

# CONSUMER CREDIT CONTRACTS

Carmen Adriana GHEORGHE<sup>1</sup>

**Abstract:** *In compliance with European Directives, Romanian authorities have established some principles for consumer credit, minimum standards for authorizing, regulating and monitoring credit institutions. These measures were required by the increase in imports due to consumer credit, while the national bank tempered this increase. Therefore, banks, together with the big shops, perfect their techniques to attract customers.*

**Key words:** *consumer credit, contracts, banking system, legal conditions.*

## 1. Principles of consumer credit

Within the process of harmonizing the national legislation with the community one in order to fulfil the commitments made when joining the European Union, the transposition of the Directives no. 87/102/CEE of 22.12.1986 is stipulated in the Romanian legislation regarding the consumer credit, changed by the Directives 90/88/CEE of 22.02.1990 and 98/7/CE of 16.02.1998. The Directives no. 87/102/CEE of 22.12.1986 regarding the consumer credit establish some principles in the field, in order to be adopted in the several national legal conditions, and these must be applicable in case there are no minimum protection clauses for the consumer in the consumer credit contract concluded between the seller and purchaser. Within a market economy, it is necessary that the rules for products, services and commercial practices should meet consumers' exigencies, under the terms of providing a loyal competition and the free circulation of products and services. If the security parameters, which define the product, are imposed, surely, by specific rules, supervised by specific

authorities, depending on domains, the other parameters, which define quality, and those which are declared by label, publicity or other similar means, are ensured by warranties, for contractual clauses regarding the contracts of credit concluded with the consumers, the adoption of some clear, general and compulsory rules is necessary, both for economic agents and for consumers. The domain settled by the transposition of this European normative act establishes the legal system of the consumer credit contracts meant for consumers; this field is now regulated by the Roman Civil Code, and partly by the Law no. 58/1998, the banking law, with subsequent changes and completions.

Concerned by the expansion of the foreign currency credit contracted by the population for the equipment from imported products, NBR consented to the agreement with IMF (International Monetary Fund) and established more restrictive norms for loans.

An example regarding the increase in imports due to consumer credit is the partnership between banks and the shops

---

<sup>1</sup> Dept. of Law, *Transilvania* University of Braşov.

which import goods. The banks say that the financial mediation is very low compared to the countries in the European Union.

While the National Bank tries very hard to temper the increase of consumer credit, the banks together with the big shops perfect their techniques to attract customers, so that the non-banking institutions of consumer credits increase.

The companies of consumer credits in Romania are Credisson, recently taken over by the funds of BNP Paribas, Euroline Retail Service Romania launched by the Romanian-American Funds of Investments, and the Domo chain, Estima Finance – owned by BRD Société Générale. The extension of this type of non-banking financing institutions is based on the faith of the enterprisers in the big potential of the increase in this type of business.

## 2. Central Banks and consumer credit

The Executive and the National Bank intent to elaborate a normative act to establish minimum standards for authorizing, regulating and monitoring non-banking financial institutions, as well as consumer credit or leasing companies.

Basically, the new regulations stipulate that the total monthly payment engagements - credit instalment and the interest corresponding to all types of credit contracts, as well as other contracts of same kind (leasing, purchasing of goods by credit) - cannot exceed a maximum level of 40% of the net income of the applicant for a credit and, if applicable, of his/ her family. Also, the monthly payment engagements resulting from consumer and real estate credits, cannot exceed 30%, respectively 35% of the net income of the applicant and, if applicable, of his/ her family. The central bank supports the opportunity of this measure by the last statistical data, according to which in May,

crediting had an ascendant curve, the nongovernmental credit having a real increase of 25,9% over the same period of the last year.

If we take a look at the structure of the nongovernmental credit, we can see potential trends of misbalances. The dynamics of the foreign currency credit, which had the highest level of the last 9 years in May, has significantly overlapped the one of the component in Lei. In the purpose of the law, the following terms are defined as follows:

- a) consumer: private person who, within a transaction regulated by the present document, acts in a purpose outside its commercial or professional activity;
- b) creditor: person or group of persons who, within the professional or business activity, is authorized according to OUG 99/2006, to give credits for consumers. The authorized private persons, non-profit associations and consumer cooperatives which, beside the basic activity offer credits to private persons, can get the quality of creditor only by following the provisions of banking legislation;
- c) credit: any payment engagement for an amount of money in exchange of the right to reimburse the paid amount, as well as the payment of an interest or other costs related to this amount or any extent of the due date of a debt and any engagement for the acquisition of a title that incorporates a debt or of another right for payment of an amount of money;
- d) contract of credit: a document by which a creditor grants or undertakes to grant a consumer a credit as payments by periodic depositing for the selling of products with instalments payment or for supplying services or utilities, payments as loan in case of granting a credit in cash or a facility of extending the credit into a current account, as well

as any other similar financial facility, in particular a leasing contract for consuming goods. The credit contract is an enforceable title;

- e) total cost of the consumer credit: all costs that the consumer must pay for a credit, including interest and other commissions;
- f) effective annual interest, hereinafter referred to as DAE, represents the total cost of the credit for the consumer, expressed in the annual percentage of the total value of the granted credit;
- g) credit documentation – documentation that is the base of an agreement between the creditor and another person for the granting of a credit.

#### Cases of guilt

The guilt and the cases of guilt are ascertained and established according to the Romanian law.

Under the conditions of the contract of credit, cases of guilt of the Borrower:

- a) Nonpayment of any debt and/or non-fulfilment of any duty of the Borrower towards the crediting company, within the terms and conditions provided by the credit contract, especially the non-fulfilment of the payment obligation within the terms and conditions provided by the credit terms;
- b) Submission and/or supplying by the Borrower of incomplete or false information, and/or the omission to transmit information to the crediting company with the purpose of misinforming the company at the moment of credit granting or during the contract period;
- c) The use of any of the amounts and/or rights transmitted to the crediting company with other purposes than to cover the due debts to the company.

At the arising of any of the above mentioned cases of guilt or at any time the guilt of the Borrower will be ascertained, the crediting company can declare all the

obligations resulting from the contract as exigible and payable with all the afferent costs and will start the enforcing measures against the Borrower. The Borrower renounces, according to the contract of credit, to term benefit. The crediting company has a general right of retention over the goods, amounts of money and over the entire patrimony of the Borrower.

After ascertaining the guilt, the crediting company will summon the Borrower in guilt to pay within 5 days all the debts arisen by the contract and which have direct connection to it. After the 5 days term, in case of nonpayment of the debts by the Borrower, the crediting company will begin the fore-closure of the Borrower according to the contract of credit and the law.

The direct or indirect financial consequences due to the anticipated exigibility of the debt will be supported by the Borrower, who will owe the crediting company all the costs and expenses involved by the immediate enforcement.

### **3. The legal conditions of the contract. Jurisdiction**

The contract of credit is elaborated according to the will of the parties and it is governed by the Romanian laws. The non-exercising or late exercising, by the credit institution, of any of the rights and prerogatives assumed by the contract shall not be a renunciation of the company to the respective rights and / or prerogatives, and the credit institution may exercise them anytime.

The disputes and misunderstandings of any kind between the contracting parties regarding conclusion, running, fulfilling and alteration of the contract shall be solved by the parties amicably, and if the parties do not reach an agreement, they agree to the final solving of the disputes by legal means; the competence belongs to the courts located at the registered office of the

credit institutions. The parties agree that any solution of the disputes by special procedures (e.g. the procedure stipulated by OG (Government decree 5/2001) should be of the competence of the courts at the registered place of the credit company.

Generally, most of the non-banking institutions are insured against slow-payers. Therefore, if within 30 days from the last not paid due date the borrower does not pay the amount (interest and penalties), he/she is sent a notification at home. If within 15 days the borrower does not pay the annuity, the next step is to send a notification to the company where the borrower is employed, and then the employer should apply deductions of the borrower's salary. But there are more companies which do not engage in these deductions and in these cases, the contract of credit is taken over by the insurance company and the credit company is compensated.

## References

1. Bercea, R.: *Communitarian Law. Principles*. C.H. Beck Publishing House, Bucharest. 2007.
2. Dragos D. C.: *The European Union: institutions, mechanisms*. Third Edition C.H. Beck Publishing House, Bucharest. 2007.
3. Gornig, D., Rusu, I. E.: *The right of European Union*. C.H. Beck Publishing House, Bucharest. 2006.
4. Nemeş, V.: *Operaţiuni şi contracte bancare*. Editura Universul Juridic, Bucureşti. 2011.
5. Nour, O. S.: *Contractul de împrumut- analiză teoretică şi practică*. Editura Universul Juridic, Bucureşti. 2009.
6. Săuleanu, L., Smarandache, L., Dodocioiu, A.: *Drept bancar*. Editura Universul Juridic, Bucureşti. 2009.
7. Ştefan, B., Andreşan G.: *Communitarian Law*. C.H. Beck Publishing House, Bucharest. 2007.