

THE IMPACT OF REGULATION ON THE MORTGAGE CREDIT MARKET

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Abstract. *At the level of national legislation we can identify a product orientation credit-type guaranteed with a mortgage, or with a right regards the immoveable property. In this sense takes shape a unitary national regulatory framework, oriented in order to protect individual consumers, with a significant impact on the competitive environment. The law expressly sets that the customer information is necessary both in the pre-contractual stage and credit agreement, with the focus on consumer's education. The establishment of new legal mechanisms, in the form of the giving in payment institution, has led to sensitive market changes. These were felt in both the consumer and commercial banks, for the purpose of raising the advance but also by tightening the conditions of credit analysis at the moment of granting the credit. Although legal norms had aimed mainly to protect the consumer, have also generated costs for them. This paper examines the impact of normative acts recently adopted in the Romanian legal system upon the asset/property market credit guaranteed with a mortgage or other real right (in rem).*

Keywords: *consumer, legislation, banking system, credit guaranteed by mortgages, giving in payment (datio in solutum), relevant market*

JEL Classification System: *E51, F12, K20, G21.*

1. Introduction

Legislative barriers constitute a central influencing factor of competition in the banking sector. Prudential orientation, for the purposes of consumer's protection, has led to the adoption of various laws which have tightened the entry on the market, including the legal regime applicable to the various credit agreements, in particular to the credits guaranteed by a mortgage or other real right. In this respect, the Romanian legal system have outlined new rules about the need for education and information of consumers involved directly in the process of lending, at the same time giving new solutions to customers in paying difficulty to extinguish the debt, as an example through the legal mechanism of giving in payment. The changes were due to factors that were outlined at a

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national level, such as: the lack of a uniform legislation with regard to credit agreements guaranteed by mortgages, offerors' behavior, diminishing confidence among consumers about the usefulness of such goods and/or services and thereby lowering of demand, the impossibility of consumers to repay loans and the increase in the level of non-performing loans. Specifically, in the context of the evolution of supply and demand, in the banking sector was required the adoption of legal norms for ensuring the education of consumers regarding the practices related to credits' granting and debt level management.

The main purpose of the adopted legislation was to increase the degree of transparency, efficiency and competitiveness on the market, through coherent, flexible and fair credit agreements, because in the end to increase the level of consumers' protection. This objective has led to the establishment of criteria for defining the property market by the type of credit guaranteed with a mortgage or other real right. Legislative changes have generated effects in terms of competition, with a reduction in the level of supply. In the structure of loans by commercial banks we were able to identify a decrease in the share of this type of credit guaranteed with a mortgage. This happened amid an increase in advance but also tightening up the conditions for the granting, generating costs and barriers of both for the offerors and individual consumers as representatives of the demand. The prudential approach of commercial banks, for the purpose of reduction of supply, it is considered that was grounded in order to prevent subsequent losses due mainly to some non-performing loans.

The development of a qualitative and quantitative analysis in terms of the competition it is necessary in order to highlight the relevant market trends. In the banking sector from Romania, by reference to the way in which the competition authority has understood to define the relevant market, we can distinguish between:

- Relevant market geographically – is represented by national market
- The relevant product market – which we can differentiate according to two criteria:
 - From the point of view of the debtor:
 - The market of consumer credits for individuals
 - The market of loans offered to professionals, regardless of whether they are self-employed or commercial.
 - From the point of view of the type of product:
 - The loans market (consumer credit market, mortgage market, investments credit market etc.)
 - The deposits market.

2. The evolution of the normative framework affecting competition in the banking sector in Romania

The process of forming of the normative system in Romanian banking sector began in 1990-1991, through the adoption of two normative acts that had as main objective the regulation of banking activity and the Statute of the National Bank of Romania. It was founded the organization of the banking system on the principles of the market economy and the competitive system by adopting law No. 33/1991 relating to banking and law No. 4/1991 relating to the NBR Statute. The banking system was structured on two levels: National Bank of Romania, as a central bank with monopoly power in establishing, determining and implementing the monetary policy, the issue of currency and of the rules adopted in this sector, and commercial banks acting as representatives of the supply on the market. The normative framework permitted *de jure* the development of a market oriented banking system, encouraging the emergence of privately owned domestic and foreign banks. These were authorized to act in the market as universally commercial banks, allowing them to perform a wide range of banking operations at the level of the national market, in compliance with the prudential nature rules established by the supervisory central bank, with specific tasks in areas of lending and deposit formation.

At the normative level, the next period was characterized by the adoption by the National Bank of Romania of prudential nature rules, whose objectives were to establish market access restrictions, to improve the level of market surveillance and banking legislation that establishes prudential behavior in this industry and to increase consumer protection¹. Law No. 58/1998 imposed the enhancement of the capacity of prudential supervision of the National Bank of Romania in parallel with the improvement of the regulatory framework of the banking activity.

Beyond the legislation adopted in the field of the organization and working of the Romanian banking system, have been found relatively recently an increased attention given to the consumer and his protection. So Government Emergency Ordinance No. 50/2010 was adopted, concerning credit agreements for consumers, amid a deficiency in relation to the regulation of the consumer credit contracts that could discourage the competition within the banking system. The regulation has occurred from the need to establish uniform criteria which will ensure the comparability

¹ www.bnr.ro – NBR and National Securities Commission Regulation No. 131/18/2006, regarding the determination of minimum capital requirements for credit institutions and investment firms, approved by order of the NBR– CNVM No.10/107/2006.

of credits offered to individual consumers in the market and to ensure a high degree of transparency.

Recent banking sector optics from Romania aims to protect the consumer, with an orientation on the credit type product, guaranteed with a mortgage or a right regards the immoveable property. The normative acts adopted expressly set the information that must be provided to consumers in the pre-contractual stage, but also those that need to be found in the contents of the contract itself.

In relation to the product offered on the market, we can identify new regulatory conditions that could lead to increasing the transparency of the market, combined with a rise in the level of competition. An enlightening example is represented by Government Emergency Ordinance No. 52/2016 concerning the consumer credit agreements provided for real estate, as well as for the modification and completion of the Government Emergency Ordinance No. 50/2010 relating to credit agreements for consumers, setting out explicit terms in the process of granting real estate credits.

This was matched by the adoption of law No. 77/2016 concerning the giving in payment of immovable property for the purpose of termination of the obligations under loans, allowing the extinguishment of debts arising from these real estate credits by giving in payment of the right of ownership of real estate, which is the subject of credit contract guarantee, mechanism that may generate costs and losses to the creditor. Despite the recent tendency of these rules, we could find that the legislative trend is unitary, in terms of developing a single and predictable legislative framework on the credit market.

An enlightening argument had legislative authority, at the time of the adoption of new regulations, with respect to loans/credits secured by a mortgage or a right concerning the immoveable property, was that the major borrowers in this segment are consumers and households. Taking into account the information asymmetry and the impossibility to evaluate and/or monitor the activity of banking institutions, one can appreciate that this category of borrowers is that which supports the whole undivided risk from the credit agreement. During the execution of the contract may appear unpredictable events, which may give rise to an over-added risk reported on the financial situation of debtors, and in the end they will find themselves unable to willingly fulfill their obligations. The asymmetrical character of the information may also lead to panic on the banking market and may turn a potential failure into a real one². Modification of the

² Jean Tirole, *Market Power and Regulation*, compiled by the Economic Sciences Prize Committee of the Royal Swedish Academy of Science, 2014, p. 35.

national legal framework should be done step-by-step, systematically, so as to correct the shortcomings existing on the market.

In terms of evolution from the point of view of competition of the Romanian banking sector, in the context of new approaches with regard to consumer protection, we haven't noticed any major changes in recent years. From a numerical point of view at the end of the year 2016 we could identify 37 credit institutions, of which 8 branches of foreign banks, compared to the previous year when we could find 36 credit institutions, of which 7 branches of foreign banks. At the end of the year 2016 the degree of market concentration remained relatively medium, the level reflected by Herfindal Hirschman Index, and also by the market share of first five banks in the banking sector, located around the level of 50%. According to data provided by the National Bank of Romania, the credit institutions with foreign capital, own about 90% of the assets of the Romanian banking system, which makes Romania to occupy the second place in the ranking of foreign ownership at EU level after Slovakia. It has been said that this evolution has confirmed that the process of amending the legislative system created a stable market for the Romanian banking sector, based on the principles of market economy.

3. Evolution of mortgage loans

According to information provided by the National Bank of Romania at the end of 2015 in Romania we could identify over 491,000 of loans with mortgage guarantees, and/or real estate granted to approximately 460,000 borrowers. Of the total of these credits: 37% represented mortgage loans whose purpose was the purchase of housing, and 63% represented loans for real estate investment or housing loans with collateral. Given the high share of loans secured by a mortgage or other real right was required to adapt the legal regime applicable to economic reality that characterized the relevant market.

At the end of the year 2016, compared with the previous year, we noticed on the banking market an increase over 12% for housing loans and about 10% for loans for real estate investment or housing loans with collateral. This evolution occurred amid legislative changes whose purpose was the development of a legal regime that is predictable and stable. In the structure of loans, depending on the destination, according to data provided by the National Bank, the mortgage loans owned a share of over 51 % in the total loans granted in the market, surpassing the level of loans for consumption or for investment.

This evolution also occurred at the beginning of the year 2017. Thus, of the total consumer loans, worth 112,554.40 million lei, over 52 % represented housing loans³. It can be seen that the upward trend of these types of loans has been a constant one. Despite the intensive debates that have arisen, both offerors and individual consumers, as representatives of the demand in the market, understand the law. Confidence in the banking sector rose amid the increasing in the transparency of information and the reduction of their asymmetric character. However, the share of loans such as those analyzed did not increase with the pace anticipated at the time of the adoption of new normative acts. It was noted that this development was due to the rigidity of both demand and supply. From the commercial banks' point of view, at the time of granting the credits, a strict analysis of the borrower's creditworthiness and collateral property assessment reported on the level of debt were imposed, slowing the lending process. In terms of consumers, they understood the role and importance of the principle of informing, thus prompting to comparatively analyze the existing offer on the market and to start a comprehensive process of negotiating with commercial banks at the time of granting the loan.

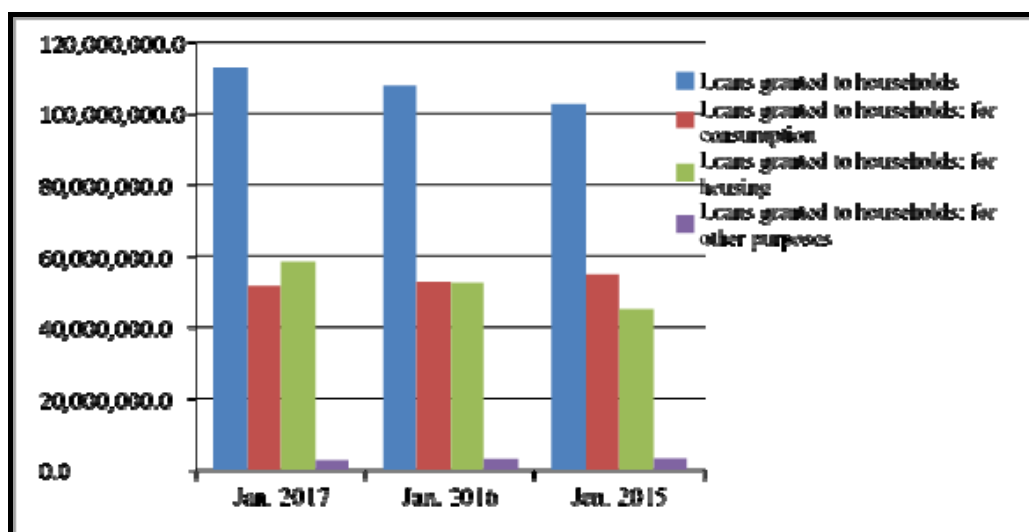


Figure 1. Consumer Loans

The source data of the National Bank of Romania <http://www.bnro.ro/Raport-statistic-606.aspx>, our own processing.

Regarding the loans granted to households, according to the graph above can be observed an average increase of 5% compared to previous year in the level of credits offered to consumers (households and

³ <http://www.bnr.ro/Credite-acordate-gospodariilor-populatiei-5771.aspx>

population). On the consumer loans market we can identify an increase in the share of loans for housing in total loans, from 44% in early 2015, at 52% January 2017. Amid the recent changes, it can be concluded that increasing transparency regarding the loans guaranteed with a mortgage, or with a right regards the immoveable property or to credit agreements offered to consumers for real estate there has been an increase in the level of demand, the purpose of the settlement being reached. Changes brought about by recent legislation have supported the rising trend in terms of crediting among consumers. The effects will be felt by default in the balance sheet of commercial banks. The existence of a guarantee will minimize the cost of non-performing loans, but also that of the provisions. Recent statistics confirmed that the adoption of a unified regulatory framework with a high degree of predictability produces changes in the structure and also of the level of supply. Consumers' reorientation towards these types of loans confirmed that the goal of adopted legal norms was achieved, although since their adoption has passed a relatively short time.

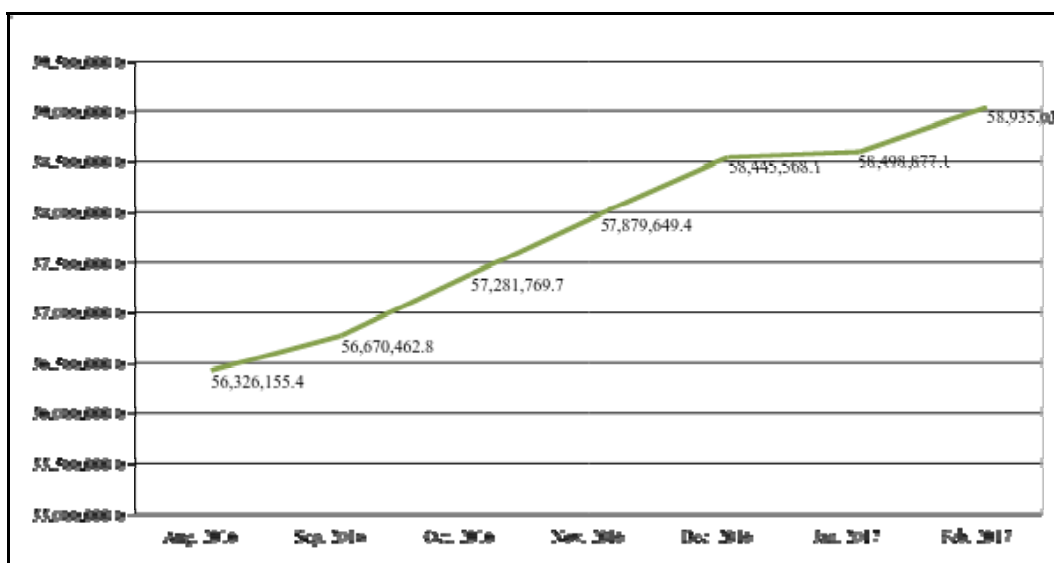


Figure 2. Loans granted to households; for housing (in thou. lei)

Data Source National Bank of Romania <http://www.bnro.ro/Raport-statistic-606.aspx>, our own processing

In the context of adoption, in September of the year 2016, of the Government Emergency Ordinance No. 52/2016 concerning consumer credit agreements provided for real estate, as well as for the modification and completion of the Government Emergency Ordinance No. 50/2010 concerning credit agreements to consumers, according to data outlined

above we can see that the level of credits subject to the legal regime established by banking law there has been a growth of 611,306.90 thou lei in October compared with the previous month. Although its primary purpose was that of transposition into national law of Directive 2014/17/EU of the European Parliament and of the Council of February 4th, 2014 concerning credit agreements offered to consumers for residential real estate, the law contains some references and/or changes regarding loans consumers regarded *lato-sensu*, regardless of whether consumer credits or credits given for another destination. This change causes implicitly a decrease in the level of credit, and with regard to consumer credit, amid an increase in the share of loans in real estate matters.

We can appreciate that redirecting consumers to the guaranteed loans, in the medium term will cause a reduction of the cost of lending for banking entities. Assuming that loans contracted during this period would become non-performing, the existence of a credit collateral, whose value is comparable to the level of debt, will allow commercial banks, as in the procedure of execution to recover the debt by capitalizing on real estate, or even through a forced remission of debt, as a result of giving in payment law. The existence of guarantees in the form of real estate collateral confers to the creditor a right of preference, thus giving him the possibility to make use of it to repay the debt. In comparison with consumer loans or unsecured loans commercial banks will record smaller losses. This evolution will also be observed as regards the level of provisions. According to the trend identified in chart above, among consumers there will be an increase in the level of demand, mainly due to the increase in the level of information about the type of credit, both at the time of conclusion of the contract and during its implementation.

Although legislative changes have generated an increase of the level of real estate loans in the structure of consumer loans, related to the total level of existing loans in the balance of commercial banks, the share of consumers' loans registered a downward trend starting in 2015, from a share of 3.89% of total loans, to 3.43% at the beginning of the year 2017⁴, with a minimum of only 3.33% of the total in November 2016. Downward trend is also visible regarding the new loans whose share has dropped from 3.84% in 2015 to 3.56% at the beginning of 2017. This development, however, could not be identified regarding consumer loans, because the legislative framework that established the legal regime applicable to them had a predictable character. The main factors that led to this evolution in

⁴ BNR, Monthly Bulletin January, 2017, Year XXV No. 279

the structure of loans granted by the banking system have been: raising the cost of credit, increasing the level of the advance for granting the loans with mortgage, or real estate guarantees, raising the interest rates and tougher conditions for the analysis of creditworthiness / solvency of potential new borrowers.

Statistical data confirm that amid legislative changes in the structure of credits shall be recorded changes as a result of the repositioning of commercial banks and consumers in the market. In the short term new legislation adopted may also increase uncertainty, due mainly to strong interpretative character of the norm, which leads finally to shaping a prudential behavior among consumers. This could be seen in 2016, when amid legislative changes was recorded the minimum value of the analyzed loans. After clarifying the mode of interpretation and enforcement, the upward trend has been resumed; however, the degree of growth has been one slow. Although the changes are relatively recent we could see at the level of the relevant market that both offerors and consumers have reacted against the latest changes. We can appreciate that at the market level the trend of mortgage loans granted to consumers will be one of growth, but a slow one.

4. The impact of the law of giving in payment on mortgage lending

The evolution of this market segment and occurred amid of adoption in the banking regulatory system of Law No. 77/2016, regarding giving in payment of immovable property, for the purpose of extinction of obligations undertaken through loans. This rule has created special legal institution of giving into payment, through which loans with a value of up to 250,000 euro, calculated at NBR course on the day of granting of credits, and that meet all the conditions prescribed by law, may be closed by transferring ownership of the debtor to the creditor, without the necessity of the manifestation of the will of the latter. The mechanism thus established leads to remission of debt, either by putting into the ownership of the building intended as a family dwelling, or through an action for finding of extinguishment of debt, in iterated by the borrowers in the hypothesis that real estate brought in warranty is subject to the enforcement procedure, regardless of its stage, provided that the property should not be capitalized. These provisions have turned *datio in solutum* into common law in an obligation owed by the creditor, as a result of unilateral manifestation of will

of the debtor, for the purpose of extinguishing claims arising from loan agreements in favor of which were instituted a real guarantee⁵.

Implementation of the law on giving in payment generated effects in the sector of loans secured by a mortgage on the real estate with housing destination or on the credit agreements provided to the consumers for real estate. At the end of the year 2016 about 25 banks have received over 5,366 notifications. We could see that in reality the number of borrowers who have made use of the law was far smaller than originally anticipated, namely those of 300,000 potential borrowers who could appeal to giving into payment. As a rule, notifications have targeted one credit, and over 530 borrowers have notified giving in payment for at least 2 credits. Thus 454 borrowers have notified 2 credits, 93 between 3 and 5 credits and 6 credit borrowers have notified more than 5 credits. Reported at the level anticipated by the legislative authority about the borrowers who would have been able to use the newly created legal institution this has not complied with the reality, but highlighted all the debtors versus the law were fulfilled. Furthermore the impact study of the rule has not spotlighted the incidentals which law that would be generated within the relevant market. In addition to the intention to support the individual borrowers/consumers who can no longer pay, due to circumstances external to their will that determined their undertaken obligations to be overly onerous, we appreciate that at the time of the adoption of the norm were not taken into account and the effects that it would generate over commercial banks.

As a reaction of commercial banks to the amendments to the law on giving in payment, more than 68% of the notifications submitted by borrowers have been subject the process of contesting from them. At the level of March 2017 on the role of Romanian courts were registered about 3,590 disputes having as object the objections of creditors against the giving in payment notifications and debt extinction actions, in consideration of the giving in payment law. Of the total number of disputes resolved about 357 have been favorable to the banking entities and over 236 were favorable to borrowers. Compared with these data, we can see that at the market level the uncertainty about the law's effects persist. Once

⁵ Despite the fact that, according to Directive 2014/17/EU, that has been *verbum regens* of this rule, giving in payment is only one of the options offered for voluntary repayment of credit. According to Art.28 paragraph 4, Member States may not prevent parties to a credit agreement to agree that return or transfer to the lender of the collateral or income derived from the sale of the property brought in warranty to be necessary and sufficient to repay the loan. Such remission of debt through giving in payment was not the only alternative offered by the EU law.

the rule has been subject to legal control of constitutionality in front of the Constitutional Court of Romania and it gave a new interpretation of the law, as an application of the unpredictability in the matter of contracts falling under its jurisdiction, according to data provided by the National Bank of Romania, the number of notifications submitted by commercial banks began to grow, so in late February 2017 on the market were approximately 7,000 of such notification with a growth rate of approximately 300 notifications per month.

With regard to the offerors in the banking sector, namely commercial banks, the notified credits constitute a cost because for more than 90% of these the remaining credit amount repaid at the time of notification exceeds the amount of the security, and for about 690 notifications the value of the asset in guarantee exceeds the level of debt. Over 76% of the total notified loans are non-performing loans, with over 90 days late payment. The application of the law should lead to an increase in the price of such products, due to the necessity of the establishment of new provisions and additional capital requirements to cover the recorded losses. Statistical data confirm that through the mechanism of remission of debt, most of the debt arising from the notified credits will not cover through the transfer of ownership of real estate in the collateral assets of the banks, and because of its market value is lower than the debt. Moreover, at the time of ownership transmission, the Bank becomes the owner of an ownership right of a property, which will be capitalized later, by which a debt is off. Implicitly the capitalization process will involve costs that will ultimately lead to a lower level of recovered debt, with impact on the provision of commercial banks.

By country report of Romania for the year 2016 of the European Commission, has been identified as a major risk for the evolution of macroeconomics, through the implementation of the law on giving in payment because it could have a negative effect on domestic demand and consumers' confidence⁶. Among the main risks that can have a negative impact on the market are its applicability with retroactive character and its scope, i.e. credit agreements concluded between individuals and institutions guaranteed by real estate. Toward this latter risk rises the question of the application of the norm and loans to businesses, if there is at least one codebtor who is a natural person, which is responsible jointly and severally with the entity for the purpose of repayment of the loan. Against this we can appreciate that such an interpretation would be contrary to the very reason that the legislature gave it the law, in its

⁶ http://ec.europa.eu/europe2020/pdf/csr2016/cr2016_romania_ro.pdf

statement of reasons and to the directive itself that stood at its base. A clarification of the rule's scope should be introduced in order to avoid any interpretation why would defeat the purpose of the law, which is to protect individual consumers who are experiencing difficulties during the execution of the contract and are unable to fulfill their obligations.

In the light of identified risks and the fact that the law could have a negative impact on the cash flow of credit institutions, the Central Bank predicted that in early 2016 in terms of lending the offerors will impose stricter standards for granting such credits, through a significant increase of the advance requested at time of grant, but also in the level of interest, the erosion of financial inclusion, in the sense of access to mortgage loans is reduced for those on low incomes⁷. The recent economic reality pointed out that some of the anticipations of the Central Bank have come true. The principal offerors on the market understood to reconsider their position and to tighten conditions for granting the loans. There have been changes since the time at which the law was in the process of public debate. Five banks – Banca Românească, Raiffeisen Bank, Garanti Bank, Bancpost and Intesa Sanpanolo Bank have increased the level of advance mortgage loans, prior to the adoption of the law, and following the vote in the Chamber of Deputies BRD and Alpha Bank⁸ applied the same measures. In this sense, on the market we might see a substantial increase in the level of the advance from 15% to 45%. After the decisions of the Constitutional Court on the mortgage market was observed a reduction in the level of the advance, but without that to return to the initial one. The average advance for real estate loans in lei there has seen a decrease in average of 1.7 percentage points, from 26.6% to 24.9%. At the beginning of the year 2017 the average level of the advance payment amounted to 23.7%. On the market level, offerors such as Credit Agricole Bank set a different level of advance relative to the credit period⁹. We believe that the immediate reaction of commercial banks was justified because they mainly pursued the costs reductions for loans, and restricting or diminishing demand, up to the moment when the market is repositioned in accordance with the new requirements. In this way, commercial banks by increasing the price of

⁷ <http://www.opiniibnr.ro/index.php/macroeconomie/105-firme-de-consultanta-renumite-darea-in-plata-duce-la-beneficii-pentru-un-grup-mic-de-consumatori-si-pierderi-pentru-un-grup-mai-mare-de-consumatori?highlight=WyJjcmVkaXRlliwiaXBvdGVjYXJlIiwiaY3JlZGl0ZSBpcG90ZWVhcmUiXQ==>

⁸ Alpha Bank increased the advance to 30% for mortgage loans in Lei and to 40% for those in Euro, from 15%, respectively 25%, previously applied levels.

⁹ For loans over a maximum period of 20 years the level of the advance is 15% and for a period of 30 years is 20%.

credits have been following to get a minimum of time to readjust the products offered to consumers.

A study of the London Economist's experts appreciates as the legal mechanism *datio in solutum* will cause an increase in the price of mortgage loans, amid an increase in the cost of financing. The main reason that would be the basis of such developments is to develop the credit conditions depending on risk, and thus the risk premium embedded in the interest level will increase and implicitly its level will increase. In conjunction with the impact on capital requirements of banks, by giving in payment the risks of losses from devalued the asset will transfer from the consumer to the lender and thus directly affect the risk weightings assigned to loans secured with a mortgage right¹⁰. Optics of commercial banks seems to be justified because it seeks to minimize the level of bad loans and the negative effects that may influence the ability to recover the balance of the loan.

Legal institution of giving in payment applies in other European countries, such as Spain and Portugal. Considering the regulatory mode of *datio in solutum* its applicability is different. Thus, as regards to the Spanish giving into payment model has a narrower applicability due to the limits and conditions imposed on persons subjected to the derogatory legal regime. An important element of this system is that it is based on a code of good practice, which must be necessarily respected, once it has been chosen for this. Giving in payment becomes effective through voluntary adherence of commercial banks, for a period of two years, which may be extended annually. Regarding the Portuguese system, which gave the legal effectiveness of the institution of giving in payment, it aims to protect borrowers with a poor economic situation. In exceptional circumstances, credit institutions may propose giving in payment, as means of partial or total extinction of mortgage. After the debtors' agreement on this way of debt extinction, shall be given a period of grace of six months, within which keeps their property ownership, which will make the object giving into payment, paying only interest from undivided credit. Assuming that by the mechanism of giving into payment the debt is not extinguished, it shall be for the borrowers to pay the difference between main and real estate value¹¹.

¹⁰ Study on means to protect consumers in financial difficulty: personal bankruptcy, *dation in solutum* of mortgages, and restriction on debt collection abuse practices; London Economics, December 2012

¹¹ <http://www.opiniibnr.ro/index.php/macroconomie/100-exista-darea-in-plata-in-europa?highlight=WyJjcmVkaXRliiwiaXBvdGVjYXJliwiY3JlZGl0ZSBpcG90ZWNhcmUiXQ==>

Unlike the two systems of law where the giving in payment applies, Romanian legal regime is differentiated in three key points:

- The mechanism of giving into payment was imposed through a normative act adopted by the legislative power. At the same time, it was suppressed by express the condition of the creditor will agreement, in order to give efficacy to giving into payment as a way to extinguish the debt. It is true that this interpretation may be shaded after the Constitutional Court's decisions, but the finality of legal rule is not changed.

- The Romanian legal system, assuming that the value of the property given in the warranty does not cover the debt in the report that the borrowers request giving into payment, the creditor will proceed to forgiveness of debt in respect of the debt remained uncovered

- You can bring forth interpretations with regard to consumers covered by Law 77/2016. Although the Constitutional Court established that we are in the presence of a variant of the unpredictability institution, and it is necessary to make a difference between people who can no longer pay and those who do not want to pay, in the absence of precise rules defining the scope of application of this notion, the uncertainty surrounding the legal norm is exacerbating. The Court referred only to a so-called over-added risk that appears during execution of the contract, with unpredictable character, which makes the performance of the contract to be overly burdensome for the debtor. On the other hand it doesn't define what is meant by risk involved, and thus different interpretations may arise.

However, we can appreciate that, following the Constitutional Court's Decisions on the Law 77/2016, which showed that the giving in payment is no longer a discretionary tool offered to consumers, but is a species of unpredictability, the impact of this rule may have on the Romanian banking system could not be determined at its true level. This is because since the implementation of the rule was not a sufficiently long period of time to see if the anticipated trend of notified credits have been confirmed. By this time, the number of borrowers who have made use of the giving in payment is much lower than the one indicated in the law's statement of reasons. Moreover, the buildings that are the subject of notifications of giving in payment were not returned to the economic circuit, because notifications are in various stages of the complaints process.

5. Conclusions

In order to achieve an analysis on the impact of regulation over the Romanian banking sector and implicitly on the mortgage market, it is

necessary to identify whether these regulations have achieved the objectives set out in the law's statement of reasons, namely maximizing efficiency and social welfare. Any modification of the legal framework can be the basis for the increase in competitiveness within the banking sector and contribute to its stability by increasing transparency. The impact of the legislation upon competitiveness can determine the efficiency of financial services and increase their quality.

As regards to the recent changes of the legal regime applicable to mortgage credit contracts, according to the latest statistical data, on the relevant consumers' market we have noticed an increase in the share of loans guaranteed by mortgages or with a real right (*in rem*), of the total loans. This evolution shows a shift in consumer demand from consumer loans to mortgage loans, amid the emergence of transparency, information of customers on the risk derived from the contract, both in pre-contractual period and during its implementation. However, if you relate the evolution of loans to consumers in respect to the total mortgage loans of the Romanian banking system we can identify a downtrend, amid an increase in the cost of credit, of the advance on granting the credit and the risk assumed by the offerors. Commercial banks have understood to harden the conditions applicable to these types of loans amid legislative changes, in particular of the law of giving into payment, which has universal applicability both in terms of its contracts concluded prior to the adoption and for the future.

During the course of any credit contract guaranteed with an immovable, the consumers have economic and financial difficulties that may occur both because of the variation in interest or exchange rates, but also as a result of other unforeseen issues, including the asymmetric character of the information. For this purpose it is necessary to adopt prudential measures that prevent the occurrence of such risks during execution of the contract. We appreciate that it is not advisable to adopt radical measures, such as that of the giving into payment institution, which offers a solution through the remission of debt in order to extinguish the debt. The statistics have confirmed that a solution like the one of giving into payment determines costs both at the expense of consumers and producers. We keep in mind the increase in the price of credit or tightening the analysis conditions for granting the credits that restricts demand registered on the relevant market.

In this study we have shown that legal provisions adopted relatively recently have produced changes on the relevant product market of mortgage credit type. Among consumers, individuals as the main

beneficiaries of the law we noticed their repositioning in the market by increasing the level of demand, but also changes in their behavior with regard to the solutions offered by the law. Regarding the giving in payment, a relatively small number of borrowers have turned to this legal institution to close their loans, and the vast majority understood to start a renegotiation of the contract. In terms of commercial banks, their prudential approach predictable and confirmed the central bank's expectations. They have mainly watched the diminishing of credit cost. In the future, we anticipate that the increasing trend of the level of loans guaranteed by mortgages will be maintained, but the growth will be moderate in the context of the new regulatory framework.

REFERENCES

- [1] Adriana Almășan, Course Support for distance learning *Competition Law*, Faculty of law, University of Bucharest.
- [2] Cezar Mereuta, Bogdan Căpraru, *Banking competition in Romania a new structural approach*, 2010, <http://econpapers.repec.org/paper/roseeince/120722.htm>.
- [3] Jean Tirole, *Market power and Regulation*, compiled by the Economic Sciences Prize Committee of the Royal Swedish Academy of Science, 2014.
- [4] Sorin Popescu, Cătălin Ciora, Victoria Țândăreanu, *Practical aspects of the technical and legislative record*, Monitorul Oficial R. A., 2008.
- [5] IMF Stijn Classens, *Competition in the financial sector: Overview of Competition Policies*, 2009.
- [6] NBR January 2017 monthly bulletin Year XXV, No. **279**.
- [7] Study on means to protect consumers in financial difficulty: personal bankruptcy, *datio in solutum* of mortgages, and restriction on debt collection abuse practices; London Economics, December 2012.
- [8] The Competition Council, *Developments in key sectors of the economy until 2006*.
- [9] <http://www.juridice.ro/286643/liberarea-debitorului-prin-darea-in-plata.html>
- [10] <http://www.juridice.ro/286643/liberarea-debitorului-prin-darea-in-plata.html>
- [11] www.bnr.ro Raportul anual 2015 și 2016
- [12] www.bnr.ro Raportul lunar 2017
- [13] <http://www.bnr.ro/Credite-acordate-gospodariilor-populatiei-5771.aspx>
- [14] <http://www.bnr.ro/Sistemul-bancar-din-Romania---pilon-de-baza-al-sistemului-financiar-7333.aspx>
- [15] <http://www.arb.ro/asteptari-implinite/>
- [16] <http://www.anpc.gov.ro/articol/556/proiect-de-lege-privind-contractele-de-credit-pentru-consumatori-garantate-cu-bunuri-imobile>