

# Debt Counseling from the Directive No. 2023/2225 on Credit Agreements for Consumers and Perspectives for Transposition

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## **Abstract**

The present research aims at analysing the regulation of debt advice at European level contained in Directive 2023/2225. The research reveals, at this date, at the national level, the lack of express regulation for the conduct of independent, impartial counselling of people in debt or about to become in debt. The research also identifies that the only category of counselling known and regulated at the national level, where credit is the main source of indebtedness, is consumer counselling by creditors and credit intermediaries. The regulation of independent debt advice under Directive 2023/2225 has yet to be transposed at the national level. The challenge of identifying the entity/entities that will provide independent debt advice is the one to which this study responds, and has profound social-economic implications, as this category of advice is a solution to prevent over-indebtedness.<sup>2</sup>

**Keywords:** (over) indebtedness, debt counselling, financial services, financial education, consumer associations, consumer information and advice centres, prevention of financial exclusion, vulnerable consumers.

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## **1. Introduction**

In view of the increasing over-indebtedness of the population, independent debt advice has been regulated at the European level by Directive 2023/2225. In view of this regulation, which is to be transposed at the national level, the identification of entities that can provide consumers with independent advice is included in this study.<sup>3</sup>

### **1.1. The concept of “debt advice” provided for in articles 35 and 36 of Directive (EU) 2023/2225 of 18 October 2023 on consumer credit agreements**

Debt advice is a complex solution that primarily serves the needs of consumers of financial services, but it is equally likely to serve the interests of creditors, as such services ensure the protection of consumers, but also allow creditors to recover their debts effectively.

At the EU level, debt counselling was regulated for the first time with the adoption of Directive (EU) 2023/2225 of the European Parliament and of the Council of 18 October 2023 on consumer credit agreements, which repeals Directive 2008/48/EC in the field of consumer credit<sup>4</sup> and provides

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<sup>2</sup> The debate regarding debt counselling was launched at the national level through the Project “Provision of a European Platform for the Prevention of Over-Indebtedness by the Increase of Accessibility and the Improvement of Effectiveness of Debt Advice for Citizens”, acronym: PEPPi. European Consumer Debt Network, acronym ECDN <https://ecdn.eu/news/>, coordinated the project co-financed by the EU. Coordinator of the project for Romania – Rodica Diana Apan.

<sup>3</sup> Regarding the pauperization situation of the population, see Ciornei C.M., *Analiza politicilor sociale de garantare a venitului minim și combatere a sărăciei în România, 1996–2013*, Presa Universitară clujeană Publishing House, Cluj Napoca, 2017 and Ciornei C.M., *Sistemul de garantare a venitului minim în România – asistență socială sau administrație publică?*, Social assistance magazine, Work Review Series, Year XV, No. 1/2016.

<sup>4</sup> [https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=OJ:L\\_202302225](https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=OJ:L_202302225), accessed 30.11.2023, hereinafter referred to as Directive 2023/2225.

for the following key points:<sup>5</sup>

- Member States' obligation to promote financial education;
- Member states's obligation to take measures to encourage creditors to exercise reasonable forbearance;
- Increasing the availability of debt counselling services.

*Independent debt advice*, i.e. not advice provided by creditors/credit intermediaries, is assessed in the Preamble to Directive 2023/2225 as having a positive impact on society, both socially and economically:

- measures to prevent and manage (over) indebtedness are likely to improve social inclusion;
- investment in debt advice services has an excellent return, with equivalent benefits of between €1.4 and €5.3 expected for every €1 spent on debt advice, mainly by avoiding the costs to society of (over) indebtedness.<sup>6</sup>

The aim of debt counselling services is to support consumers who are experiencing financial problems and provide them with the guidance they need to manage to repay their outstanding debts as far as possible while maintaining a decent and dignified standard of living.<sup>7</sup> The characteristics of independent counselling are impartial; counselling is in the sole interest of the consumer; it is related to the consumer's financial situation; it takes into account the consumer's needs and preferences.

In concrete terms, through independent debt advice, consumers who are experiencing difficulties in meeting their financial commitments will benefit from support in the form of expert advice and guidance on managing their debts.

Member States are required to ensure that debt counselling services, consisting of *personalised technical, legal or psychological assistance* provided by *independent professionals*, are available to consumers who are experiencing or might experience difficulties in meeting their financial commitments. At the same time, it is essential that this type of debt counselling is entrusted to *independent professional operators* who are not creditors, credit intermediaries or other providers of credit services.

This is, therefore, the standard for independent advice in the areas of debt that must be achieved in Romania with the implementation of Directive 2023/2225. A *paradigm shift* is needed with *regard to independent consumer debt advice at the national level, by identifying the entities to which independent debt advice services are to be entrusted for its development.*

## 2. Status of national regulations ex-ante transposition of the Directive 2023/2225

### 2.1. Consumer credit advice by creditors or credit intermediaries

Romanian Government Emergency Ordinance 52/2016<sup>8</sup>, transposing Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for residential property offered to consumers and amending Directive 2008/48/EC and 2013/36/EU and Regulation (EU) No. 1093/2010<sup>9</sup> imposes principles and practices on consumer credit advice, *but exclusively regulates consumer advice by creditors or credit intermediaries at the stage of credit agreement formation.* The aforementioned regulations also set standards of professional competence in consumer advice for representatives of creditors and credit intermediaries.

The essential feature of the advice is found in the Preamble to Directive 2014/17/EU, point

<sup>5</sup> Regarding the effects of the directive as a community act, see Gyula F., *Drept instituțional comunitar. Ediția a III-a revăzută și adăugită cu referiri la Tratatul de la Lisabona*, Sfera juridica Publishing House, Cluj Napoca, 2008, p. 134-139.

<sup>6</sup> See Study on European consumers' over-indebtedness and its implication, *Final Report*, June 2023, [https://commission.europa.eu/publications/study-european-consumers-over-indebtedness-and-its-implications-annexes-final-report\\_en\\_accessed 30.02.2024](https://commission.europa.eu/publications/study-european-consumers-over-indebtedness-and-its-implications-annexes-final-report_en_accessed%2030.02.2024).

<sup>7</sup> An in-depth analysis of the debt situation of the population in the Member States, see in Study on European consumers' over-indebtedness and its implication, *Final Report*, June 2023, [https://commission.europa.eu/publications/study-european-consumers-over-indebtedness-and-its-implications-annexes-final-report\\_en](https://commission.europa.eu/publications/study-european-consumers-over-indebtedness-and-its-implications-annexes-final-report_en).

<sup>8</sup> Hereinafter referred to as GEO 52/2016.

<sup>9</sup> <https://eur-lex.europa.eu/legal-content/ro/TXT/?uri=CELEX%3A32014L0017>, accessed 25.01.2024, hereinafter referred to as Directive 2014/17.

(31) and in Art.7, para. 1) of the chapters on “Rules of conduct” for the granting of credit to consumers and consists in the express provision of the obligation for creditors, credit intermediaries and their appointed representatives to provide *advice in the best interests of the consumer*. It should be noted that the concept of “*best interest*” is used exclusively in those areas where the legislator considers that the protection requirement is a social imperative that the protection provided to a specific category of persons is in the public interest; e.g. “*best interest of the child*”. Here, then, is a concern for the *best interests of the consumer* this time.

The principles and practices regulated in Directive 2014/17/EU and taken over into national law in the Emergency ordinance of the Government (GEO) 52/2016 are creditors, credit intermediaries and appointed representatives all take into account the *interest of consumers*, which represents a high level of fairness, honesty and professionalism within the sector, proper management of conflicts of interest, including those caused by remuneration.

Both Directive 2014/17 EU and GEO 52/2016 are structured and provide for *limits to the scope of regulation of consumer counselling activities carried out by creditors or credit intermediaries, as follows*:

a) *in relation to the time of the conclusion of the credit agreement*<sup>10</sup> – only advice given to the consumer exclusively *at the time of the formation of the agreement/acceptance of the credit offer* is regulated, i.e. advice given by the creditor to the (over) indebted consumers as a result of the conclusion of a credit agreement is not regulated, in circumstances where e.g.: the consumer is no longer able to fulfil his obligation to repay the credit or is in other moments of difficulty in the performance of the agreement, but only, as mentioned *above*, advice given at the *stage prior to the formation of the agreement*.

Our observation is that the credit agreement is not a contract with *one-time* performance, but with successive performance over time. The borrower is bound by the contract to repay the credit, representing both principal and interest, at the times and in the amounts agreed. Under these circumstances, the creditor’s obligation to advise the consumer should *accompany the credit agreement throughout its ‘existence’*, i.e. also at the stage of (non-) performance of the agreement and not only during its formation. Besides, ‘The consumer loan is the common law for bank credit contracts. The credit facility agreement is a type of loan. Therefore, the regulation contained in arts. 2193–2196 of the NCC is supplemented by the rules on consumer loans.’<sup>11</sup>

b) *with regard to the nature of the credit agreement* – if the scope of application of GEO 52/2016 covers consumer credit agreements for the sale or purchase of immovable property, credit agreements secured by mortgages on immovable property and credit agreements involving a right related to immovable property, it is obvious that the regulations contained in the ordinance concerning the advice of consumers by creditors apply only to the *above-mentioned* agreements *and* are not applicable to other categories of credit agreements. Therefore, for the formation of other types of credit agreements concluded with consumers, such as consumer credit, consumer advice by the creditor is not regulated;

c) *with regard to the persons covered by the provisions of the two regulations, i.e. the European and the national regulations for providing advisory services, we note that they define and cover the activity of creditors, credit intermediaries, groups of creditors, related credit intermediaries and their representatives*. So, several categories, a real *‘code of credit professionals in the conduct of consumer advice activity resides in the content of these regulations*. As a consequence, the provision of consumer advice services is also regulated and will be carried out, according to these provisions, only by the *above mentioned* persons falling within the scope of Directive 2014/17 and GEO 52/2016. Counselling is thus, from the perspective of the providers that the regulations include within their

<sup>10</sup> A credit history, see Apan R. D., *Protecția juridică a consumatorilor – Creditul destinat consumului și domeniile conexe*, Sfera juridica Publishing House, Cluj Napoca, 2007, p. 2–7, and an analysis of consumer credit, see Gheorghe A. N., Spasici C., Arjoca D. S., *Dreptul consumației*, Hamangiu Publishing House, Bucharest, 2012, p. 238–252.

<sup>11</sup> In Baias, FI. A., Chelaru E., Constantinovici R., Macovei I. (coord.), *Noul Cod civil. Comentariu pe articole arts. 1–2664*, C. H. Beck Publishing House, 2012, p. 2169. Regarding the obligation to return the amount of money borrowed as a monetary or pecuniary obligation, see Pop L., *Tratat de drept civil. Nașterea, statica, dinamica și stingerea obligațiilor. Ființa obligațiilor civile*, Universul Juridic Publishing House, Bucharest, 2023, p. 101–104.

scope, a professional, specialised service that can be exercised as a *separate service* or as an *independent service* by creditors or credit intermediaries.

## 2.2. The role of consumer associations in consumer credit protection

Chapter II ‘Financial education’, Article 4, para. (1) of GEO 52/2016 contains the following provisions: ‘Public authorities, creditors and non-governmental organisations may contribute to consumer education on responsible lending and debt management practices, *in particular* with regard to consumer credit agreements secured by mortgages. They provide, through organised actions, *clear and general information on the credit granting process in order to provide guidance to consumers, especially to first-time mortgage borrowers.*’

It follows from the above legal provisions that the role of non-governmental organisations, i.e. consumer associations, is, according to the provisions of GEO 52/2016, exclusively in the sphere of credit consumer education and *is only to contribute to consumer education* on responsible lending and debt management practices, *in particular* with regard to consumer credit agreements secured by mortgages. *Specifically*, non-governmental organisations can organise actions to *inform consumers and provide guidance* in the credit granting process, so again the advice is aimed at the pre-contract stage and is *particularly* aimed at *consumers taking out a mortgage-backed loan for the first time.*

However, in the absence of an express limitation, on the basis of the principle that ‘*what is not prohibited is permitted*’, we believe that consumer advice can also be extended to other categories of contracts and can be carried out by other categories of providers than creditors and credit intermediaries or their representatives. Moreover, the service of consumer advice as a professional activity is regulated, in a complex, professional sense, not only for creditors, credit intermediaries or their representatives. Under the provisions of EU Directive 2023/2225, analysed *above*, the obligation to provide independent debt advice is regulated.

The advisory service is defined as a professional service, as it is provided by the specialised entities identified in GEO 52/2016, which results from the fact that the activity of credit intermediaries, and therefore also the advisory activity, *is subject to the existence of a professional insurance, and the obligation to register with the National Authority for Consumer Protection*<sup>12</sup>, prior to carrying out the activity of credit intermediaries, is also incumbent on the entities that carry out professional credit activity.

In light of the legal provisions analysed above, we believe that the advice given to consumers at the stage of the formation of the credit agreement, both under the regulations of Directive 2014/17 and consequently also under GEO 52/2016, is more to the benefit of the creditor and the credit intermediary than to the consumer. It is in the consumer’s interest to have real opportunities to compare credit offers, since only the consumer can assess the extent to which he or she needs advice. We also believe that the limitation on the persons who can provide advice leads to *a dilution of the consumer’s awareness of the role of advice.* Counselling services, being provided by entities granting or intermediating the granting of credit, is not perceived as a necessity by the consumer, as a distinct activity useful for informed contracting, but is ‘merged’ with the information and formation, *per se*, of the credit contract. As the doctrine holds, ‘A distinction can be made between advice and information. The advice is a remunerated service and bears the usual name of *consultation*, and the information is based on a prior obligation to warn. However, both can be remunerated, and in this case the obligation to inform operates with some opportunity criteria. In short, while the information is intended to clarify, the advice is intended to guide the client.’<sup>13</sup>

Moreover, the consumer’s possibilities to seek credit advice are limited to the creditor or the credit intermediary, since it is obvious that this advice is not independent and impartial. In these circumstances, we believe that, in order for the consumer to benefit from independent and impartial advice, it is necessary, in accordance with the provisions of Directive 2023/2225, to develop advice

<sup>12</sup> Hereinafter referred to as ANPC.

<sup>13</sup> Turcu I., *Contractele bancare in Noul Cod civil arts. 2184–2194, arts. 2279–2294. Comentarii și explicații*, C.H. Beck Publishing House, 2013, p. 62.

services provided through other categories of entities, with consumer associations representing an option in this respect, as we will argue below.

The concrete possibilities for more widespread provision of counselling services, by offering this service by categories of independent entities, among those that do not offer or grant credit, *is a desire that will be provided for in a national regulation* resulting from the transposition of Directive 2023/2225. On this basis, the holders of the offer of professional, independent and impartial advice services must be determined.

### 2.3. Aspects of the work carried out by consumer associations in Romania

The current situation of the work carried out by consumer associations reveals a number of issues directly related to the topic of this study.

According to the provisions of Article 38 of the Romanian Government Emergency Ordinance No. 21 of 1992 on consumer protection, as amended<sup>14</sup>, consumer associations may be set up in the private sphere as NGOs. Their sole purpose is to defend the rights and legitimate interests of their members or of consumers in general. Consumer associations have the right to receive logistical support from central and local public administration bodies in order to achieve their objectives and to receive funds from the state and local budgets.

It also regulates the right of consumer associations to carry out *free* activities for the benefit of consumers, *which consist of information, recommendations and advice on problems related to the purchase of a product or service*.

So, in our opinion, this category of activities can also include counselling in general, not only debt counselling, and can consist of *advice and counselling*. We note that these two activities fall under the legal provision of ‘purchasing a product or service’. This express provision refers to the stage prior to the formation of the contract between the professional and the consumer. A number of consumer rights, such as the right to be informed and to receive advice and recommendations, are or should be exercised, as indicated above, *hic et nunc* during the performance of the contract. We believe that the role of consumer associations needs to be strengthened and expanded, as they are entities compatible with carrying out such activity, with a holistic approach, in the sole interest of consumers.

Consumer information, advice and counselling activities are carried out alongside other consumer protection activities through consumer advice and information centres set up within consumer associations. In order to carry out concrete projects, it is strictly necessary to finance the centres from state budget resources, through the ANPC, or from local budgets, through local/county councils, and from national or local social welfare authorities for projects targeting vulnerable people. The financing of the activity of the centres may concern the following: expenses, salaries or, where appropriate, remuneration of staff used in the consumer advice and information centres, which will be made on the basis of the time actually worked; material expenses incurred for the maintenance of the premises and related equipment; running costs and those incurred for printing information materials, etc.

The ANPC controls the activity carried out in the centres. ANPC Order 353/2008 approved the Regulation of 4 November 2008 on the organisation and functioning of the evaluation and selection commission for consumer advice and information centres within consumer associations receiving state budget funds. In the period 2015–2018, consumer advice and information centres operated in 4 of the consumer associations legally established in Romania.<sup>15</sup>

In ANPC’s 2021 Activity Report, the priorities of the institution, in line with the Governance Programme, include stimulating the appropriate establishment/operation of consumer advice and information centres.<sup>16</sup>

<sup>14</sup> Hereinafter referred to as GEO 21/1992.

<sup>15</sup> Summary of the Audit Report on the Consumer Protection Activity of the Court of Accounts of Romania, 2015–2018, <https://cdn.cursdeguvernare.ro/wp-content/uploads/2020/12/Curtea-de-conturi-raport-ANPC-Sinteza-20201008.pdf>, p. 9, accessed 11.02.2024.

<sup>16</sup> Activity Report 2021, [https://anpc.ro/wp-content/uploads/2022/06/RAPORT\\_ANPC\\_2021.pdf](https://anpc.ro/wp-content/uploads/2022/06/RAPORT_ANPC_2021.pdf), p. 36. accessed 11.02.2024.

Consumer associations in Romania have initiated and developed projects on consumer information and advice, mostly online, with general information on consumer rights or special information on various categories of products and services.

We believe that consumer advice and information centres can be developed to carry out debt counselling activities. Information, advice and consultancy activities are less complex than debt counselling, which undoubtedly requires the professionalisation and specialisation of counsellors and the establishment of national quality standards for this activity. It is also necessary to find the resources to finance debt counselling activity over an extended period of time, as it is an ongoing activity in the relationship with consumers, in order to bring about an improvement in their financial situation or to prevent them from falling into debt, based on the decisions taken as a result of the counselling. Therefore, the organisation and development of debt counselling centres remain a real and effective option for consumers, but affordable, sustainable sources of funding for such activities within consumer associations need to be regulated.

In the absence of concrete, adequately funded projects through which the associations can (re) obtain long-term (1–2 years) sources of funding, they do not have the financial capacity to support the provision of independent, professional debt counselling services and only support various consumer information campaigns on credit products to date. This gap needs to be filled by the adoption of legislation on the funding of consumer associations.

### **3. Comparative elements between ‘consumer counselling’ by creditors or credit intermediaries and ‘debt counselling’ by consumer associations**

Directive 2014/17/EU defines for the first time, on a generic basis, the concept of ‘counselling services’ and similarly this definition is also taken up in GEO 52/2016, in Article 3, point 21. *Advisory services* are the provision of *personalised advice* to a consumer on one or more transactions, linked to credit agreements and constituting a separate activity from the granting of credit and credit intermediation activities.

Moreover, GEO 52/2016, in Article 3, point 40, also defines *independent advice services* – the provision of advice by the creditor or credit intermediary in the form of personalised recommendations to a consumer on credit offers, credit agreements or one or more transactions related to credit agreements in *an impartial manner and in the sole interest of the consumer, depending on the consumer’s financial situation, needs and preferences*. They constitute a separate activity from the granting of credit and credit intermediation activities.

In accordance with the provisions of Article 7, para. Two of Directive 2014/17, both the granting, intermediation or provision of credit advice and, where appropriate, ancillary services, *shall be based on information relating to the specific situation of the consumer* and any specific requirements made known by the consumer, since it is only in this hypothesis, where the consumer has informed the creditor, the credit intermediary, that it is possible to offer *personalised* advice on one or more operations relating to credit agreements.

This duty of the creditor to advise the debtor is rooted in the duty of cooperation between the parties during the performance of the contract. The situation of difficulty in which the debtor may find himself during the ‘course’ of the performance of the credit agreement as regards the obligation to repay the principal and interest requires a proactive attitude on the part of the creditor. It is obvious that in the legal relationship arising from the creditor-debtor credit agreement, where the creditor is (possibly) concerned with advising the debtor only at the stage prior to the formation of the agreement, this is incomplete. The parties to the contract must remain with each other throughout the ‘life’ of the credit agreement. In this sense, the doctrine shows that ‘the current economic crisis generates social exclusion and a deep cleavage between individuals in society. Faced with this danger, the only viable foundation remains human rights. It can be used for the protection of the weak against the strong, also invoking a certain concept of human dignity. The judge must intervene only in extreme cases to combat excesses. The legislator must not limit himself to economic efficiency, but must put the human person at the heart of the great legislative policies, to counter the discourse of

economic efficiency. Beyond the exit from the crisis, it is required for the edification of a right capable of preventing the problems of the crisis, based on the principle of dialogue.’<sup>17</sup>

*In fact*, when an instalment is first defaulted on, the creditor passively waits for 90 days to pass before declaring the credit due in order to charge the penalty interest which is higher than the interest agreed by the parties for the credit, and then, with the same nonchalance, assigns the claim resulting from the credit agreement to the debt collectors, who will start using their own means of recovery.

In relation to the debtor’s obligation to repay the credit, we see a *weakening of cooperation* between creditor and debtor during the performance of the contract. A formalism, excessive to the point of *dehumanising* the debtor, characterises the credit agreement. The debtor is perceived and comes to represent a number in the credit contract is identified by a number in the repayment schedule, and his existence as a human being is annihilated.

Comparing the provisions of Art. (1) of GEO 52/2016, regarding the activity of non-governmental organizations ‘They shall provide, through organized actions, *clear and general information on the credit granting process, in order to provide guidance to consumers*’ with those of GEO 52/2016, art. 3, para. 21, which define counselling as ‘*personalized recommendations*’ and those of art. 3, para. 40, where the definition is complemented by the words ‘*impartially and in the sole interest of the consumer, according to his/her financial situation, needs and preferences*’, we are of the opinion that both activities can be considered as distinct categories of counselling services, by reference to the level of generality, as they are offered by different holders.

The regulation of consumer advice thus regulated needs to be improved, as it does not ensure the protection of consumers at a crucial moment in the existence of the credit agreement, namely when the impossibility of performance of the agreement, consisting of the impossibility of repayment of the credit, in conjunction with the state of (over) indebtedness arising from this or related sources, intervenes.

*Specifically*, non-governmental organisations – consumer associations have the legal basis to carry out, *at this date*, credit counselling services to consumers/households, an activity limited to those expressly indicated in Art. 4, para. (1) of GEO 52/2016 – clear and general information on the credit granting process, in order to provide guidance to consumers, especially to those who contact a mortgage-backed loan for the first time.’

*Providing guidance*’ is not the same as doing a budget analysis, receiving information from the authorities about the consumer’s situation on behalf of the consumer, e.g. from the Romanian Credit Bureau, the Public Finance Administration, etc. Moreover, the consumer association cannot take out professional insurance for a possible malpractice resulting from the performance of counselling activities, because for such a hypothesis it would be necessary to perform counselling as a professional activity.

#### 4. Conclusions

The need for independent advice is acutely felt in Romania by consumers in a state of (over) indebtedness, because it was and is generated by certain *de facto* or *de jure* deficiencies arising from the formation and execution of credit contracts, which are one of the main sources of indebtedness. This financial vulnerability of consumers stems from:

- inability to repay instalments after the suspension of payments during the pandemic or as a result of increases/changes in ROBOR and IRCC;
- inability to repay instalments as a result of taking out a loan in an exotic currency;
- rates and fees contained in credit agreements and calculated on the basis of unfair interest and fee clauses or increased by unfair commercial practices of banks in their dealings with consumers;
- high interest rates as a result of the call on non-bank lending, at a time when bank lending

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<sup>17</sup> Turcu I., *Noul Cod civil. Legea nr. 287/2009. Cartea V. Despre obligații art. 1164–1649. Comentarii și explicații*, C.H. Beck Publishing House, 2011, p. 341.

was not accessible to consumers;

- unfair and onerous practices in the assignment and recovery of debts;
- the consequences of failure in entrepreneurial activity on an individual's assets;
- the consequences for the co-debtor and the guarantor of default by the principal debtor,

vulnerabilities due to age, health, addictions, migration. Vulnerable consumers 'are those who cannot, or can no longer, cope with the requirements of the modern consumer society. These consumers run the risk of being isolated from social and economic life, be it by over-indebtedness, illness or a lack of possibilities to communicate. This also includes the growing problem of social deprivation.'<sup>18</sup>

Isolated consumers or groups of consumers in a situation of financial vulnerability resulting from the above shortcomings have resorted *illo tempore* to various means such as legal action against the banking/non-banking service provider<sup>19</sup>, the debt collector, referral to the ANPC, rescheduling/refinancing of credit, etc., other possible palliative solutions. These means, even if useful, cannot replace the actual need for specialised independent debt advice, which is felt in Romania both by consumers who have taken out a credit and may find themselves in one of the situations listed above, and by those who have not acted in any way, as there (over) indebtedness is already established and the possibilities for action are unknown or inaccessible to them.

Moreover, independent debt counselling is all the more necessary as, according to Eurostat, 34.5% of Romanians are on the verge of poverty or social exclusion<sup>20</sup>, which is the highest percentage in the European Union.

Thus, as indicated *above*, the standard of professional competence in counselling is imposed on persons within the creditors or credit intermediaries providing counselling. If the consumer advice service is to be regulated in the future so that it can also be provided professionally by other entities, such as consumer associations, it is necessary to create and impose a uniform national standard of professional competence for consumer associations carrying out these activities, taking as a starting point the standard imposed on creditors and credit intermediaries, and leading to the creation of a profession covering the activities necessary for the provision of independent debt advice to consumers. Independent credit counselling services that are highly professionalised will generate consumer confidence.

The creation of a profession of debt counsellor that meets the requirements of professionalism and competence will be a step forward on this road. The qualifications of those providing counselling need to include long or short courses of specialisation, to which access is allowed from both the legal, economic and social work professions. This occupation should be listed in the Classification of Occupations in Romania (COR) as a separate occupation. Counselling services need to be widely accessible to the population, in smaller, more remote or electronic locations.

Other reasons why it is urgently necessary to transpose Directive 2023/2225 at national level, through clear regulation of entities and services providing independent debt advice to consumers in relation to all stages of credit agreement formation and performance, any type of credit agreement and any other source of indebtedness, are:

- involvement in the activity of educating (over) indebted consumers not only of non-governmental organisations aiming at consumer protection and counselling of indebted consumers, but of any public bodies and agencies working with any category of vulnerable persons or services in the social sphere, e.g. social welfare services in town halls, social welfare directorates, etc. Besides, 'The essence of financial education is understanding young people's relationship between money and work, understanding the value of money, shaping the rationality of spending money, as well as learning the background of capital. With the child's age, the sums spent on them grow, but the child's respect for the money does not increase automatically nor in proportion to the increase in the amounts

<sup>18</sup> Reich N., Micklitz H.-W., Rott P., Tonner K., *European Consumer Law*, Intersentia Publishing House, 2003, p. 46.

<sup>19</sup> In jurisprudence, pseudo-class actions were launched through which consumers 'fight' in group with a certain financial service provider. Regarding the class action, see Marsh G. A., *Consumer protection law in a nutshell. Third Edition*, West Group Publishing House, St. Paul, Minn., 1999, pg. 20–35.

<sup>20</sup> <https://www.caleaeuropeana.ro/eurostat-345-dintre-romani-se-afla-la-limita-saraciei-sau-excluziunii-sociale-fiind-cel-mai-ridicat-procent-la-nivelul-ue/> accessed on 11.02.2024.



spent. That is why it is so important to teach the youngest about finances. Financial education should cover all life stages and start in the pre-school age with the need to adapt the curricula to the level of the trainee. Another kind of knowledge is needed by a preschooler and another by a retired person. Therefore, knowledge in the field of financial literacy should be adapted to the age and the needs of a person and their household.<sup>21</sup>

- creating a nationwide community that includes all actors providing financial education, that supports the concept of consumer advice, its role and that constantly educates consumers in this direction;

- concrete financial education programmes targeting categories of people in different situations of vulnerability, disseminated in the environment accessible to these people not only through non-governmental organisations aiming at consumer protection and providing advice to indebted consumers, but also through entities that are already known and trusted by vulnerable consumers, e.g. associations for the disabled, the elderly, etc.

In researching the issue of debt counseling, we cannot ignore aspects of the impact of online banking because 'In advanced economies, money is gradually moving into the virtual environment.'<sup>22</sup>

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<sup>21</sup> Świecka B., Grzesiuk A., Korczak D., Wyszowska-Kaniewska O., *Financial Literacy and Financial Education. Theory and Survey*, De Gruyter Oldenbourg, 2019, p. 11.

<sup>22</sup> Wheelan C., *Povestea banilor*, Humanitas Publishing House, Bucharest, 2020, p. 75.