

# IMPORTANT CHANGES IN THE REGULATION OF LOANS FOR RESIDENTIAL REAL ESTATE BY LAW NO 134/2023

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**Abstract:** *Consumer credit is of permanent social and economic interest and has therefore benefited from appropriate European and national regulation. In its specialised form, the credit agreement offered to consumers for residential real estate has been regulated by O.G. No 52/2016 and recently amended by Law No 134/2023. The study of the substantial amendments to Law no. 134/2023 is of legal interest, in particular, because of the field addressed, namely mortgage credit. The paper is divided into three parts: "Introduction to the credit agreement", "Consumer credit in national regulations" and "Main legislative amendments to the law on mortgage credit by Law No 134/2023".*

**Key words:** *Civil Code, credit agreement, consumers.*

## 1. Introduction to the Credit Agreement

In general, credit is part of the economic circuit, as a prerequisite for any significant commercial activity (Colectiv, Romanian Legal Encyclopedia, 2019, p. 1004).

Thanks to consumer interest in the purchase of products and services, "consumer credit" has become a widespread and useful financial and legal instrument.

Our study aims to provide a brief overview of consumer credit (in general) and credit agreements offered to consumers for residential real estate, with (special) reference to the current changes introduced by Law No 134/2023.

## 2. Consumer Credit in National Regulation

The general legislative framework for consumer credit is provided by the General Ordinance no. 21/1992 on consumer protection and the General Ordinance no. 50/2010 on consumer credit agreements (O.G. No 21/1992, O.G. No 50/2010).

Subsequently, credit agreements offered to consumers for residential real estate were also regulated by the provisions of O.G. No 52/2016 (amended by Law 134/2023).

a). The first national regulation of consumer credit was made by the provisions of O.G.

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No 21/1992 for consumer protection.

According to the Ordinance, "Any form of advertising relating to credit agreements which indicates an interest rate or any other figures relating to the cost of the credit to the consumer" must include: the interest rate on the credit including "any costs included in the total cost of the credit to the consumer"; the total amount of the credit; the annual percentage rate of charge; the duration of the credit agreement and the total amount payable by the consumer (Article 9 of the Ordinance).

According to the offer to contract, the information on costs must be written visibly and legibly, in the same field of vision and in the same font size. In addition, for the granting of credit, the consumer is obliged to conclude an insurance contract, which "will mention this in the advertising".

Credit agreements must include, in addition to the provisions of ordinary law, the costs of administering, withdrawing or depositing cash from the current account, which are to be borne by the consumer (Article 9 of the Ordinance).

In the context of the general rules, interest, as well as all commissions, fees, charges, bank charges or any other costs related to the granting and performance of the contract, i.e. related to services for which the consumer has no freedom of choice, must be mentioned in the contract "without reference to the general business conditions of the financial service provider".

The contract must also include the type of variable or fixed interest.

During the course of the contract it is prohibited to increase the commissions, fees, charges, bank charges, any other costs mentioned in the contract or to introduce and charge new fees, commissions, charges, bank charges or any other costs.

Where applicable, the early repayment charge shall be determined in close relation to the creditor's losses and shall not be "a disproportionate obstacle to the exercise of the consumer's right". The form in which contracts are drawn up shall be written, legible and visible, in a font size of at least 10, on paper or another durable medium, in at least two copies.

The amendment of the contractual terms must be made only by the conclusion of an additional act, accepted by the consumer.

Termination of the contract will be in accordance with the ordinary law, including by the consumer's reaching the end of the term, termination or unilateral withdrawal. According to Article 1321 of the Civil Code, the contract is terminated, in accordance with the law, by performance, agreement of the parties, unilateral termination, expiry of the term, fulfilment or, as the case may be, non-fulfilment of the condition, fortuitous impossibility of performance, as well as for any other cause provided for by law.

Once the obligations between the parties have been discharged, the supplier must also close the accounts relating to the financial service, "without the need for the consumer to submit a further request and without paying any additional costs" (Article 9(b) of the Ordinance).

As a consequence of the termination of the credit agreement, the financial service provider is obliged to hand over to the consumer, free of charge, a document certifying that "all obligations between the parties have been discharged".

b). After Romania's accession to the European Union, consumer credit was regulated by GEO no. 50/2010.

According to the Emergency Ordinance, a credit agreement is one whereby a creditor grants, promises or stipulates the possibility of granting a consumer credit in the form of a deferred payment, loan or other similar financial facility (Article 7(2) of the Ordinance).

It should be pointed out that the term "credit" is not to be confused with the term "loan" enshrined in civil law, in the sense that the concept of credit has a wider scope, both economic and legal (Angheni, 2014, p. 21.).

Ad validitatem, the credit agreement must fulfil two special conditions (Boroi, Anghelescu, 2012, p. 127 et seq.):

- the credit must serve exclusively to finance a contract for the supply of certain goods or the provision of a certain service;
- the credit agreement and the contract for the purchase of goods or services must form "a commercial unit".

In its pre-contractual phase, the contract must contain the "standard information" required by the credit consumer (Article 8 of the Ordinance). Credit agreements must contain complete, clear and easily understandable information in Romanian.

The standard information includes: the interest rate on the credit, whether fixed or variable, the total amount of credit, the annual percentage rate of charge, the duration of the credit agreement, the purchase price and the amount of any down payment, the total amount payable by the consumer and the amount of instalments, etc.

At the consumer's request, the information may be further detailed or explained by the bank before the agreement is signed in the form of a note, annexed to the agreement (Article 7(2) of the Ordinance).

Creditors must also provide "appropriate explanations", according to which the consumer can assess whether the contract corresponds to his needs and financial situation (Article 18(1) of the Ordinance).

Appropriate explanations include, for example, pre-contractual information, essential characteristics of the products offered, explanation of the costs which are part of the total cost of the credit, consequences of non-payment by the consumer.

In the case of an "overdraft" agreement, the creditor must provide the consumer with information enabling him to compare several offers in order to make an informed decision (Article 22(1) of the Ordinance).

The terms of the contract include the creditor's obligations and the consumer's obligations.

There are two main obligations in the contract: the granting of the credit by the creditor and the payment of the price by the consumer.

According to the Ordinance, the following are prohibited: clauses allowing unilateral modification of the contract without the conclusion of an additional act and clauses obliging the consumer to keep the contractual terms and conditions confidential (Article 40(1) of the Ordinance).

The consumer credit agreement may be amended during its term. The parties or the law may require the contract to be amended.

If the parties agree to change the total amount of credit after the conclusion of the

agreement, the creditor must update the consumer information ((Article 30 of the Ordinance).

Similarly, if the amendments have been imposed by law, the consumer's failure to sign the additional documents is considered tacit acceptance.

In the above case, the consumer has a period of 15 days from receipt of the notification to communicate his choice of acceptance or non-acceptance. It should be noted that failure by the consumer to reply within the aforementioned period is not considered tacit acceptance and the contract will remain unchanged.

In principle, the credit agreement may be terminated on the basis of ordinary grounds (late payment, non-performance of main obligations, etc.).

Unilateral termination is possible only in the case of successive agreements concluded for an indefinite period.

Also, when an ancillary service is provided in connection with the credit agreement and the consumer exercises his right of withdrawal from the credit agreement, the consumer's obligations arising from that ancillary service cease (Article 61 of the Ordinance).

In order to terminate the agreement, the consumer has a period of 14 calendar days within which "he may withdraw from the credit agreement without giving any reason" (Article 58(1) of the Ordinance). The period of 14 calendar days starts to run from the date of conclusion of the credit agreement or from the date on which the consumer is made aware of the clauses, contractual conditions and information required by law.

After withdrawal, the consumer is obliged to notify the creditor and pay the credit or the part of the credit drawn down and the related interest.

Notice of withdrawal from the credit agreement: shall be given on paper or on another durable medium available and accessible to the creditor; it shall be given by any means permitted by law and shall be sent before the expiry of the period.

As a rule, in the event of withdrawal, the consumer does not owe any other compensation (Article 60 of the Ordinance).

Consequently, the consumer has the right at any time to discharge all or part of his obligations under the credit agreement.

In the above case, the consumer is also entitled to a reduction in the total cost of the credit.

The cost reduction consists of the interest and costs relating to the period between the date of early repayment and the scheduled date of termination of the credit agreement (Article 66(1) of the Ordinance).

On the basis of early repayment of the credit, the creditor is entitled to fair and objectively justified compensation.

Compensation is granted for any costs directly linked to the early repayment of the credit, provided that the early repayment takes place in a period in which the interest rate on the credit is fixed (Article 67(1) of the Ordinance).

Any compensation may not exceed the amount of interest that the consumer would have paid during the period between early repayment and the agreed date of termination of the credit agreement (Art. 69 of the Ordinance).

It should be noted that the assignment of the credit agreement can only be made by

the credit consumer.

In the above context, the consumer has the right to invoke (against the assignee) any defence to which he could have had recourse against the original creditor, including the right to compensation (Article 70 of the Ordinance). The assignor shall notify the consumer of the assignment within 10 days of the conclusion of the assignment contract by registered letter with acknowledgement of receipt.

Any notice which the creditor gives to the consumer must be signed, dated and numbered. Failure to comply with the provisions on consumer notification is punishable by absolute nullity of the act of notification (Article 44 of the Ordinance).

Following termination of the contract, the credit accounts are closed.

### **3. Main Legislative Changes in the Field of Mortgage credit, through Law No 134/2023**

Law No 134/2023 made important changes to the provisions of GEO No 52/2016 on credit agreements offered to consumers for immovable property (the basic regulation in this area).

In the following, we intend to give an overview of the regulation of real estate credit contracts, focusing on the main recent legislative changes (marked in italics).

#### **a). Scope of application**

According to Art. 2 para. 1 of GEO no. 52/2016, the provisions of the normative act are applicable to consumer credit agreements on the sale of immovable property; credit agreements secured by a mortgage on immovable property and credit agreements involving a right linked to immovable property (Spasici, 2022, p. 186 et seq.).

The provisions of the Ordinance do not apply to: credit agreements granted by an employer to its employees as a secondary activity; credit agreements where credit is granted without interest and without fees; collective savings and loan agreements for housing; credit agreements relating to credit granted to a restricted public on the basis of a legal provision in the general interest (without interest or at lower interest rates) (Crețu, Spasici, p. 17-34.).

According to Art. 128 para. 13-14, introduced by law, entities performing debt recovery activity are obliged to report to the Credit Risk Centre of the National Bank of Romania individual data on the acquired claims and their holders, in accordance with the relevant regulations issued by the National Bank of Romania.

The transmission by the National Bank of Romania of the information reported by the entities performing debt recovery activities to the other reporting entities to the Credit Risk Centre shall not be considered a breach of the obligation of professional secrecy. The provisions of the regulations on the Credit Risk Centre issued by the National Bank of Romania (Article 128 (15), introduced by law) shall apply to entities performing debt recovery activities.

#### **b). Mortgage credit agreement. Subjects and conclusion**

The consumer credit agreement is the one whereby a creditor grants or promises to grant a consumer a credit for the purchase of a residential property, in the form of a

deferred payment, loan or other similar financial facilities (Article 3(3) of the Ordinance).

The parties to the contract are the creditor, the consumer, the intermediary and the property developer.

The creditor is the credit institution (legal person) which grants credit of the type provided for by law in the course of its commercial or professional activity (Article 3(2) of the Ordinance).

A credit intermediary is an authorised natural person or legal person not acting as a creditor who, in the course of his trade, business or profession, in return for a fee, establishes a connection, either directly or indirectly, between a consumer and a creditor or another credit intermediary (Article 3(5) of the Ordinance).

The tied credit intermediary is also a credit intermediary, but acting on behalf of and under the full and unconditional liability of: a single creditor; a single group; or a number of creditors or groups which do not represent the majority of the market.

When providing advice to consumers, non-related credit intermediaries, *inter alia*, analyse a sufficient number of credit agreements available on the whole market, i.e. at least one type of agreement available from each creditor, and recommend at least 3 credit agreements appropriate to the consumer's needs, financial situation and personal circumstances (Art. 65 (1) (b) amended by law).

The real estate developer is the legal entity or the natural person authorised by law to carry out all real estate operations for the construction, completion and handover to beneficiaries of housing, as well as the coordination of the sources of financing necessary to carry out these operations" (Article 3 amended, of the Law).

Prior to the conclusion of the contract, the credit offered to consumers for residential real estate must include the "information" and "practices" made available by the creditor. According to Article 128 para. 13-14, introduced by law, entities engaged in debt recovery activity are required to report to the Credit Risk Centre of the National Bank of Romania individual data on acquired claims and their holders, in accordance with the relevant regulations issued by the National Bank of Romania. The transmission by the National Bank of Romania of the information reported by the entities performing debt recovery activities to the other reporting entities to the Credit Risk Centre shall not be considered a breach of the obligation of professional secrecy.

Advertising and promotional materials relating to credit agreements must be fair, clear and not misleading.

Mortgage credit advertising should include standard information on: the identity of the creditor or credit intermediary; the fact that the credit agreement will be secured either by a mortgage on immovable property; the interest rate; the total amount of credit, etc.

In any "form of advertising", creditors must include "a concise and proportionate warning of the specific risks" associated with credit agreements.

The general information must include, *inter alia*: the identity and address of the creditor's registered office; the purposes for which the credit may be used; the forms of security; the possible duration of the credit agreements; the types of interest rate available; the arrangements for repayment of the credit (including early repayment).

According to Art. 9 para. 1 of the Ordinance, the creditor "shall provide the consumer

with personalised information" (which the consumer needs in order to compare credit products available on the market).

The offer is irrevocable for the creditor under the law (Art. 9 (6) (b) amended). The creditor shall make available to the consumer, on its website, a simulator that calculates the APR for the credit, whatever the amount of credit and credit period chosen by the consumer, within the limit of the creditor's offer.

Personalised information must be provided in good time before any consumer is bound by a credit agreement or offer, but not less than 15 calendar days before

The above period is a "cooling-off period" for the consumer prior to the conclusion of the credit agreement.

If, during the reflection period, the financial information on the basis of which the consumer's creditworthiness was assessed or which was provided by the consumer and which formed the basis for the issuing of the EuSEF changes, or the valuation report, the title deeds of the property to be acquired were not provided at the time of drawing up the EuSEF, the creditor shall provide the consumer with a new EuSEF reflecting only the changes which have occurred as a result of both aspects" (Article 9(13) introduced by the Law).

Creditors must also provide the consumer with adequate explanations of the agreement "to enable the consumer to assess whether the proposed credit agreements and ancillary services are suited to his needs and financial situation" (Article 11(1) of the Ordinance).

According to Art. 12 para. 1 of the Ordinance, bundling practices are permitted and tying practices are prohibited. If the consumer decides to make use of the right to convert the credit agreement into an alternative currency, the creditor does not impose any restrictions and offers the consumer the products available from the creditor's offer at the time of the consumer's request for conversion. The creditor shall transmit its offer to the consumer as soon as possible, but no later than 15 calendar days from the date of registration of the consumer's request. The consumer opts to accept/reject the offer within 15 days of receiving it (Art. 32(2) as amended by law).

When providing advice to consumers, non-binding credit intermediaries shall analyse a sufficient number of credit agreements available on the whole market, i.e. at least one type of agreement available in the offer of each creditor, and shall recommend at least 3 credit agreements appropriate to the consumer's needs, financial situation and personal circumstances (Art. 65 (1) (b) as amended by the law).

### **c). The content and execution of the mortgage credit contract**

The credit agreement must include the following main provisions.

The contracting parties, i.e. the lending institution and the consumer-credit beneficiary (with identification data, address of registered office or domicile, telephone number, etc.).

Type of credit relating to the sale of immovable property, with a mortgage on immovable property or involving a right relating to immovable property.

The total amount of the credit and the conditions governing the drawdown of the credit.

The interest rate on the credit and its type (fixed or variable) and the conditions governing its application.

The annual percentage rate of charge and the total amount payable by the consumer (calculated at the time the credit agreement is concluded).

In the case of loans granted in foreign currency, the exchange rate communicated by the National Bank of Romania and valid at the time of conclusion of the agreement between the currency of the credit agreement and the national currency (Article 26(1)(h) as amended by law) (Vasii, 2022, p. 310-312).

The consumer's right to repayment of the credit also implies a repayment schedule (as well as a copy of the credit agreement).

The repayment schedule must be made available to the consumer for the duration of the credit agreement (Article 27(1) of the Ordinance).

According to Art. 19 para. 4, as amended, creditors do not have the right to refuse to collect credit instalments in the currency of the credit.

The following specific activities are prohibited during the credit agreement:

- increasing the level of fees, rates and charges (conditions) of the agreement;
- the introduction and charging of new fees, tariffs or any other charges, with the exception of costs specific to additional products and services expressly requested by the consumer, not provided for in the agreement or not offered to the consumer at the time of conclusion of the agreement;
- the charging of a cash deposit fee for the payment of credit instalments;
- charging a withdrawal fee for sums drawn on the credit;
- the levying of a fee, charge or any other charge where the consumer requests and the creditor agrees to rescheduling of instalments or the granting of a grace period;
- the levying of charges in cases where the consumer requests a change of collateral, provided that the consumer pays all costs related to the establishment and valuation of the new collateral (Pop, Popa, Vidu, 2012, p. 806 et seq.).

The file analysis fee, the current account management fee and the one-off fee will be set as a fixed amount, the same amount being charged to all consumers with the same type of credit, at the same credit institution, for credit granted during the same period of time (amended Article 17(2)).

The administration fee is charged, within the limit of the creditor's actual costs, for monitoring, recording or carrying out operations by the creditor for the purpose of repaying the credit granted to the consumer. If this fee is calculated as a percentage, it will be applied to the current balance of the credit (Article 17(3), amended).

Increasing the interest margin or, where applicable, the fixed interest rate, introducing or increasing charges and new cost elements by means of additional documents drawn up for the granting of rescheduling, rescheduling, grace periods granted at the consumer's request.

It should be noted that contractual clauses entitling the creditor to unilaterally amend the contractual terms without the conclusion of an additional act accepted by the consumer are prohibited (Article 19(1) of the Ordinance). In order to fulfil its obligations, the creditor shall contact the consumer to obtain information on the consumer's financial situation, at the latest after the consumer has been in arrears for 60



consecutive days. On the basis of the information received, the creditor shall take the necessary steps to provide the consumer in writing with appropriate solutions for payment of the debt (Article 50(3) as amended by the law).

**d). Modification and assignment of the contract**

During its term, the contract (with successive performance) may be amended.

Modification of the contract by agreement of the parties produces new rights and obligations for the contracting parties (Goicovici, 2022, p. 69).

The amendment of contracts in progress will be made by means of additional acts agreed with the creditors, without costs, i.e. fees charged by the creditors and without additional guarantees on the part of consumers (Article 35(2) amended by law).

Thus, in the credit agreement it is in principle possible to change the level of credit costs unilaterally (under the terms of the agreement). In the case of early repayment, the Creditor shall, at the consumer's request, provide the consumer in writing with a simulation for each of the three options provided for by law. The creditor is obliged to inform the consumer of this right. A copy of the simulation provided will be kept by the creditor and another copy will be given to the consumer (Article 41(21) introduced by the law).

In order to change the costs, the creditor is obliged to notify the consumer of the change in writing and to provide the consumer with a new repayment schedule against signature and date of receipt (Article 16(2) of the Ordinance).

Assignment of the contract consists in the transfer of the contract by one of the parties to a third person during the term of the contract. According to the general contractual rules established by the Civil Code, "a party may substitute a third party in relations arising from a contract only if the services have not yet been fully performed and the other party consents thereto" (art. 1315 para. 1 Civil Code).

The assignor shall notify the consumer of the assignment within 10 calendar days of the transfer of ownership of the claims to the new creditor by registered letter (Article 130(3)(7), as amended by the law).

The subjects of the assignment of the contract are: the assignor, the contracting party transferring its rights and obligations to the assignee, the third party acquiring the assignor's rights and obligations and the assignee, the other contracting party.

Credit agreements offered to consumers for residential immovable property may be assigned only to creditors other than non-financial creditors (Article 58(2) of the Ordinance).

The assignment, either individually or as part of a portfolio of claims, becomes enforceable against the consumer upon notification to the consumer by the assignor (Article 59(1) of the Ordinance).

The notification of the assignment shall state: the name and details of the creditor (including the name of the original creditor from whom the claim was taken), the date on which the assignment was made; the amount of the sum due and the documents evidencing the components of this amount (Article 59(4) as amended by the law).

According to Article 60 of the Ordinance, communication with the consumer between 8 p.m. and 9 p.m. is also prohibited (Article 60(j), as amended by law).

All credit intermediaries and/or real estate developers who have applied for registration and meet the conditions laid down, whether they have been set up as authorised natural persons or legal persons, are entered in a register kept by the National Authority for Consumer Protection (Art. 102(1), as amended by the Law). The register of credit intermediaries and real estate developers is periodically updated and is available to the public online at [www.anpc.ro](http://www.anpc.ro).

#### **4. Conclusions**

The credit agreement offered to consumers for residential real estate has been regulated by GEO no. 52/2016.

The regulation given by O.G. No 52/2016 concerns a narrow (but, importantly, s.n.) field, namely consumer credit agreements on the sale of immovable property, credit agreements secured by mortgage and those involving immovable property.

With the provisions of Law No 134/2023, the field of real estate credit offered to consumers has undergone important reconsiderations dictated by the interest of ensuring greater protection for the consumer of real estate credit.

Under the new law, in the event of early repayment, the creditor must provide the consumer in writing with a simulation for each of the three options provided for by the law, i.e. maintaining the monthly instalment and reducing the initial credit period; reducing the monthly instalment and maintaining the initial credit period or reducing the monthly instalment and reducing the initial credit period.

We believe that consumer credit activity should be looked at in a comprehensive way, and from an economic perspective.

#### **References**

- Angheni, S. (2014). *Legal relationships between professional traders*. Bucharest: Ch. Beck.
- Boroi, G., & Angheliescu, C.A. (2012). *Curs de drept civil. General Part*. Bucharest: Hamangiu.
- Colectiv (2019). *Romanian Legal Encyclopedia*. vol. I A-C, Ed. Romanian Academy. Bucharest: Universul Juridic.
- Goicovici, J. (2022). *Law of relations between professionals and consumers*. Bucharest: Hamangiu.
- Pop, L., Popa, I.-F. & Vidu, S. I. (2012). *Elementary Treaty of Civil Law, Obligations*. Bucharest: Universul juridic.
- Spasici, C. (2022). *Institutions of Civil Law and Consumerism*. Bucharest: Hamangiu.
- Vasii, G. (2022). *Civil contract versus consumer contract*. Bucharest: Rosetti.