agreement in foreign currency in an alternative currency*, namely:

- a. the currency in which the consumer mainly receives its income or owns assets financing the loan payment;
- b. the currency of the Member State in which the consumer either resided at the time the credit agreement was concluded or currently resides.

The exchange rate of the conversion is the one published by the National Bank of Romania on the day the conversion was requested.

It is prohibited to conclude a new credit agreement as a result of the conversion, unless the consumer expressly requests it. The conversion is implemented by addendums, without supplementary costs for the consumer.

6. Early repayment

In case of early repayment, according to the ordinance, *the consumer has the right at any time to repay all or part of its obligations under a credit agreement prior to its termination*. This right cannot be subject to payment of a certain minimum amount or a certain number of installments.

The creditor is not entitled to apply penalties, to request compensation or any other costs from the consumer for early repayment.

7. Payment difficulties and enforcement proceedings

The creditor must develop procedures to identify, in the shortest time, consumers who are in difficulty to pay, in order to prevent the accumulation of arrears. Among the measures that can be proposed to consumers are the following: refinancing the loan, extending the duration of the credit agreement, providing a period without payments, reducing the amount of installments for a short period of time, consolidating multiple loans (*measure which may provide a longer period of time and a lower rate*) rescheduling or restructuring the installments or loan conversion. Implementation of these measures will be made without any other securities from the consumer and without the revaluation of the existing securities.

In case of impossibility for consumers to fulfill their contractual obligations due to *increase of the interest rates with at least two percentage points (from the time the agreement was concluded)*, the creditor endeavour to submit in writing solutions based on the current income of the consumer. The parties agree the proposal by an addendum that will be valid until the cause disappears, but not more than 12 months.

The creditor takes actions to prevent declaring early repayment, initiation of enforcement proceedings or sale of consumer bad debt to entities conducting the activity of debt recovery and must be able to prove that he has taken all measures to prevent it.

The creditor may declare the loan due earlier after the consumer recorded 90 consecutive days of arrears. The period between declaring the loan due earlier and triggering the enforcement proceedings cannot be more than 3 months.

In the situation preceding the declaration of the loan as early due or preceding the enforcement proceedings, the consumer is entitled to ask *the creditor to sell*



the mortgaged immovable asset directly. The creditor grants this right for a period of at least 6 months. In this situation, the enforcement can be triggered only after the period in which the consumer is entitled to sell the immovable asset expired.

8. Assignment

The receivables arising from non-performing loans for which the creditor declared the early repayment or initiated enforcement proceedings may be transferred to entities carrying out activities of debt recovery (legal entities, other than initial creditors, with a minimum share capital subscribed and paid of no less than lei 500,000 only carrying out activities of debt recovery).

The assignee is bound to have its registered office, a branch or a representative in Romania in order to solve any disputes and be held liable in front of public authorities.

In addition, as of 1 January 2017, it is established the obligation of authorization for entities carrying out activities of debt recovery in front of the National Authority for Consumer Protection (“NACP”). The application for authorization may be submitted by entities which meet the following conditions:

- a. have their registered office, a branch or a representative in Romania in order to solve any disputes and be held liable in front of public authorities;
- b. the persons responsible for management have a good reputation;
- c. the way in which the personnel is paid and motivated should not depend on the achievement of targets concerning the debt recovery and should not be related to the amounts recovered;

The authorization procedure will be published within 90 days from entry into force of the Ordinance by order of NACP’s President.

In terms of debt recovery, it is forbidden to charge fees, interest and penalty interest, excluding the legal penalty interest and the use of techniques to harass or abuse any person in connection with debt recovery.

9. Independent advice services

Independent advice services represent offering advice in the form of personal recommendations to a consumer about the offers or credit agreements, in an impartial way and solely in the interest of the consumer, according to its financial situation, needs and preferences.

Independent advice services can be only provided by unbound credit intermediaries, which are authorized by NACP. They may be *remunerated exclusively by consumers and not by creditors.*

10. Evaluation of consumer's creditworthiness

Given that consumers' creditworthiness assessment is done by creditors, other than those nonfinancial, according to the regulations of the National Bank of Romania, *the Ordinance thereby regulates the assessment of the creditworthiness of consumers made by nonfinancial creditors.*

The assessment is based on relevant factors in order to assess if the consumer is able to fulfill its contractual obligations, taking into account its income and spending levels and other economic and financial information deemed relevant and necessary.

The technical details for assessing the creditworthiness made by nonfinancial creditors will be established by order of the NACP’s President within 90 days from the entry into force of the Ordinance.

11. Assessment of immovable assets

In order to assess an immovable asset, the mandatory evaluation standards adopted by the National Association of Certified Appraisers in Romania must be used.

Creditors must ensure that the assessment is carried out by *independent appraisers* in relation with credit granting, in order to ensure an *impartial and*



objective assessment. Furthermore, the consumer is entitled to choose whether the assessment is performed by an appraiser hired / paid by the creditor or by another appraiser, chosen by him.

12. Requirements regarding staff's knowledge and competence

The staff of creditors and credit intermediaries should maintain and constantly update their level of knowledge and competence in relation to developing, offering or granting credit agreements or providing advice services, as applicable. *The minimum requirements regarding staff's knowledge and competence are set out in Annex 3 of the Ordinance.*

13. Credit intermediaries

To carry out all or part of credit intermediation activities or to provide advice services, *credit intermediaries are registered in a special register held by NACP.*

Credit intermediaries *may appoint designated representatives*, having full and unconditional responsibility for any action or omission made by the designated representative.

Acceptance of a credit intermediary by ANPC will effect throughout the European Union without the need for any admission by the competent authorities of the host Member States.

If an intermediary having a branch in Romania violates the Ordinance, the NACP asks the intermediary by written notification to cease the violation, otherwise being able to apply sanctions.

14. Applicable sanctions

Violation of the provisions of the Ordinance constitutes an offense punishable by warning or a *fine of up to 100,000 lei.*

At the same time, NACP may apply one or more of the following *complementary sanctions*:

- a. immediate compliance of the contract terms which were breached;
- b. reimbursement of amounts collected without legal basis, and the amounts regarding unfair terms, as determined by final judgment within a period not exceeding calendar 15 days;
- c. bringing the contract in accordance with the law, within a period not exceeding 15 calendar days;
- d. correcting any non-compliance as established by the minutes of the contravention, within a period not exceeding 15 calendar days;
- e. suspending the credit intermediation activity until compliant with the law, within a period not exceeding 90 calendar days;
- f. deregistration followed by suspension of the debt recovery activities until compliance with the law;
- g. suspending the advertising campaign until compliance with the law;
- h. bringing all similar contracts in accordance with the law, within a period not exceeding 30 calendar days;
- i. ordering the interruption of collecting or repayment of the amounts received without legal basis for all similar contracts, within a period not exceeding 15 calendar days.

15. Final aspects

According to the Ordinance, *consumers may not waive the rights conferred to them.*

After the entry into force of the Ordinance, given the changes brought to GEO no. 50/2010 on credit agreements for consumer, its scope will be limited to credit agreements that do not target the acquisition of immovable assets or are not secured by immovable assets.

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