

# CONSUMER ADVICE IN THE FIELD OF (OVER)INDEBTED PEOPLE IN ROMANIA; A BRIDGE TOO FAR?

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**ABSTRACT:** *This study analyzes the way in which the concept of « consumer counselling » is regulated in Romania, as well as the concrete possibilities of carrying out this activity at national level through various categories of entities*

**KEYWORDS:** *financial services; consumer counselling; independent counselling; consumer credit, over-indebtedness.*

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## 1. INTRODUCTION

Consumer advice on financial services is a constant concern at the level of the European Union and was initiated due to the complexity and technicality of this category of services and over - indebtedness resulting from contracting loans inadequate to consumer needs. Consumer credit counselling was originally launched as an obligation of the professional lender to provide consumer advice at the conclusion of the consumer credit agreement.

The landmarks and the extend of the obligation to advise the consumer have known *illo tempore* an extension of the persons who provide advice. Thus was launched the concept, which will be studied *hit et nunc* « independent, impartial advice », to be given to the consumer by specialized persons, extrinsic to the relationship between the consumer and the professional creditor who offers the loan. A special look will be given to the premises of development of this type of counselling in Romania, to the entities that provide consumer counselling services at the national level, the characteristics and effectiveness of counselling.

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## 2. HISTORICAL MILESTONES IN LENDING IN ROMANIA

Lending was very reduced in Romania until 1990, neither at the level of legal entities, nor at the level of individuals. In the planned communist economy, the so-called “socialist enterprises” carried out an activity that did not require lending, and for individuals lending was very limited, loans are granted by the House of Savings and Consignments – CEC, Mutual Aid Houses – CAR, family loans.

After 1990, there was a development of the banking sector in Romania, and legal entities, given the possibility of developing private initiative, began to use loans in their activities, also to the individual, but very poorly in this field.

The year 2000 and onwards is characterized by a reorientation of banks towards individuals and consisted in the launch of lending to individuals at the national level. In our opinion, we consider that in this way the banks went down the street, those impregnable citadels, in which individuals had never stepped over time, set up agencies on every street corner, in the locations of the former landings and stores, to demonstrate that both, themselves and the credit are affordable. Consumerism has found its economic support nationally through lending.

The relationship between banks / credit institutions and consumers at the national level was characterized from the beginning by the lack of education, information, and awareness of consumers about their rights, but the “hunger” for credit was unstoppable. If initially the target was consumer credit, consumers later refocused on real estate credit. An analysis of consumer credit can be found in doctrine. ( R.D.Apan, 2007, pp.230-260).

The year 2010 and onwards constituted the “litigious” stage, between consumers and credit institutions, being initiated individual or group litigations, based on easy loans, without a real and effective analysis of consumer creditworthiness, without respecting the principle of responsible credit and the credit agreements which contained abusive interest, commission clauses, etc.

The adoption in 2010 of Government Emergency Ordinance 50 on consumer credit agreements<sup>1</sup> was a step forward in the “fight” to protect consumers in relation to credit institutions, followed in 2016 by the adoption of Government Emergency Ordinance 52 on credit agreements offered to consumers for real estate , as well as for the modification and completion of the Government Emergency Ordinance no. 50/2010–on consumer credit agreements relating to real estate credit, assignment of credit, debt collectors and enforcement of the credit agreement.

We note, that the scope of these two regulations only applies to newly concluded contracts, actually after entry into force and do not bring solutions for contracts in progress or execution, for those in various stages of enforcement of the consumer or of the co-debtor guarantor, for those assigned to the debt collectors, the enforcement being initiated in these cases by the debt collectors.

A multitude of consumers are in the situations indicated above, without the above-mentioned legal provisions being applied for the credit agreements concluded before 2010.

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<sup>1</sup> Published in Official Gazette no. 389 of June 11.2010.

An important addition was in the Government Emergency Ordinance 52 from 2016 regarding the debt collectors, on which, the doctrine it was concluded: „Applying the analysis matrix to the O.U.G. no. 52/2016, it resulted that the normative act in force ticks, at least partially, a large part of the constitutive elements mentioned. Thus, the O.U.G. no. 52/2016 uses a definition of debt collectors that includes the original creditors, introduces a (relatively simplistic) procedure for registration and authorization of debt collection entities, includes a list of prohibited abusive practices (with the notable absence of provisions on false representations), seems to contain open definitions (but not functional ones, given the omission to mention modern technologies or the use of unconventional methods) and, last but not least, introduces measures of supervision and administrative implementation. The solution adopted is a decent one, but one that already needs improvement. Among the essential constituents specified in Section II of this article, civil liability combined with incentives for the private action of the consumer-debtor against the entity using abusive practices is completely missing. But the element that most undermines the effectiveness of the O.U.G. no. 52/2016 is its application in time, given that the normative act excludes the application of its provisions to contracts in progress at the time of its entry into force, the protection offered applying only to contracts concluded later.”, aspect retained in Stănescu C.G.,2019] , p.32.

A first conclusion: given the background of the legal relationship between creditors – credit institutions and consumers – debtors, characterized by e.g. consumer distrust, lack of transparency and pursuit of group economic interests only in the practices used by creditors, it was difficult for consumers to incorporate the new regulated concept of “consumer counselling services”, a first consideration for which counselling had a slow start at the national level in Romania.

### 3. HIGHLIGHTS OF REGULATIONS AT EUROPEAN AND NATIONAL LEVEL IN THE FIELD OF (OVER) INDEBTED CONSUMER ADVICE

The concept of "independent, impartial debt advice" has been regularly launched at European level, in the field of mortgage credit, through Directive 2008/48 / EC, but other categories of financial services can "*bring it closer*". Independent counselling, although a private matter interferes with the sphere of public order of consumer protection enshrined by the European Court of Justice, and it is necessary to find a framework in Romania, given its preventive purposes, even educational, including consumer protection against over-indebtedness

Government Emergency Ordinance 52/2016<sup>2</sup>, a normative act transposing Directive 2014/17 / EU of the European Parliament and of the Council of 4 February 2014 on credit agreements offered to consumers for residential real estate and amending Directives 2008/48 / EC and 2013/36 / EU and Regulation (EU) no. 1093/2010<sup>3</sup> brings the following news of the regulation of consumer counselling: imposes principles and practices on consumer counselling, defines the concept of "consumer counselling", sets

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<sup>2</sup> published in Official Gazette no. 727 of September 20, 2016, hereinafter referred to as GEO 52/2016

<sup>3</sup> published in Official Journal of the European Union of 24 November 2010; hereinafter referred to as Directive 2014/17

out the scope of counselling and sets standards of professional competence in consumer counselling.

*The principles and practices regulated in the Directive are:*

(i) both creditors and credit intermediaries and designated representatives take into account the interest of consumers with a high level of fairness, honesty and professionalism in the sector;

(ii) a proper management of conflicts of interest, including those caused by remuneration, characteristics which also affect the counselling activity (Preamble, point (31) and Article 7 (1) of the Directive, in the « Chapter Rules of conduct for granting credit to consumers »);

(iii) express provision for the obligation to be granted by creditors, as well as by credit intermediaries and their designated advisory representatives in the best interests of the consumer (Preamble and Directive, point (31)). We appreciate that the concept of “superior interest” is encountered exclusively in those areas where the legislator considers that the desideratum of protection is imperative, that protection is of public interest comparable e.g. with “the best interest of the child”.

We find that the above principles and practices are difficult to reflect in concrete obligations to be implemented by creditors and credit intermediaries, even if, following the transposition of the Directive in GEO 52/2016, a number of information and practices are provided prior to conclusion a credit agreement for the "weak side" of the credit agreement.

*The scope of the regulation on counselling at national level is as follows:*

a) *reported at the time of concluding the credit agreement:* the advice given to the consumer for the *pre-contractual stage is regulated, respectively until the moment of forming the contract / accepting the credit offer, so the advice of the (over) indebted consumer as a result of concluding a credit contract is not expressly regulated, can no longer perform the obligation to repay the loan or is at other times deficient in the execution of the contract;*

b) *related to the nature of the credit agreement :* if the scope of GEO 52/2016 concerns consumer credit contracts regarding the sale, respectively purchase of real estate, mortgage-backed credit agreements on real estate and credit agreements involving a right related to real estate, it is obvious that *the regulations contained in the same ordinance on counselling also apply to the contracts indicated above. Therefore, counselling is required to be regulated for other typologies, many of which are credit agreements.;*

c) *reported to the persons concerned by the provisions of the two regulations in order to provide counselling services:* GEO 52/2016 defines and aims through its provisions the activity of creditors, credit intermediaries, the group of creditors, related credit intermediaries, their representatives, it is therefore a true "*code of credit professionals*" in relation to the consumer. Consequently, the provision of counselling services is also regulated and can be carried out by the persons indicated *ut supra* who fall within the scope of the Directive and GEO 52/2016. Counselling is thus a professional, specialized service, which can be exercised as *a separate service* or as *an independent service*, by professionals.

The provision of counselling services is regulated and may be carried out as a professional activity by persons falling within the scope of the Directive and GEO

52/2016, aspect that undoubtedly results from the provisions of CHAPTER II «Financial education», art. 4, para. (1) according to which «Public authorities, creditors and non-governmental organizations can contribute to educating consumers on responsible lending and debt management practices, in particular on mortgage credit agreements for consumers. They provide, through organized actions, clear and general information on the process of granting credit, in order to provide guidance to consumers, especially those taking out a mortgage-backed loan for the first time».

The role of non-governmental organizations located mainly in the field of credit consumer education is mainly to contribute to consumer education on responsible lending and debt management practices, in particular on consumer credit agreements secured by mortgage. In concreto, non-governmental organizations can organize actions to inform consumers and provide guidance in the process of granting loans, so they target the pre-contract stage and target especially consumers who take out a mortgage-backed loan for the first time. We appreciate that the lack of an express limitation of the legislator for the advice provided by non-governmental organizations, can be complemented by the fact that the associations would need to acquire and use a series of tools to professionalize the counselling services of over (obligated) consumers. offers contracts. The limitations indicated *ut supra* restrict the possibilities for consumers to seek professional advice other than that provided by the credit service provider or credit intermediary. This seems to have been the reason of the European legislator and consequently of the national one, the advice to represent an option of the creditor and / or the credit intermediary and in no case an option of the consumer. We mention that the scope of the right to compare credit offers and the need for advice belongs exclusively to the consumer, he can appreciate the extent to which he would need advice.

We also argue that the current regulations raise awareness of the role and importance of consumer advice. The positive impact of debt advice and its limits is developed in doctrine ( Atfield, G., Lindley, R. and Orton, M. 2016, pp.24-26)

The advisory service, even independently, being provided by entities that grant or mediate the granting of credit, is not perceived as a necessity by the consumer. The concrete possibilities, to be carried out on a larger scale, by offering this service by several categories of professional entities, among those that do not offer or do not grant loans is a desideratum not covered at this time by a national regulation. We argue that the holders of the offer of professional credit counselling services need to be diversified, as we will develop in the following.

#### 4. DEFINING THE CONCEPT OF "CONSUMER COUNSELLING"

The Directive defines for the first time the concept of "counselling services" and in an absolutely similar way this definition is taken over in GEO 52/2016, in art. 3 point 21. According to this text of the law, counselling services consist in offering personalized recommendations to a consumer regarding one or more operations related to a credit agreement, a separate activity from the granting of a loan and from the activities of credit intermediation. Also, GEO 52/2016 in art. 3 point 40 also defines the notion of independent counselling services as the provision of counselling in the form of personalized recommendations to a consumer regarding offers, respectively credit agreements or one or more operations related to credit agreements impartially and in the

*exclusive interest of the consumer, depending on his financial situation, needs and preferences.* They constitute a separate activity from the granting of a loan and from the activities of credit intermediation.

In accordance with the provisions of art. 7, para. (2) of the Directive, all activities related to the provision, intermediation or provision of credit counselling services and, where appropriate, ancillary services, *are based on information on the specific situation of the consumer* and on any specific requirement brought to light only by the consumer, because, only in this case where the consumer has informed the creditor or the credit intermediary, it is possible to offer *personalized* recommendations regarding one or more operations related to the credit agreement.

In the analysis of the impact of the regulations indicated *ut supra*, particularly useful, regarding the concept of “*counselling*” by reference to the competencies established by law for consumer associations, we find the following:

-comparing the provisions of art. 4 para. (1) of GEO 52/2016 regarding the activity of non-governmental organizations *according to which they provide, through organized actions, clear and general information on the process of granting loans, in order to provide guidance to consumers*, with those of art. 3 point 21 of GEO 52/2016 which define counselling as "*personalized recommendations*" and respectively with those of art. 3, point 40 of the same normative act, by which the definition is complied with the statement "*impartially and in the exclusive interest of the consumer, depending on his financial situation, needs and preferences*", *we note the existence of two categories of counselling services, by reference to the level of generality, offered by different holders, but not applicable, so insufficient to protect (over) indebted consumers.*

-*in concreto*, non-governmental consumer organizations have a legal basis to carry out, at this date, consumer / household counselling services on credit, an activity quite limited to those indicated in art. 4 para. (1) of GEO 52/2016, respectively to provide *clear and general information on the credit granting process, in order to provide guidance to consumers, especially those taking out a mortgage-backed loan for the first time.* Or, "*providing guidance*" does not involve drawing up a budget analysis, requesting, receiving and analyzing information from the authorities about the consumer's financial and financial situation on its behalf, e.g. Romanian Credit Bureau, Public Finance Administration, etc. We criticize the regulation regarding the activity of consumer associations, which is not adapted to the activity of "counselling". This attracts a limitation of the activity of consumer associations in the field of counselling in Romania.

**4.1. The requirements in terms of knowledge and competence of the staff are provided by art. 9 of the Directive:**

- *credit intermediaries and designated representatives require their staff to have and constantly update an adequate level of knowledge and competence in relation to the preparation, provision or award of credit agreements and the performance of credit intermediation activities or the provision of advisory services, where the conclusion of a credit agreement includes an ancillary service related to it, requirements of knowledge and competence relating to that ancillary service are imposed;*

- *minimum knowledge and competence requirements for the staff of creditors, credit intermediaries and representatives are also set.*

*Or, the consumer counselling service needs to be provided professionally by consumer associations, so it is necessary to create and impose at the same time a standard of professional competence at national level, namely the creation of quality professional tools to constitute the necessary guarantee for the provision of counselling services for (over) indebted consumers. The qualification of the persons offering counselling is necessary to include specialization courses, constituting a specialization based on competences from all these three fields, to allow access from both the legal and economic profession, as well as social assistance.*

The lack of such a solution and, in general, the lack of paradigm shift in over-indebted consumer counselling, from counselling by creditors and credit intermediaries to impartial and independent counselling, makes it difficult to develop consumer counselling at the national level in Romania.

Developing consumer counselling model programs include in social services is the future of counselling. Regarding the risk categories, it is noted an actuality problem even now: “Young adults are indeed more at risk than elderly people, but this relation is non-linear: in particular, those households where the respondent was more than 50 years old rarely ran into arrears. The analysis further shows that this is not necessarily true for new Member States (NMS) that joined the EU in 2004 and 2007, with households of respondents aged 50 years or older running relatively often into utility arrears. “(Eurofound 2010, p.4)

## 5. NATIONAL COUNSELLING SERVICE PROVIDERS

*Consumer counselling is particularly limitedly developed at the national level.*

The main providers of national counselling services are:

(i) *creditors, credit intermediaries and their representatives;*

*public administration bodies with responsibilities in the field of consumer protection, respectively the National Authority for Consumer Protection (NACP) which provides advisory services, including, more recently, in the matter of opening the insolvency procedure of the natural person. The regulation of the insolvency procedure of the natural person in Romania see in doctrine( Apan R. D., 2017).*

(ii) *non-governmental organizations aiming at consumer protection and aiming at advising indebted consumers.*

*Creditors, credit intermediaries and their representatives have a higher market share, then public administration bodies with responsibilities in the field of consumer protection, while non-governmental organizations that aim to protect consumers and advise consumers appreciate that they are at the highest level. reduced level. Among the reasons, we consider that the financial resources are paramount, the financing being extremely difficult to obtain. The data regarding the activity of consumer associations in the field of counselling are estimative, empirical, being impossible to establish at this moment due to the poor development of counselling at national level.*

Regarding the payment of debt counselling we consider a relevant that “A number of debates and tensions have arisen within the debt advice sector about whether relations with creditors should be adversarial or co-operative, and about the rights and wrongs of receiving funding from the financial industry. These debates manifest a conflict, between

two contradictory concepts of social welfare: a broadly-speaking socialist one and a broadly-speaking neoliberal one.” (Davey R.,2019)

*The main funders of national counselling services are:*

- (i) *creditors, credit intermediaries and their representatives;*
- (ii) *public administration bodies with responsibilities in the field of consumer protection. They finance their own counselling activities. Their contribution to the financing of counselling services is impossible to appreciate at this time.*

*For non-governmental organizations that aim to protect consumers and that aim to advise consumers, funding is difficult to obtain, it is sporadic and does not ensure the consistency of counselling, but only isolated education and information activities. In order to obtain funding from the government, years of consistent activity and the fulfilment of very strict conditions are required to be declared a public utility association, according to the national regulation.*

The level of public awareness of debt counselling services is also very low, almost non-existent. *The main reasons why consumers cannot access counselling services are: they did not find out about the existence of these services; do not understand the need and role of counselling; did not receive financial education; do not trust those who practice counselling; counselling services do not have an appropriate level of professionalism; services are not widely accessible to the population, in smaller localities, further away from urban centres for those who do not have access to electronic means.*

Reported to the analysis of the regulations on counselling and those of the consumer associations in Romania, we formulate a series of proposals aimed at developing the counselling activity in Romania. Proposed measures to improve information and access to consumer advice services:

(i) *Clear regulation of consumer advice in relation to all stages of the formation and execution of the credit agreement and for any type of credit agreement through credit associations;*

(ii) *Creating a profession of debt adviser, which meets the requirements of professionalism and competence;*

(iii) *Involvement in education in the field of counselling of (over) indebted consumers, not only of non-governmental organizations aiming at consumer protection and aiming at advising indebted consumers, but also of any other public bodies and bodies engaged in related activities. with any category of vulnerable persons or services in the social sphere, eg social assistance services within town halls, medical services within national programs, etc., in order to create a system;*

(iv) *Creating a national movement that includes all actors that offer counselling and education in this field, that supports the concept of consumer counselling, its role, and that constantly educates consumers in this direction, as indicated doctrine( Kaiser, T. and Menkhoff, L., 2017)*

(iv) *Concrete programs targeting different categories of people and situations of vulnerability, propagated to people with disabilities, the elderly, the poor, people with addictions and mental problems, developed in doctrine ( Micluția I.V., 2021) etc., not only through non-governmental organizations that aim to protect consumers and aim to advise consumers , but also through entities that are already known to people who need*



*advice, in whom they trust, e.g. associations for people with disabilities, humanitarian foundations, church organisation, etc.*

The economic crisis created by the pandemic with the Covid - 19 virus has generated an acute need to develop the advice of over – indebted consumers, developed in doctrine( Apan R.D., 2020). We support this fact because the effects of lending may consist in creating in our opinion, the following vulnerabilities, which we are going to study in the near future:

- the appeal to the insolvency procedure of the natural person. Regarding this proceedings, doctrine note the relevant observation „ The radical critique of bankruptcy as a legitimating and disciplinary institution in contemporary capitalism merits a scholarly response. It also has the methodological message the qualitative analysis of the discourse of bankruptcy and the experience of bankrupts may increase knowledge of the extent to which bankruptcy is a progressive or disciplinary institution. The introduction of special procedures in several countries to provide debt relief for low income individuals provides the opportunity to test the possibilities and limits of the fresh start precisely for those who may fall into the category of a „surplus population” - marginalised and low – income workers. ( Ramsay, I., 2017) and ” Over-indebtedness became more frequent with the rise in consumer credit. Throughout the 2000s, there have been various forces at play, which triggered even more marked increases in indebtedness.” (Eurofound , 2010).

- initiation of the enforcement procedure against the natural person debtor and the assignment of the debt to debt collectors, that generate a difficult conditions for the consumers because creditors methods and behaviour of which the doctrine exemplifies „Meanwhile, creditors face disruptions in their activity and the risk of insolvency, which may cause them to engage in abusive practices in order to maximize collection and restore their economic situation.” (Stanescu C.G., 2021)

- initiating the enforcement procedure both against the main debtor and against the guarantor co-debtor, the means the extinction of application to a large number of physical person.

## 6. CONCLUSION

The economic impact of indebtedness is catastrophic for families, adults, children, the elderly and society in general. In our opinion, the „ fight” against over-indebtedness is substantiate because is a human rights issue, targeting those so-called "economic" rights, e.g. a decent standard of living and living, so we have a duty to find solutions to prevent over-indebtedness, and the development of consumer advice at national level is one of these solutions.

An analysis of the establishment of non-governmental organizations - consumer associations that aim to advise over-indebted consumers reveals at this time there are a very small number of associations concerned with this goal. In order to develop their activity, a support was consisted of the following:

- sharing the way of organizing the activity by the entities that carry out the activity of counselling over-indebted consumers

- analysis and debate of the way of organizing one's own counselling activities, the stages of counselling, the level of professional training of counselors and their improvement

- the code of ethics for carrying out the activity of consumer counselling that is necessary to be implemented at the level of the organization for independent, real and impartial counselling

Once acquired these means of work and skills, the possibility is created for the consumer associations in Romania to carry out counselling activity in conditions of professionalism, the competence supporting the over-indebted persons in finding solutions for the particular situation of each one.

This study is a plea for the development of debt counselling in Romania and launches the development of counselling through consumer associations at the national level.

It is obvious that, at this moment, the Romanian legislation does not offer the legislative instruments adapted to the mission that the counselling of over-indebted consumers has. This mechanism developed in some of the member states of the European Union requires an urgent regulation, but also effective in Romania in order to implement.

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