

**JONATHAN HILL**  
Member of the European Commission

**PIERRE MOSCOVICI**  
Member of the European Commission

Brussels, 13.04.2016

Ms Anca DRAGU  
Minister Of Public Finance  
Romania

Dear Minister,

We are writing to you to express our concerns regarding the Romanian draft law on debt discharge and to enquire about the way forward.

In November 2015, the Romanian Parliament adopted a draft law on the discharge of debt obligations stemming from loan contracts through the transfer to the creditor of immovable property (*datio in solutum*). The draft law was sent back by the Romanian President to the Parliament for re-examination, and is currently under further discussion. The draft law poses a number of issues, which have been raised repeatedly by different parties, including the National Bank of Romania, the ECB in its opinion of 18 December 2015 and the Romanian Banking Association. The issue has also been raised by the Commission services, in particular DG ECFIN and DG FISMA, in their contacts with the Ministry of Finance. The 2016 Country Report on Romania prepared in the context of the EU Semester<sup>1</sup>, released on 26 February, discusses extensively the issues associated with the draft law.

The draft law poses serious challenges to legal certainty and financial sector stability in Romania.

First, the scope of the draft law covers not only loans concluded after its entry into force, but also ongoing loan contracts, thus raising particular legal concerns and questions about compliance with the EU law general principle of legal certainty. Moreover, it could potentially hinder investment in Romania.

Second, the draft law raises concerns from the viewpoint of the EU rules on free movement of capital and freedom of establishment. The draft law has a very broad scope of application. Although the draft law is intended to protect natural persons, the draft legislative provisions would apply also to certain corporate loans, and would apply widely to all types of loans (including consumer loans and mortgage loans) irrespective of their status (performing or non-performing loans) and currency denomination (local or foreign currency loans). Under the draft law, *datio in solutum* would be available to all debtors, independently of their financial situation and capacity to continue servicing their debt obligations. In addition, *datio in solutum*, if chosen by the debtor, would have to be accepted by the creditor, regardless of the estimated value of the immovable property which backs up the loan. Whereas Member States are allowed to take measures to pursue overriding reasons of public interest, they must do so in compliance with the general principles of EU law, in particular proportionality. From this angle, the draft law is likely to create concerns as to its compatibility with EU law.

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<sup>1</sup> [http://ec.europa.eu/europe2020/pdf/csr2016/cr2016\\_romania\\_en.pdf](http://ec.europa.eu/europe2020/pdf/csr2016/cr2016_romania_en.pdf), page 27

Moreover, it is likely to increase moral hazard in the banking sector and weaken credit discipline.

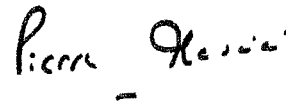
Finally, we stress that the EU Mortgage Credit Directive (2014/17/EU) only requires Member States not to prevent the parties to a credit agreement from expressly agreeing to a *datio in solutum* arrangement. This proposal goes well beyond that.

Thank you for considering these points. In view of the concerns we have set out, we would encourage the Romanian authorities against proceeding with any measures until they have consulted the Commission. I invite your services to contact Olivier Guersent if you have any queries (tel: +32 229-65414, email: [Olivier.Guersent@ec.europa.eu](mailto:Olivier.Guersent@ec.europa.eu)), Director-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jonathan Hill', with a diagonal slash at the end.

**JONATHAN HILL**

A handwritten signature in black ink, appearing to read 'Pierre Moscovici', with a horizontal line underneath.

**PIERRE MOSCOVICI**