

National and European Legislative Mechanisms for Consumer Protection in Financial-Banking Matter

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Abstract

This study aims to analyze the national and European legislative mechanisms for consumer protection in banking matters. In this regard, the first research objective will aim to analyze the notions of "consumer", "professional", "creditor" or "unfair terms" as well as the means of consumer protection (general framework). The second research objective will aim to observe, in financial and banking matters, the obligations of creditors (usually banking institutions) that they must respect towards consumers of banking services, in the case of concluding credit contracts, both in the pre-contractual phase and after the conclusion of the contract. In preparing the study, the relevant and updated national and European legislation as well as existing specialized studies on the subject will be used.

Keywords: consumer, creditor, professional, unfair terms, credit contract.

JEL Classification: K12, K15

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1. The General Legislative Framework for Consumer Protection and the Means of Achieving Effective Protection

In any state, consumers represent the most vulnerable category in relations with professionals. Therefore, it is necessary to ensure effective means of protection at national and European level, capable of preventing and ensuring any kind of abuse by professionals.

In this regard, we will observe the relevant national and European regulatory acts and we will analyze the notions of "consumer", "professional" and "unfair clauses".

Regarding the notion of "consumer", at national level, Law 193/2000 on unfair clauses in contracts concluded between professionals and consumers, republished², establishes the framework provisions regarding the contractual protection of consumers. According to art. 2 paragraph (1) of Law 193/2000 defines the notion of

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² Republished in the Official Gazette no. 543 of 03.08.2012.

consumer as “any natural person or group of natural persons established in associations, who, pursuant to a contract falling under the scope of this law, acts for purposes outside his commercial, industrial or production, craft or liberal activity”. Paragraph (2) of the same article establishes that the notion of professional is designated as “any natural or authorized legal person, who, pursuant to a contract falling under the scope of this law, acts within the framework of his commercial, industrial or production, craft or liberal activity, as well as any person acting for the same purpose in the name or on behalf of him³”.

In the financial and banking field, we note the provisions of Emergency Ordinance no. 50/2010 on consumer credit contracts, with subsequent amendments and updates⁴, which establishes in article 7 point 1 that by consumer we designate “the natural person who acts for purposes that are outside his commercial or professional activity”. Given the specific nature of the regulatory act in question, we will no longer find the notion of “professional” regulated, but that of creditor, which designates “the legal person, including branches of credit institutions and non-banking financial institutions from abroad, which carries out activity on the territory of Romania and which grants or undertakes to grant credits in the exercise of its commercial or professional activity⁵”.

At the European level, we will find Directive 93/13/EEC on unfair terms in consumer⁶ contracts, which defines in art. 2 point (b), the notion of consumer, as “any natural person who, within the framework of contracts regulated by this directive, acts for purposes which are outside his professional activity”. At the same time, the European regulatory act defines the notion of seller or supplier as “any natural or legal person who, within the framework of contracts regulated by this directive, acts for

³ In addition to the information presented, we recommend consulting J. Goicovici, *The Law of Relations between Professionals and Consumers*, Hamangiu Publishing House, Bucharest, 2022, pp. 7-9. In the same sense, Law 296/2004 on the Consumer Code, republished, establishes in art. 27 the following consumer rights: - to be protected against the risk of purchasing a product or being provided with a service that could harm their life, health or safety or harm their legitimate rights and interests; - to be fully, correctly and precisely informed about the essential characteristics of products and services, so that the decision they adopt in relation to them best meets their needs, as well as to be educated in their capacity as consumers; - to have access to markets that provide them with a varied range of quality products and services; - to be compensated effectively and appropriately for the damages caused by the inadequate quality of products and services, using for this purpose means provided by law; - to organize themselves in consumer associations, in order to defend their rights and interests; - to refuse to conclude contracts that contain abusive clauses, in accordance with the legal provisions in force; - not to be prohibited by an economic operator from obtaining a benefit expressly provided for by law.

⁴ Published in the Official Gazette no. 389 of 11.06.2010.

⁵ In our opinion, closely linked to the notion of “creditor”, we find the notion of “commercial unit” explained and specified. Thus, art. 7 point 16 of the same normative act specifies that by “commercial unit” it is considered that there is a commercial unit in one of the following situations: - the supplier or service provider finances the credit for the consumer himself; - the credit is financed by a third party, and the creditor uses the services of the supplier or service provider for the conclusion of the credit agreement or for its preparation; - the respective goods or the provision of a certain service are expressly specified in the credit agreement.

⁶ Published in the Official Journal of the European Union of 01.01.2007.

*purposes relating to his professional, public or private activity*⁷.

Regarding the notion of “*unfair terms*”⁸, we will note that Law 193/2000 establishes the general legislative framework for the protection of consumers as well as the remedies that they have at their disposal in the case of contracts containing unfair terms. Therefore, in the view of the normative act, a contractual clause that has not been negotiated directly with the consumer will be considered abusive if, by itself or together with other provisions in the contract, it creates, to the detriment of the consumer and contrary to the requirements of good faith, a significant imbalance between the rights and obligations of the parties⁹.

Analysing the normative provision, we note that, for a clause to be considered unfair, first, it must not have been negotiated by the parties directly. Paragraph (2) of the same art. 4 of Law 193/2000 establishes that “*a contractual clause shall be considered not to have been negotiated directly with the consumer if it was established without giving the consumer the possibility to influence its nature, such as pre-formulated standard contracts*”¹⁰ or *general conditions of sale practiced by traders on the market of the respective product or service*. At the same time, paragraph (3) states that although “*certain aspects of the contractual clauses or only one of the clauses have been negotiated directly with the consumer, this does not exclude the application of the provisions of this law to the rest of the contract, if an overall assessment of the contract shows that it was unilaterally predetermined by the professional. If a professional claims that a pre-formulated standard clause has been negotiated directly with the consumer, it is his duty to present evidence in this regard*”. In addition, the legislator establishes that with regard to the qualification of a clause as abusive, it can also be assessed according to the following indicators: the nature of the products or services that are the subject of the contract at the time of its conclusion; all the factors that determined the conclusion of the contract or other clauses of the contract or other contracts on which it depends¹¹.

⁷ Art. 2 point (c) of Directive 93/13/EEC on unfair terms in consumer contracts.

⁸ According to the same Directive 93/13/EEC on unfair terms in consumer contracts, a term is considered unfair if it has not been individually negotiated and if, contrary to the requirement of good faith, it causes a significant imbalance in the rights and obligations of the parties under the contract, to the detriment of the consumer. In the same sense, a term is always considered not to have been individually negotiated when it was drafted in advance and, for this reason, the consumer did not have the opportunity to influence the content of the term, in particular in the case of an adhesion contract. The fact that certain aspects of a term or a specific term have been individually negotiated does not exclude the application of this Article to the rest of the contract, if an overall assessment of it indicates that it is, nevertheless, an adhesion contract. Where any seller or supplier claims that a standard term has been individually negotiated, the burden of proof shall lie with him. See also Gh. Piperea, *Consumer protection in commercial contracts*, C.H. Beck Publishing House, Bucharest, 2018, pp. 340-343.

⁹ Article 4 paragraph (1) of Law 193/2000 on unfair terms in contracts concluded between professionals and consumers, republished.

¹⁰ As follows from the provisions of article 5 of Law 193/2000 on unfair terms in contracts concluded between professionals and consumers, republished, in the case of pre-formulated standard contracts, the professional is obliged to provide, upon request, any interested person with a copy of the contract he proposes.

¹¹ Article 4 paragraph (5) of Law 193/2000 on unfair terms in contracts concluded between professionals

Moreover, for a more accurate identification of the abusive clauses existing in contracts concluded between consumers and professionals, a special annex is inserted in Law 193/2000 with clauses that can be considered abusive¹². In this sense, unfair terms may be considered to be those that:

- give the professional the right to unilaterally modify the terms of the contract, without having a valid reason to be specified in the contract;
- oblige the consumer to submit to contractual conditions that he did not have the real opportunity to become aware of at the date of signing the contract;
- oblige the consumer to fulfil his contractual obligations, even in situations where the professional did not fulfilled his own;
- give the professional the right to automatically extend a contract concluded for a determined period, by the tacit agreement of the consumer, if the deadline during which he could express his option was insufficient;
- give the professional the right to unilaterally modify, without the consumer's agreement, the terms regarding the characteristics of the products and services to be provided or the delivery term of a product or the execution term of a service;
- give the professionals the right to unilaterally ascertain the conformity of the products and services provided with the contractual provisions;
- give the professional the exclusive right to interpret the contractual clauses;
- restrict or cancel the consumer's right to claim compensation in cases where the professional does not fulfilled his contractual obligations;
- oblige the consumer to pay disproportionately high amounts in the event of non-fulfilment of contractual obligations by him, compared to the damage suffered by the professional;
- provide that the price of the products is determined at the time of delivery or allow sellers of products or service providers the right to increase prices, without, in both cases, granting the consumer the right to cancel the contract if the final price is too high in relation to the price agreed at the time of conclusion of the contract;
- allow the professional to obtain sums of money from the consumer, in the event of non-execution or completion of the contract by the latter, without providing for the existence of compensation in an equivalent amount for the consumer, in the event of non-execution of the contract by the professional;
- give the professional the right to cancel the contract unilaterally, without providing the same right for the consumer;
- give the professional the right to terminate the contract concluded for an indefinite period without reasonable prior notice, except for justified reasons¹³.

and consumers, republished.

¹² See also A.N. Gheorghe, C. Spasici, D. S. Arjoca, *Consumer Law*, Hamangiu Publishing House, Bucharest, 2012, pp. 96-99. At the same time, we also refer to the work R. Rizoïu, „We have an abusive clause: how do we proceed?”, *Revista Română de Drept Privat*, no. 1/2018. The article can be consulted in its entirety at: <https://sintact.ro/#/publication/151012466?keyword=clauze%20abuzive&c m=SREST>.

¹³ See the Annex to Law 193/2000 on unfair clauses in contracts concluded between professionals and consumers, republished. See also E. Mihai, „Unfair clauses or the consumerist avatar of contractual equilibrium”, *Pandectele Romane*, no. 10/2007. The article can be consulted in its entirety at: <https://>

Regarding the existing protection mechanisms at the level of the provisions of Law 193/2000, first of all we note that, in the case of identifying abusive clauses contained in a contract and ascertained either personally or through the bodies authorized by law, they will not produce effects on the consumer, and the contract will continue to run, with the consumer's consent, only if after their elimination it can continue¹⁴. And to the extent that the contract can no longer produce its effects after the elimination of the clauses considered abusive, the consumer is entitled to request the termination of the contract, being able to request, as the case may be, damages.

In this regard, the control of compliance with the legal provisions is carried out by the authorized representatives of the National Authority for Consumer Protection (ANPC), as well as by authorized specialists of other public administration bodies, according to their competences, and the control of professionals is carried out upon notification by the injured parties or ex officio. Professionals are required to submit to the control bodies, in original, the contracts concluded with consumers. The competent control bodies conclude minutes recording the facts established during the checks carried out, as well as the articles of the law violated by the professional. In the event that they find the use of adhesion contracts containing abusive clauses, the control bodies provided for by law will notify the court of the professional's domicile or, as the case may be, the registered office, in order to order the cessation of the use of abusive clauses for the future and the modification of the contracts currently in execution, by eliminating the abusive clauses¹⁵.

In the event that the notified court finds the existence of abusive clauses in the contract, it obliges the professional to modify all adhesion contracts currently in execution and to eliminate the abusive clauses from the pre-formulated contracts, intended to be used within the professional activity, and obliges him to publish on his own website the court decisions that have become final. At the same time, the court will also apply the fine provided for in art. 16 par. (1) of Law 193/2000. If the court finds that there are no abusive clauses in the contract, it will annul the minutes drawn up and the decision is subject only to appeal¹⁶. In addition, the Court is obliged to examine ex officio the abusive nature of a contractual clause as soon as it has the necessary legal and factual elements in this regard. When it considers that such a clause is abusive, the court does not apply it, unless the consumer objects¹⁷.

An important role in consumer protection is also played by Consumer Protection Associations¹⁸. According to the provisions of the same Law 193/2000, they

sintact.ro/#/publication/150999791?keyword=clauze%20abuzive&cm=SREST.

¹⁴ According to article 6 of Law 193/2000 on unfair terms in contracts concluded between professionals and consumers, republished.

¹⁵ According to articles 10-12 of Law 193/2000 on unfair terms in contracts concluded between professionals and consumers, republished.

¹⁶ Article 13 of Law 193/2000 on unfair terms in contracts concluded between professionals and consumers, republished.

¹⁷ Article 13¹ of Law 193/2000 on unfair terms in contracts concluded between professionals and consumers, republished.

¹⁸ Ordinance 21/1992 on consumer protection, republished, establishes in article 30 that consumer associations are considered non-governmental organizations, as legal persons, according to the law, and

can sue the professional who uses adhesion contracts containing abusive clauses, before the competent court, so that it can order the cessation of their use, as well as the modification of contracts currently in execution, by eliminating the abusive clauses¹⁹.

In addition to this prerogative, Consumer Associations may publish, within 45 days, on the official website in compliance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, final court decisions, in situations where they had procedural status or the case submitted to the court is in the field for which the consumer association was established²⁰.

2. Consumer Protection Measures in Bank Credit Contracts. Old and New Legislative Valences

In the financial-banking field²¹, as previously stated, Emergency Ordinance 50/2010 on consumer credit contracts, with amendments and updates, regulates the rights and obligations of the parties with regard to consumer credit contracts²². "Credit

which, without seeking to make a profit for their members, have as their sole purpose the defence of the legitimate rights and interests of their members or of consumers in general. And according to article 37 of the same national normative act, consumer associations have the following rights and obligations: - to be logistically supported by central and local public administration bodies, in order to achieve their objectives; - to receive amounts from the state budget and local budgets; - to inform the competent authorities regarding the presence on the market of non-compliant products or products that endanger the life, health or safety of consumers, regarding abusive clauses in contracts and unfair practices of traders in their relations with consumers; - to request economic operators to produce products and services under special conditions, in order to meet the needs of disabled or elderly consumers; - to be consulted when drafting normative acts, standards or specifications that define the technical and qualitative characteristics of products and services intended for consumers; - to inform public opinion, through the media, on the quality deficiencies of products and services, as well as on their harmful consequences for consumers; - to file legal actions to protect the legitimate rights and interests of consumers; - to request public administration services or bodies to conduct analyses and tests of products intended for consumers and to publish the results. We also recommend consulting the article, L. Bercea, „Normative instruments for the protection of the over-indebted consumer, (Again) about regulatory convergence and competition instead of an editorial”, *Romanian Journal of Business Law*, no. 5/2016. The article can be consulted in its entirety at: <https://sintact.ro/#!/publication/151010589?keyword=asocia%C8%9Biile%20pentru%20protec%C8%9Biile%20consumatorilor&cm=SREST>

¹⁹ Article 12 paragraph (3) of Law 193/2000 on unfair terms in contracts concluded between professionals and consumers, republished.

²⁰ Article 13 paragraph (6) of Law 193/2000 on unfair terms in contracts concluded between professionals and consumers, republished.

²¹ We would like to point out that on 30.10.2023, Directive 2023/2225 on consumer credit agreements and repealing Directive 2008/48/EC was published in the Official Journal of the European Union, establishing a common framework for the harmonisation of certain aspects of the laws, regulations and administrative provisions of the Member States concerning consumer credit agreements.

²² Article 2 of Emergency Ordinance 50/2010 on consumer credit agreements, as subsequently amended and updated, establishes that the scope of application covers credit agreements, with the exception of the following operations: - rental or leasing agreements, where the obligation to purchase the object of the agreement is not established either by the respective agreement or by another separate agreement; - credit agreements in the form of an "overdraft", on the basis of which the credit must be repaid within one month; - credit agreements on the basis of which the credit is granted without interest and without other costs, as well as credit agreements with a repayment term of 3 months and for which only insignificant costs are

contract" means the contract by which a creditor grants, promises or stipulates the possibility of granting a consumer a credit in the form of a deferred payment, loan or other similar financial facilities, with the exception of contracts for the continuous provision of services or for the supply of goods of the same kind, when the consumer pays for such services or goods in installments, during their provision, the parties to the contract being the creditor and the consumer²³.

The aforementioned normative act establishes the legislative framework for the protection of the consumer of financial and banking services by regulating certain obligations incumbent on the creditor, in most cases, the financial and banking institution, both before and after the conclusion of the contract. Therefore, the creditor and, where applicable, the credit intermediary are obliged to provide the consumer, based on the credit terms and conditions offered by the creditor, as well as, where applicable, the preferences expressed and the information provided by the consumer, with the necessary information to allow the consumer to compare several offers in order to make an informed decision regarding the possible conclusion of a credit contract. The information must be provided sufficiently in advance, but not less than 15 days before a consumer concludes a credit contract or accepts an offer, on paper or another durable medium and must be written in a visible and easily legible manner. At the same time, the pre-contractual information must be written in such a way as not to mislead consumers, by using technical, legal or financial-banking expressions, by using abbreviations or initials of names, except for those provided for by law or common language. Technical terms will be explained at the consumer's request, in writing, at no

payable. By insignificant costs is meant costs of up to 0.5% of the value of the credit agreement; - credit agreements granted by an employer to its employees as an accessory, as support for them, without interest or with an effective annual interest rate lower than that charged on the market and which are not generally offered to the public; - credit agreements concluded with investment firms, in order to allow an investor to carry out a transaction relating to one or more financial instruments from those provided for in art. 2 point 1 of Regulation no. 31/2006 on supplementing certain regulations of the National Securities Commission, in order to implement certain provisions of the European directives, approved by Order of the National Securities Commission no. 106/2006, when the investment company or credit institution granting the credit is involved in such a transaction; - credit agreements which are the result of a decision issued by a court or another authority established in accordance with legal provisions; - credit agreements relating to the postponement, free of charge, of the payment of an existing debt, not including restructuring, rescheduling, etc. agreements; - credit agreements upon conclusion of which the consumer is required to provide the creditor with a movable asset, as collateral, and in which the consumer's legal liability is strictly limited to the respective movable asset offered as collateral. This does not include credit agreements under which the asset offered as collateral is the financed asset itself; - credit agreements relating to credits granted to a restricted public on the basis of a legal provision of general interest, at interest rates lower than those normally practiced on the market or without interest or under conditions that are more advantageous for the consumer than those normally practiced on the market and with interest rates lower than those normally practiced on the market; - credit agreements regarding the sale or purchase of immovable property, credit agreements secured by a mortgage on immovable property, credit agreements involving a right related to an immovable property.

²³ Article 7 point 2 of Emergency Ordinance 50/2010 on consumer credit contracts, as amended and updated. See also J. Goicovici, *Consumer and real estate investment loans. Comments and explanations*, C.H. Beck Publishing House, Bucharest, 2014, pp. 44-47.

additional cost²⁴.

Thus, among the information to be transmitted to the consumer will be found: the type of credit; the identity and address of the registered office and place of business of the creditor, as well as, where applicable, the identity and address of the registered office and/or place of business or, where applicable, the home address of the credit intermediary involved; the total value of the credit and the conditions governing the drawdown; the duration of the credit agreement; in the case of a credit granted in the form of a payment deferral for a specific good or service and in the case of linked credit agreements, the respective good or service and its purchase price; the interest rate related to the credit; the conditions governing the application of the interest rate related to the credit, the formula for calculating the interest rate, as well as the terms, conditions and procedure for modifying the interest rate related to the credit and, where different interest rates related to the credit are applied in different circumstances, the above information for all applicable rates; the annual percentage rate of charge and the total amount payable by the consumer, illustrated by means of a representative example indicating all the assumptions used for the calculation of that rate; where the consumer has informed the creditor of one or more components of the preferred credit, such as the duration of the credit agreement and the total amount of the credit, the creditor must take these components into account; where a credit agreement provides for different drawdown arrangements, with different costs or with different interest rates on the credit, and the creditor uses the assumption set out in Annex 1, point II, letter b), it must indicate that the application of other drawdown arrangements for this type of credit agreement may result in the application of a higher annual percentage rate of charge; the amount, number and frequency of payments to be made by the consumer and, where appropriate, the order in which the payments will be allocated for repayment of the different outstanding balances with different interest rates on the credit; the management fees of one or more accounts recording both payment transactions and credit withdrawals, unless the opening of an account is optional, together with the costs for using a means of payment for both payment transactions and credit withdrawals, any other costs resulting from the credit agreement, as well as the conditions under which these costs may be modified; the existence of taxes, fees and costs that the consumer must pay in connection with the conclusion, advertising and/or registration of the credit agreement and its ancillary documents, including notary fees; the obligation, where applicable, to conclude a contract for an ancillary service related to a credit agreement, in particular insurance, where the conclusion of the service contract is mandatory for obtaining the credit itself or for obtaining it in accordance with the terms and conditions presented; the interest rate applicable in the event of overdue instalments, the measures for its adjustment and any other costs incurred in the event of non-compliance with the contract; a warning regarding the consequences of non-

²⁴ In accordance with the provisions of Article 11 paragraph (1-2) of Emergency Ordinance 50/2010 on consumer credit contracts, as amended and updated. See also L. Săuleanu, „The obligation of banks to inform in the case of loans granted in Swiss francs”, *Romanian Journal of Jurisprudence*, no. 3/2015. The article can be consulted in its entirety at: <https://sintact.ro/#/publication/151010226?keyword=bonitatea%20consumatorului&cm=SREST>.

payment²⁵.

The warning must contain, as a mandatory requirement, the deadlines for reporting to the Credit Bureau and the minimum deadline within which the creditor may initiate the enforcement procedure; the guarantees requested; the existence or absence of the right of withdrawal; the right of early repayment and, where applicable, information regarding the creditor's right to compensation and the manner in which it will be established in accordance with the provisions of art. 66-69; the consumer's right to be informed immediately and free of charge of the result of the consultation of the database for the assessment of his creditworthiness, in accordance with the provisions of art. 32 paragraph (1); the consumer's right to receive, upon request and free of charge, a copy of the draft credit agreement. This provision does not apply if, at the time of the request, the creditor cannot conclude the credit agreement with the consumer in accordance with its internal rules; the consumer's right to receive a copy of the draft credit agreement free of charge in the case of loans secured by a mortgage, another comparable security or a right over immovable property, as well as credit agreements the purpose of which is the acquisition or retention of ownership rights over an existing or planned immovable property or the renovation, development, consolidation, rehabilitation, extension or increase in the value of an immovable property. In this case, point 5 on other important legal aspects, heading 5, set out in Annex No. 2, is reworded as follows: "The right to receive the draft credit agreement. You have the right to receive a copy of the draft credit agreement." This provision does not apply if, at the time of the request, the creditor is unable to conclude the credit agreement with the consumer in accordance with its internal rules and, where applicable, the period during which the pre-contractual information is legally binding on the creditor²⁶.

Also, before concluding a credit agreement, the creditor is obliged to assess the consumer's creditworthiness, taking into account their ability to cope with adverse developments in exchange rates, interest rates and income²⁷.

After the conclusion of the agreement and without prejudice to the legal

²⁵ See also C.E. Popa Tache, „Evaluation of the efficiency of consumer protection measures in the Romanian banking sector”, *Revista de Drept Bancar și Financiar*, no. 1/2024. The article can be consulted at: <https://sintact.ro/#/publication/151033097?keyword=asocia%C8%9Biile%20pentru%20protec%C8%9Bia%20consumatorilor&cm=SREST>; I. Silberstein, „Can we talk about the efficiency of legislative initiatives for the relationship between the consumer and the professional creditor?”, *Revista Română de Drept al Afacerilor*, no. 5/2016. The article can be consulted in full at: <https://sintact.ro/#/publication/151010591?keyword=bonitatea%20consumatorului&cm=SREST>.

²⁶ Article 14 of Emergency Ordinance 50/2010 on consumer credit contracts, with subsequent amendments and updates.

²⁷ Article 30 paragraph (1) of Emergency Ordinance 50/2010 on consumer credit contracts, with subsequent amendments and updates. In addition to the information presented, we also recommend analysing, E.N. Valcu, „To what extent do the requirements of Directive (EU) 2023/2225 guarantee consumers in consumer credit contracts, rights appropriate to the digitalization era”, *Romanian Journal of Business Law*, no. 4/2024. The article can be consulted in full at: <https://sintact.ro/#/publication/151033043?keyword=bonitatea%20consumatorului&cm=SREST>; L. Săuleanu, „Risk in credit contracts, with special regard to currency risk”, *Romanian Journal of Private Law*, no. 2/2017. The article can be consulted in its entirety at: <https://sintact.ro/#/publication/151011811?keyword=bonitatea%20consumatorului&cm=SREST>.

provisions regarding interest rate changes, during the term of the credit agreement²⁸:

- it is prohibited to increase the level of commissions, tariffs and bank charges, except for the costs imposed by legislation;

- it is prohibited to introduce and charge new commissions, tariffs or any other bank charges, except for the specific costs of additional products and services expressly requested by the consumer, not provided for in the contract or which were not offered to consumers at the time of its conclusion. These unforeseen costs will be charged only

²⁸ Art. 35 paragraph (1) of Emergency Ordinance 50/2010 on consumer credit agreements, as amended and updated. According to art. 46 of Emergency Ordinance 50/2010 on consumer credit agreements, as amended and updated, the credit agreement must contain the following in a concrete and concise manner: - type of credit; - identity and address of the registered office and place of business/domicile of the contracting parties, as well as, where applicable, the identity and address of the registered office and/or place of business or, where applicable, the domicile of the credit intermediaries involved; - duration of the credit agreement; - total amount of credit and conditions governing the drawdown of the credit; in the case of a credit granted in the form of a deferral of payment for a specific good or service or in the case of linked credit agreements, the respective good or service and its purchase price; the interest rate on the credit and its type, fixed or variable; the conditions governing the application of the interest rate on the credit, the formula for calculating it, as well as the terms, conditions and procedure for amending the interest rate on the credit and, where different interest rates on the credit apply in different circumstances, the information provided for above on all applicable interest rates; the annual percentage rate of charge and the total amount payable by the consumer, calculated at the time of conclusion of the credit agreement; all assumptions used for calculating this rate shall be mentioned; the amount, number and frequency of payments to be made by the consumer and, where appropriate, the order in which payments are to be made, for the purpose of repayment, for the different outstanding balances with different interest rates on the credit; in the case of repayment in instalments of the total amount of credit under a fixed-term credit agreement, the consumer's right to receive, on request and free of charge, at any time during the entire duration of the credit agreement, on paper or on another durable medium, as chosen by the consumer, a statement of account in the form of an amortisation table/repayment schedule; where costs and interest are to be paid without any part of the total amount of credit being repaid, a statement showing the periods and conditions for the payment of interest and any costs relating to the credit; the costs of administering one or more accounts recording both payment transactions and credit withdrawals, unless the opening of an account is optional, the costs of using a means of payment for both payment transactions and credit withdrawals, any other costs resulting from the credit agreement, as well as the conditions under which these costs may be amended; the interest rate, in the case of overdue payments, applicable on the date of conclusion of the credit agreement and the measures for its adjustment and, where applicable, any costs due in the event of non-payment; warning regarding the consequences of non-payment; the credit agreement shall necessarily contain a provision by which the consumer is warned about reporting to the Credit Bureau, the Central Bank Risks Office and/or other similar existing structures, in the event that he is late in paying the instalments due, if this reporting obligation exists; where applicable, a mention according to which it will be necessary to pay certain taxes, fees and costs in connection with the conclusion, advertising and/or registration of the credit agreement and its ancillary documents, including notary fees; the necessary guarantees and insurance, if any; the existence or non-existence of a right of withdrawal, the period within which that right may be exercised and other conditions for its exercise, including information on the consumer's obligation to pay the credit or part of the credit drawn and the interest, according to the provisions of art. 59 para. (1) let. b), para. (3) and (4) and art. 60, as well as the amount of interest payable per day; information on the rights resulting from art. 63-65, as well as the conditions for the exercise of these rights; the right of early repayment, the early repayment procedure, as well as, where applicable, information on the creditor's right to compensation and the manner in which this compensation will be determined; the procedure to be followed in exercising the right to request the termination of the credit agreement; whether or not there is an out-of-court complaint and compensation mechanism for the consumer and, if so, the means of accessing it; other contractual terms and conditions; address of the National Authority for Consumer Protection.

on the basis of additional documents accepted by the consumer. Costs imposed by legislation are exempted;

- it is prohibited to charge a cash deposit fee for the payment of credit instalments, regardless of whether the deposit is made by the holder or by another person;

- it is prohibited to charge a withdrawal fee for amounts withdrawn from the credit.

- it is prohibited to charge a commission, tariff, bank charge or any other cost, if the consumer wishes to change the due date of the instalments;

- it is prohibited to charge commissions in situations where consumers request the change of guarantees, provided that the consumer pays all costs related to the establishment and evaluation of the new guarantees.

Furthermore, contractual clauses that give the creditor the right to unilaterally modify the contractual clauses without concluding an additional act accepted by the consumer are prohibited, as well as clauses by which:

- the consumer is obliged to maintain the confidentiality of the contractual provisions and conditions;

- the creditor may declare the loan due or unilaterally terminate the contract or may penalize the consumer in the event of damage to the creditor's reputation;

- the creditor may declare the loan due in advance if the consumer has not fulfilled his obligations under other credit contracts concluded with other creditors;

- the creditor requires the consumer to conclude an insurance contract for the goods brought as collateral with a company approved by the bank²⁹.

It should be noted that, in accordance with the provisions of art. 54 of Emergency Ordinance 50/2010, the Consumer may decide to terminate an open-ended credit agreement, free of charge, at any time, except in cases where the parties have agreed on a notice period. This period may not exceed one month. If agreed in the credit agreement, the creditor may decide to terminate an open-ended credit agreement by notifying the consumer in writing, on paper or on another durable medium, at least two months in advance.

3. Conclusions

We cannot conclude the analysis we have begun without discussing two essential rights that are conferred on the consumer, namely: the right of withdrawal and the right of early repayment³⁰.

According to Article 58 of the normative act under review, the consumer has a period of 14 calendar days in which to withdraw from the credit agreement without

²⁹ Article 40 paragraph (4) of Emergency Ordinance 50/2010 on consumer credit contracts, with subsequent amendments and updates.

³⁰ Also note the article, L. Bercea, „Consumer credit: comparison between consumer withdrawal from the contract and early repayment of the credit”, *Pandectele Romane*, no. 10/2009. The article can be consulted in full at: <https://sintact.ro/#!/publication/151002296?keyword=bonitatea%20consumatorului&cm=SRE> ST.

giving any reason. The withdrawal period begins to run from one of the following dates: the date of conclusion of the credit agreement or the date on which the consumer is informed of the contractual clauses, conditions and information in accordance with the provisions of Articles 33-49 of the normative act, if that day is later than the date of conclusion of the agreement. If the consumer exercises his right of withdrawal, he has the following obligations: to notify the creditor on the basis of the information provided by him in accordance with the provisions of Article 46 paragraph (1) letter a)-q) of the law, in order for the exercise of this right to take effect before the expiry of the withdrawal period and to pay the creditor the credit or part of the credit drawn and the related interest from the date on which the credit or the respective part of the credit was drawn until the date on which the credit or the respective part of the credit was repaid; the interest is calculated based on the agreed interest rate. The notification is made on paper or on another durable medium within the reach of the creditor and accessible to him and is transmitted by legally permitted means, which ensure the transmission of the text of the act and the confirmation of its receipt being sent before the expiry of the period. It is very important to specify that in the event that the legal requirements are met, the creditor is not entitled to any other compensation from the consumer in the event of withdrawal, with the exception of compensation for any non-refundable taxes paid by the creditor to the public administration³¹.

As regards the right to early repayment, the consumer has the right, at any time, to be released in whole or in part from his obligations under a credit agreement. In this case, the consumer is entitled to a reduction in the total cost of the credit, this reduction consisting of the interest and costs relating to the period between the date of early repayment and the date set for the termination of the credit agreement. The consumer's right to early repayment may not be made conditional on the payment of a certain minimum amount or a certain number of instalments. In the event of early repayment of the credit, the creditor is entitled to fair and objectively justified compensation for any costs directly linked to the early repayment of the credit, provided that the early repayment occurs during a period in which the interest rate on the credit is fixed. Such compensation may not exceed: 1% of the value of the credit repaid in advance, if the period of time between the early repayment and the agreed date for the termination of the credit agreement is more than one year or 0.5% of the value of the credit repaid in advance, if the period of time between the early repayment and the agreed date for the termination of the credit agreement is not more than one year. The creditor shall establish a clear and easily verifiable method of calculating the compensation, which shall be made known to the consumer at the pre-contractual stage³².

As in the case of Law 193/2000, ensuring compliance with the provisions of Emergency Ordinance no. 50/2010 by creditors and credit intermediaries, consumers

³¹ Articles 59 and 60 of Emergency Ordinance 50/2010 on consumer credit contracts, with subsequent amendments and updates.

³² See also J. Goicovici, „Considerations regarding the consumer's right to early repayment and the sanctions applicable to professional creditors in credit contracts”, *Studii Iurispudentia*, no. 4/2017. The article can be consulted in its entirety at: <https://sintact.ro/#/publication/151012476?keyword=bonitatea%20consumatorului&cm=SREST>.

will have the possibility to notify the National Authority for Consumer Protection, in the event of legal abuses³³.

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³³ According to the provisions of articles 66 and 67 of Emergency Ordinance 50/2010 on consumer credit contracts, with subsequent amendments and updates.