

Legal Alert

18 March 2016

Government sends its opinion on the Datio in Solutum Law

On 16 March 2016 the point of view of the Romanian Government on the draft "datio in solutum" law has been published. The Romanian Government agrees with the enactment of the Draft Law subject to certain amendments, but it also rather harshly criticizes the Draft Law with respect to a number of issues.



Government sends its opinion on the Datio in Solutum Law

On 16 March 2016 the point of view of the Romanian Government on the draft "datio in solutum" law ("**Draft Law**") has been published on the website of the Chamber of Deputies. The Romanian Government agrees with the enactment of the Draft Law subject to certain amendments, but it also rather **harshly criticizes** the Draft Law with respect to a number of issues, such as:

- the Draft Law is too general, contains ambiguities and therefore, is **unpredictable**;
- the Draft Law is **not based on a solid analysis of the economic, social and legal impact** and fails to cover all relevant situations (e.g., when the mortgage is granted over the immovable asset owned by another person than the debtor; the immovable asset is mortgaged in favor of several creditors);
- the application of the Draft Law may result in an infringement of the **ownership right** (e.g., if the value of the mortgaged immovable assets is higher than the outstanding amount of the loan);
- the Draft Law may cause **imbalances on the financial market** and may negatively affect bank's stakeholders (e.g., depositors, shareholders of credit institutions);
- the Draft Law infringes the "**no retroactivity**" constitutional principle as it applies to mortgage loans concluded prior to the enactment of the Draft Law;
- to the extent the Draft Law **transposes Directive 2014/17/EU** on credit agreements for consumers relating to residential immovable property, then such transposition is incorrect, considering that the Draft Law intends to apply also to mortgage loans concluded prior to its enactment while the Directive expressly provides that it does not apply to mortgage loans concluded prior to 21 March 2016;
- the Draft Law **breaches the principle of binding effect of contracts**;
- the Draft Law may **infringe the right to defense** of the debtor;
- the Draft Law **does not provide objective criteria** to be met by a debtor benefiting from the **give-in-payment right** (e.g., a person in financial difficulty, good faith of the debtor etc); and
- the Draft Law is **inconsistent from a legal point of view**, by providing the right of co-debtors and guarantors to challenge if the debtor meets the conditions for benefiting from the give-in-payment right.

The Romanian Government also draws attention on the potential negative consequences of the Draft Law, such as:

- it may affect the normal functioning of credit institutions and trigger stricter lending conditions for financing of immovable assets;
- it may trigger litigation against Romania initiated by foreign investors as majority shareholders of Romanian credit institutions for the losses incurred by such credit institutions;
- it may seriously and negatively impact the state budget and the macro-economic stability; and
- it may trigger the downgrade of Romania's rating and higher costs for financing/refinancing the public/state debt.

In summary, the Romanian Government proposals related to the Draft Law are:

- the Draft Law should provide clear criteria for benefiting from the give-in-payment right and should only apply to social cases (e.g., debtors having financial difficulties);
- “Prima Casa” loans should be excluded from the scope of the Draft Law;
- the Draft Law should only apply to individuals who qualify as "consumers", as well as only to real estate assets with household destination, excluding land and commercial buildings;
- the Draft Law should be correlated with the Civil Procedure Code as regards the terms for judicial procedures.

For further questions regarding the aspects mentioned in this alert, please contact us.

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