

Cover article: "The Law for the Amendment of the Ordinance on Consumer Credit Contracts - Peace or Merely an Armistice?"

by Gabriela Tanase, Senior Associate

This month's article covers the provisions of Law no. 288/2010, the long-awaited law for the amendment of Government Emergency Ordinance no. 50/2010 on consumer credit contracts, meant to be a "peace treaty" for the involved parties – credit institutions and their consumers.

Legislative Retrospective

Voicu & Filipescu is a full service law firm, covering all legal areas relevant to your company's activity. This issue of our monthly newsletter provides you with a brief description of some of the recent legal amendments in the following areas:

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- Employment
- Real Estate

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THE LAW FOR THE AMENDMENT OF THE ORDINANCE ON CONSUMER CREDIT CONTRACTS - PEACE OR MERELY AN ARMISTICE?

Come into force on the second day of the new year, the long-awaited law for the amendment of Government Emergency Ordinance no. 50/2010 on consumer credit contracts (the "Ordinance") is meant to be a "peace treaty" for the parties involved - credit institutions and the consumers of services provided by the same - attempting to offer satisfaction to both combatants. Thus, while the debtors in the credit contracts obtained, pursuant to the amendment of the Ordinance, the removal of certain fees, as well as clarifications with respect to the credit-related costs and the contractual clauses, the main amendment for credit institutions consists in the fact that, save for some cases to be further analyzed, the Ordinance shall no longer apply to credit contracts that were in progress on the date of its coming into force, namely June 21, 2010.

This article seeks to analyze the main amendments brought to the Ordinance by means of Law no. 288/2010, as well as the impact of such amendments on the participants in the crediting activity.

(1) MAIN AMENDMENTS TO THE ORDINANCE

1.1 Prohibiting fees in the event of a change in the credit collaterals or the due date

As of the date of the law's coming into force, banks and non-banking financial institutions may no longer charge fees, tariffs, bank expenses or any other costs in the event that:

- (i) The due date for the payment of the installments is changed at the consumer's request;
- (ii) The consumer requests a change in the credit collaterals, provided that he/she pays all costs related to the establishment and appraisal of the new collaterals.

1.2 Prohibiting cross-default clauses and clauses limiting the consumer in his/her choice of the insurer

The creditor may not declare the credit outstanding in advance in the event that the consumer failed to comply with his/her obligations arising from credit contracts concluded with other creditors. In consideration of the fact that exceptions have a strict interpretation and application, we believe that declaring a credit outstanding in advance is permitted in the event that the consumer fails to comply with the obligations of his/her other credit contracts concluded with the same creditor.

Also, the consumer becomes free to choose the insurer that shall insure the good serving as collateral, and shall no longer be bound to resort to the services of an insurance company agreed upon by the bank.

1.3 Different rules for setting and charging certain contractual costs

- (i) The application review fee shall be in a fixed amount, applicable to all consumers pertaining to the same creditor and having the same credit type, and its charging in the form of a percentage from the financed value is prohibited;
- (ii) The credit management fee, if calculated on a percentage basis, shall be applied to the credit balance, and shall be charged solely for actions of monitoring, registration and/or performance of operations for the purpose of using or reimbursing the credit;
- (iii) The default interest, charged in the event of a delay in payment, shall be calculated as a fixed percentage applicable to the outstanding contractual amounts, save for the interests (the prohibition of the "interest on interest" in the case of credits granted to individuals). Furthermore, the conditions in which the banks are obligated to charge default interests decreased in the case of outstanding payments, by eliminating divorce and extended sick leave from the events generating decreases of incomes and by limiting the period for granting such facilities to a maximum of 12 months. In the event of death, the period for applying a decreased default interest may not be shorter than 6 months;
- (iv) The creditor has the right to also charge from the consumer the costs charged by third parties in relation to the credit granted. The explicit legal framework is thus created for the leasing companies' charging, for example, of the costs entailed by the registration of goods, as well as the amounts that the leasing company, in its capacity as owner of the good, pays to third parties as a result of the user's actions (i.e.: traffic fines).

1.4 Eliminating conditions imposed upon the creditor when assessing the consumer's good standing

By eliminating from the Ordinance the threshold of 15% of the initial value of the credit, from which the credit value is considered to become significant, the banks have regained their freedom to set out, by means of internal norms, the minimum limit from which it is necessary to reassess the consumer's good standing in the event of an increase of the total credit value, occurred after the contract's conclusion.

The creditor also has the option (and not the obligation) to consult relevant databases (i.e.: the Credit Office, the Central Credit Register etc) prior to concluding a credit contract.

1.5 Prohibiting the conditioning of early reimbursement of the credit on the payment of a minimum amount or the equivalent value of an established number of installments

1.6 The obligation to draw up credit contracts in the Romanian language, with a 12 p font

Both credit contracts and the information provided to the consumer prior to signing the

contract must be written in a Time New Roman font, with a size of at least 12 p (unlike the current regulation which provided for a 10 p font), in the Romanian language. Thus, credit contracts must contain information that is complete, clear and easy to understand. At the express request of the consumer, such information shall be detailed and additionally explained by the bank, prior to signing the contract, in the form of a note to be attached to the contract.

We must specify that the obligation to explain in writing, by means of a separate note, solely applies to such information that the consumer does not consider clear or easy to understand and which he/she expressly communicates to the bank. This category also includes technical, legal phrases or phrases that are specific to the financial-banking field, including abbreviations established on the relevant market (for example: EURIBOR, ROBOR, LIBOR), which are to be explained in writing only if the interested party expressly requests it. Nevertheless, nothing shall prevent the bank from inserting, on its own initiative, in the attached note and even in the contract's wording, the terms that are less usual or which generally imply specific knowledge. The clarification may not be charged.

1.7 The exemption of the creditors in the leasing contracts from the obligation to collect installments in the currency in which the credit was granted

Creditors do not have the right to refuse the cashing of credit installments in the currency in which the credit was granted, save for business operators that conclude leasing contracts. The exemption also applies to the banks that conclude leasing contracts.

(2) THE NON-RETROACTIVITY OF THE ORDINANCE'S PROVISIONS

2.1 The non-retroactivity of the Ordinance on the ongoing contracts. Exceptions

The Ordinance's provisions shall no longer apply to the credit contracts that were in progress at the time of its coming into force, with the exception of the following cases:

- (i) in the event that the consumer should request the refinancing of the credit at the same bank, if such consumer proved to be a good pay, the bank is obligated to assess his/her credit application and, depending upon the consumer's financial situation, shall decide upon granting the refinancing credit. If the consumer's application is accepted, the refinancing shall be made in compliance with all conditions of the relevant bank's current crediting offer;
- (ii) in the event of an early reimbursement of the credit, the provisions of the Ordinance with respect to the conditions and the costs of early reimbursement (the equitable decrease of the credit's total cost, the prohibition of conditioning the credit's early reimbursement on the payment of a minimum amount or the equivalent value of an established number of installments, eliminating the early reimbursement fee in the case of variable interest credits and limiting the same to a maximum of 1 % of the

amount reimbursed in advance in the case of fixed interest credits) shall also apply to consumers with contracts that are in progress on the date of the Ordinance's coming into force.

2.2 Special provisions applicable to addenda

Despite implementing the rule of non-retroactivity of the Ordinance on the contracts that are in progress, the amendment law also regulates the methods of partial "paralysis" of applying this rule, by validating all addenda concluded and signed by the consumers in view of ensuring conformity of their contracts with the initial provisions of the Ordinance. In other words, the law starts from the premise that such addenda contain clauses that are favorable to consumers, knowingly accepted by them and, as a consequence, considers they become effective as of the date of their signing. One thus institutes an exception from the rules of the Ordinance's non-retroactivity, in consideration of the fact that the provisions of the same "subsist" by the preservation of the validity of the addenda already signed by the consumers.

In the case of addenda not signed by the consumers, considered tacitly accepted by virtues of the law, such addenda shall produce their effects in accordance with the terms under which they were developed, save in the case that the consumer or the creditor should notify the other party to the contrary, up to the latest of the beginning of March 2011 (within 60 days following the date of coming into force of the law for the amendment of the Ordinance). In other words, starting from the premise that such addenda were drawn up in order to ensure the conformity of the credit contracts that are in progress with the initial provisions of the Ordinance, their only "flaw" being the fact that they were not signed by the consumers, the ordinance's retroactivity shall also subsist as far as they are concerned, save in the case that they are appealed by the interested party within the legal term of 60 days.

The only case, in our opinion, where it may be considered that the Ordinance does not operate retroactively upon the contracts in progress in June 2010 (with the exceptions set forth under point 1.1 above) is that where the bank or the consumer, discontent with the provisions of the tacitly accepted addendum, shall notify the opposing party with respect of his/her/its refusal to accept its implementing in the existing form, in which case the clauses of the credit contracts as prior to the Ordinance's coming into force shall become valid again, unless the parties agree otherwise.

(3) THE SOCIO-ECONOMIC IMPACT OF THE AMENDMENT. CONCLUSIONS

The amendments brought to the Ordinance inherently generated additional costs for the banks, as the readjustment of the existing internal regulations, the amendment of the fee structures, the adjustment of the advertising materials and, as the case may be, the amendment of the current credit contract models in order to make them comply with the new legal

provisions became necessary. The banks shall also have to decide whether they joint the battle of the addenda, given that returning to the previous credit contracts is only possible as a result of the notification actions performed within the legal term.

On the other hand, upon reviewing the law for the amendment of the Ordinance, resorting to the notification on the refusal of the addendum considered to have been tacitly accepted, in the absence of a concomitant request for credit refinancing would only represent an advantage for the consumer if the previous clauses of the credit contract were more advantageous for such consumer, as the law does not explicitly regulate the fact that the refusal notification entails the right to a renegotiation of the contract, but solely that the addendum considered tacitly accepted shall no longer apply in the form drawn up by the bank and unsigned by the consumer.

banking - legislative retrospective

Since the latest edition of the newsletter, the regulatory activity of the National Bank of Romania ("BNR") materialized into several normative acts regarding the activity of the entities supervised by the same, which we shall briefly present below:

Order no. 27 of December 16, 2010 for the approval of the accounting Regulations complying with the International Financial Reporting Standards, applicable to credit institutions, published in Official Gazette no. 890 of December 30, 2010;

Order no. 26 of December 13, 2010 regarding the amendment and the supplementing of the accounting Regulations complying with the European directives, applicable to credit institutions, to non-banking financial institutions and to the guarantee Fund for deposits in the banking system, approved by NBR Order no. 13/2008, published in Official Gazette no. 886 of December 29, 2010;

Order no. 25 of December 10, 2010 on the reporting of situations regarding credit exposures registered towards debtors from outside the credit institution sector, which represented the object of the provisions of article 112 paragraph (5) of NBR Regulation no. 18/2009 on the framework for the management of the credit institutions' activity, the internal process of assessment of the capital's adequacy to risks and the conditions for outsourcing the activity thereof.

This order sets out the form and the contents of the situation reporting forms that are periodically provided to the NBR, in accordance with the provisions of article 112¹ paragraph (2) of NBR Regulation no. 18/2009, as subsequently amended and supplemented, by the credit institutions and by the branches of the credit institutions from the third party states provided for under article 1 of the same regulation, as well as the frequency and the methods of conveyance of such forms.

The models of the reporting forms are set forth in the exhibit to the order. Such models are sent to the credit institutions on a monthly basis, within 17 days following the end of the month for which the reporting is being drawn up.

According to the order, in the case of the cooperative credit organization networks, the head offices of the credit cooperatives draw up and report two sets of forms, namely one at the level of the credit cooperatives' head office and one at the level of the entire network.

Regulation no. 25 of December 10, 2010 for the amendment and the supplementing of NBR Regulation no. 18/2009 regarding the framework for the management of the credit institutions' activity, the internal process of assessment of the capital's adequacy to risks and the conditions for outsourcing the activity thereof, published in Official Gazette no. 856 of December 21, 2010.

According to the new regulation, in the case of a subsidiary credit institution, Romanian legal entity, the management structure of the same must adhere to the values and principles regarding the framework for the management of the activity set out by the mother-company and it must take into consideration

banking - legislative retrospective

the business targets, the risk profile and the policies set out by the management structure of the mother-company. To that effect, the managing structure of a subsidiary credit institution must set out its own liabilities along the lines of the activity management framework and must assess any decisions or practices at group level in order to make sure that they do not cause the subsidiary to infringe upon the provisions of the regulatory framework or the prudential rules applicable at an individual level on the Romanian territory.

In the event that a credit institution should perform activities abroad, either through a branch or through a subsidiary, the management structure of the credit institution is in charge with the proper implementing of the established strategies and policies, in compliance with the obligations imposed by legislation of the country in which said branch or subsidiary carries out its activity.

In order to allow the interested parties to perform a credible and precise assessment of the credit institutions, the latter must give to the public information referring to the: organization of the management structure (both the bodies having a supervisory role, and the bodies having a managing role); the organizational structure; the structure of the incentives/remuneration offered; the nature and the extent of the transactions with persons having special relations with the credit institution; and information referring to the organization of the internal control system's functions.

The managing structure of credit institutions periodically approves and revises (at least once a year) the strategy for the management of credit risk, as well as the significant processes of undertaking, identifying, measuring, control and reporting for the credit risk – including the credit risk carried by the counter-party. Such strategy, policies and processes must cover the activities of the credit institution for which credit exposure leads to the registration of a significant risk.

Law no. 231 of December 7, 2010 regarding the approval of Emergency Government Ordinance no. 26/2010 for the amendment and the supplementing of Emergency Government Ordinance no. 99/2006 on credit institutions and capital adequacy and other normative acts, published in Official Gazette no. 826 of December 10, 2010);

The law targets the transposing of certain provisions of the European Parliament's Decision and of the Board for the amendment of directives 2006/48 and 2006/49 with respect to the capital requirements for the trading and re-securitization portfolio, as well as the process of supervision of the remuneration policies, pending enactment.

Thus, beginning from January 1, 2011, the formal management framework of the credit institutions must include policies and remuneration practices compliant with the effective and safe management of risks. Credit institutions must adopt policies in order to assess whether the information published according to article 159 (1) of Emergency Government Decision 99/2006 regarding the performed activity offers participants in the market a complete image of their risk profile, otherwise being obligated to publish certain additional information.

banking - legislative retrospective

According to the new amendments, the NBR is authorized to rule upon limiting the variable composition of the remuneration to a percentage of the total net revenues and to coerce credit institutions to use their net profits in order to strengthen the capital base, to impose certain capital requirements for credit institutions, in view of protecting against the risks to which they are or may be exposed, on the basis of a check-up of the management framework, the strategies, processes and mechanisms implemented by each credit institution, and is authorized to collect information with respect to the number of persons, per credit institution, who are included in remuneration categories of at least EUR 1 million, and to the main elements of the remuneration of the same, using such information in order to determine the evolution of the remuneration-related policies and practices, which information is communicated to the European Banking Supervisors' Committee.

Order no. 1191 of November 29, 2010 for the supplementing of the NBR governor's Order no. 34/2008 regarding the designation of the systems that are subject to the provisions of Law no. 253/2004 regarding the final nature of the reimbursement in the payment systems and in the reimbursement systems of the operations with financial instruments, adding the DSclear system to the same;

Order no. 24 of November 29, 2010 for the supplementing of NBR Order no. 15/2009 regarding the credit institutions' drawing up, for informative purposes, of annual individual financial statements in compliance with the International Financial Reporting Standards, published in Official Gazette no. 834 of December 13, 2010. The order regulates that annual individual financial statements complying with the IFRS should be drawn up in the Romanian language and in the national currency and be published on each credit institution's web page.

employment - legislative retrospective

Repealing law 130/1999 regarding certain measures for the protection of employees. The Romanian Official Gazette, Part I, no. 888 of December 30, 2010, published Emergency Ordinance no. 123/2010 for repealing Law no. 130/1999 regarding certain measures for the protection of employees ("GEO 123").

According to the new normative act, as of January 1, 2011, the employers' obligation to register the individual employment contracts with the territorial work inspectorates and to pay a 0.75% or a 0.25% commission, out of the wages fund, to the territorial work inspectorates, was eliminated.

Also beginning with January 1, 2011, one shall no longer submit with the territorial work inspectorates any deeds regarding the enforcement, amendment, suspension and termination of the individual employment contracts.

The employers' obligation to register the individual employment contracts, in electronic format, in the general employees' records remains in force.

Work permits for foreign citizens who wish to work in Romania in 2011. For 2011, the Government decided that the maximum number of work permits for the foreign citizens who wish to gain employment or to work in Romania on the basis of a foreign legal entity employer's assignment decision shall be 5,500. This number of work permits was set out by Government Decision no. 1345/2010 on setting out the number of work permits that may be issued to foreign citizens in 2011, published in the Romanian Official Gazette, Part I, no. 887 of December 29, 2010 ("GD 1345/2010").

According to the passed normative act, in 2011 foreign citizens shall be granted the following types of work permits, in a predefined number, as follows:

- Work permits for permanent workers – 4.000;
- Work permits for relocated workers – 600;
- Work permits for seasonal workers – 200;
- Nominal work permits – 100;
- Work permits for interns – 100;
- Work permits for sportsmen – 300;
- Work permits for cross-border workers – 200.

GD 1345/2010 also provides that, in the event that the number of applications for work permits is higher than the predefined number, such number may be supplemented on the basis of an explanatory memorandum, at the proposal of the Ministry of Labor, Family and Social Protection.

Amendments of the normative acts in the social and health insurance field. For 2011, the health insurance contribution quotas, provided for under Law no. 95/2006, as subsequently amended and supplemented, shall be set out as follows:

employment - legislative retrospective

- a) **5.2%** for the quotas owed by the employers,
- b) **10.7%** for the quota owed by the persons holding a facultative insurance;
- c) **5.5%** for the other categories of persons who are obligated to pay the contribution directly or against payment from other sources (for employees inclusively).

Said quotas are provided for by Law no. 286/2010 – “State budget law for 2011” – published in the Romanian Official Gazette, Part I, no. 879 of December 28, 2010.

Also, the social contribution quotas applicable beginning with the incomes pertaining to January 2011 are:

- a) social insurance contribution: normal conditions – 31.3%, out of which 20.8% is the employer's contribution and 10.5% is the employee's contribution;
- b) social insurance contribution: particular conditions – 36.3%, out of which 25.8% is the employer's contribution and 10.5% is the employee's contribution;
- c) social insurance contribution: special conditions – 41.3%, out of which 30.8% of which is the employer's contribution and 10.5% is the employee's contribution;
- d) contribution owed by the employer to the unemployment insurance budget: 0.5%;
- e) individual contribution owed by the employee to the unemployment insurance budget: 0.5%;
- f) contribution owed by the employer to the guarantee Fund for payment of salary debts: 0.25%;
- g) employer's contribution regarding the insurance for work accidents and occupational diseases: between 0.15% and 0.85%, applied to the amount of the monthly gross incomes.

Said quotas are provided for under Law no. 287/2010 – “The law on the state social insurance budget for 2011” – published in the Romanian Official Gazette, Part I, no. 880 of December 28, 2010.

As a consequence, year 2011 maintains the same level of the social insurance, health insurance and unemployment contribution quotas as the level regulated in 2010.

real estate - legislative retrospective

Order no. 844/2010 published in the Official Gazette no. 823/09.12.2010 approves the Regulation regarding the ***ex officio* registration in the Land Registry when the cadastral works are completed.**

According to the abovementioned regulation:

- (i) all real estates will be registered in electronic form;
- (ii) the Land Registry rules on all challenges referring to the same real estate by issuing a sole decision;
- (iii) after the term set forth for the resolution of such challenges is due, the real estate will be registered in the Land Registry on the basis of the cadastral documents and the plotting plans;
- (iv) the real estate in respect to which the owner/possessor has not have been identified, will be registered in the Land Book, as "*unidentified owner*";
- (v) each real estate is subject to a sole record in the Land Registry;
- (vi) when the cadastral works are completed, the plotting plans will be the only valid graphic support for the registration in the Land Registry;
- (vii) the transcription-inscription registers, the records of the real estates entered in the Land Registry on request and all other cadastral records will be replaced by the plotting plans and the new records of the real estates; the old record will be kept in the territorial offices' archive;
- (viii) the identification and numbering of the real estates mentioned in the ownership title and the old cadastral records and plans will be no longer valid when the new records are issued.

For more information about the above, please contact:

Daniel Voicu: daniel.voicu@vf.ro
Mugur Filipescu: mugur.filipescu@vf.ro

26-28 Stirbei Voda Street
Union International Center II
5th floor, 010113 Bucharest
ROMANIA
Tel: +40 21 314 0200
Fax: +40 21 314 0290
www.vf.ro

