

27th April 2016

**To:**

- **Mr. Jonathan Hill, Member of the Commission**
- **Mr. Pierre Moscovici, Member of the Commission**

**Cc:**

- **Ms. Vera Jourova, Member of the Commission**
- **Mr. Klaus Werner Iohannis, President of Romania**
- **Ms. Anca Dragu, Minister of Public Finance**

Dear Commissioners,

We are writing to you to express our surprise and our great concern with the letter you sent to the Romanian Minister of Public Finance, Ms Anca Dragu.

Your comments do not seem to take into account several amendments that were introduced in the law as requested by the Romanian President, the National Bank of Romania and the Romanian Government. The most important ones are a threshold of 250,000 EUR or equivalent in other currencies per credit, the exclusion of the governmental programme 'First House', a clear provision that the law will apply only to consumers and to mortgages related to residential homes.

Your letter refers to information provided by the Romanian banks, the National Bank of Romania and the ECB. It is regrettable that the Commission services didn't also seek the view of consumers and financial services users on the topic, even though BEUC sent a public letter to the Romanian President in December 2015 and the Association of Romanian Financial Services Users, a member of Better Finance, was very much

involved in all the discussions and debates regarding this law in the past few months. Regrettably, your letter does not mention the positive effect the *datio in solutum* law could have on distressed Romanian consumers, but seems to focus exclusively on the interests and stability of financial institutions.

The Commission made it clear in the past that financial services users need to be at the heart of financial market reform. In earlier speeches, you indicated that you would turn the telescope around. This means that the rights and interests of financial services users should be a central point in any EU policy-making.

Because of these missing aspects in your letter, we would like to share some real concerns we have regarding the situation the Romanian borrowers face, which might have escaped the attention of your services:

Many consumers face unfair commercial practices in the financial services area, in particular for consumer credit and mortgage credit. Many of them have been severely hit by the financial crisis and are struggling to pay their monthly instalments. In the meantime, the credit interest rates in Romania were among the highest in the EU, despite income levels in Romania being among the lowest. Many of the credit contracts signed before the crisis, when Romania was not a part of the EU, included unfair clauses. In the last years, Romanian courts issued a lot of decisions in favour of consumers regarding those contracts.

Despite the very difficult situation of debtors after the financial crisis, there have been no legislative measures to help Romanian consumers in financial difficulty. Banks were very reluctant to negotiate and to offer suitable solutions to these consumers. We therefore believe that the *datio in solutum* law adopted by the Romanian Parliament is a good way forward to help out a great number of distressed debtors. It is also crucial that the *datio in solutum* law applies to the existing mortgage contracts, so that it helps borrowers who cannot afford to repay their home loans.

We also cannot agree with your interpretation on the mention of *datio in solutum* in the EU Mortgage Credit Directive (2014/17/EU).

Directive 2014/17/EU for the first time referred very clearly to *datio in solutum* as a possible measure that could be adopted to protect consumers in financial difficulty. In addition, recital 15 of the directive stipulates that "*the objective of this Directive is to ensure that consumers entering into credit agreements relating to immovable property*

*benefit from a high level of protection". Furthermore, recital 7 makes very clear that "Member States should be allowed to maintain or introduce more stringent provisions than those laid down in this Directive in those areas not clearly specified as being subject to maximum harmonization. Such a targeted approach is necessary in order to avoid adversely affecting the level of protection of consumers relating to credit agreements in the scope of this Directive".*

Taking the above into account, no provision in existing EU legislation prevents Member States from adopting a mandatory *datio in solutum* measure aiming to protect consumers.

In fact, from a consumer perspective, this legislation is absolutely necessary to protect consumers.

This law, once adopted, will apply to all consumers, with the restrictions mentioned above. We welcome this fact: the right to *datio in solutum* should be straightforward. There should not be too many preliminary conditions, otherwise the law will be inapplicable in practice. On the other hand, it is very hard to imagine that consumers will abuse their *datio in solutum* right. Buying a home is among the most important decisions in one's life, hence losing the home would be the last resort option used by distressed borrowers.

Finally, we want to mention that last autumn the European Parliament adopted a resolution which calls on the European Commission to share best practices regarding the application of *datio in solutum* in certain Member States.<sup>1</sup>

This was because the EU Parliament found that *"in many cases consumers were not duly informed by banks about the extent of the risks associated with proposed investments, and whereas in such cases the banks also failed to perform suitability tests to determine whether clients had adequate knowledge to understand the financial risks they were exposing themselves to"*. In addition, *"...the impact of the crisis has aggravated the situation for evicted families, who still have to pay out their mortgage debt and the increasing interest on it..."*

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<sup>1</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2015-0347>

We urge you to consider these points and to provide the Romanian authorities with an updated analysis of the situation. We encourage you in the future to look at national or EU legislation from the consumer's perspective when assessing their impact.

We remain at the disposal of your services for any follow up on this issue.

Yours sincerely,

Alin-Eugen Iacob, Chairman, Association of Romanian Financial Services Users

Monique Goyens, Director General, BEUC, The European Consumer Organisation

Guillaume Prache, Managing Director, Better Finance

Annemie Drieskens, President, Confederation of Family Organisations in the European Union