

**To:**  
**The European Commission**  
1049 Brussels, Belgium

To the attention of:  
**Mr José Manuel Barroso**  
President of the European Commission

Dear Mr President,

The undersigned, **Piperea Gheorghe**, Romanian citizen, attorney-at-law, member of the Bucharest Bar, PhD university professor at the Faculty of Law of the University of Bucharest and insolvency practitioner in Romania, I am hereby asking you to kindly consider the following **petition**.

I am addressing this petition following the eleventh report from the Commission to the European Parliament and the Council on Progress in Romania under the Cooperation and Verification Mechanism approved on 18 July 2012 (the “**Report**”), as well as in connection with the warnings and urgent recommendations addressed to the Romanian authorities on the occasion of the release of the Report, as well as during the recent meeting with the Romanian Prime Minister, Victor Ponta.

I strongly believe that some very important problems of the Romanian judicial system were not dealt with by the Report. This is why, in addition to the warnings and recommendations addressed to the Romanian authorities, I would respectfully ask the President of the European Commission to include the following urgent requirements:

- 1. Require the Romanian legislative authorities to issue the necessary legal acts for the implementation of the decision issued by the Court of Justice of the European Union on July 12, 2012 in case no. C-602/10 (in the proceedings between SC Volksbank România SA and the Romanian National Authority for Consumers’ Protection, hereinafter named the “CJEU Decision of July 12, 2012”). Such legal acts should be designed to bring back the Romanian Government Emergency Ordinance no. 50/2010 on credit agreements for consumers (hereinafter named “GEO no. 50/2010”) to its initial form. Only**

**this way, shall the form and spirit of CJEU Decision of July 12, 2012 be respected.**

I wish to draw the attention of the Commission to some key moments concerning the enactment and implementation of GEO no. 50/2010. The Romanian Government issued GEO no. 50/2010 with the intention of implementing Directive 2008/CE/48 on credit agreements for consumers. The regulation was received with hostility by a number of banks, alarmed by its effect of rendering credit agreements more transparent (contracts which were in fact invaded by abusive clauses). Such banks were also concerned by the diminishing of their profits caused by the annulment of certain costs abusively imposed to clients in the retail credit agreements (the most common being the risk premium and the floating rate of interest computed in accordance with the bank's own rules, not in accordance with public rates, such as Libor, Euribor or Robor).

Further on, GEO no. 50/2010 had a sad history, as it was neutralized by the Romanian Parliament two days before Christmas Eve in 2010, thus: (i) its applicability to ongoing agreements was prohibited (over 8 million contracts of the 8.3 million contracts existing at that time); (ii) the range of premiums deemed legal was extended, including the notorious risk premium which became acceptable again; (iii) the prime rate interest became applicable again; and (iv) the competence of the National Authority for Consumers' Protection to suspend the banking activity was banned.

In order to combat the provisions of GEO no. 50/2010, the banks used the false argument of the non-retroactive applicability of said ordinance, claiming that since Directive 2008/CE/48 on credit agreements for consumers does not apply to ongoing contracts, nor does GEO no. 50/2010. Such an interpretation is clearly contradicted by CJEU Decision of July 12, 2012. The non-retroactivity arguments used by the banks ignored the constant case law of the CJEU according to which directives in the field of consumer protection are *de minimis* regulations, Member States being entitled and even encouraged to grant enhanced consumer protection.

Following pressures from the banks, the Romanian authorities basically ended up annihilating GEO no. 50/2010.

- 2. Require the parent banks of the Romanian banks to comply with the Romanian court decisions obliging banks to amend their credit agreements and return the amounts paid on the basis of abusive contractual clauses.**

In court proceedings (both collective and individual) against banks, claimants have obtained, after years of waiting, enforceable decisions obliging the banks, as defendants, to amend their credit agreements and return to the borrowers the amounts paid on the basis of abusive clauses. There are thousands of such decisions issued in favor of the banks' clients in cases initiated by the National Authority for Consumers' Protection, or direct court proceedings initiated by the borrowers. Following administrative courses of action, the National Authority for Consumers' Protection repeatedly requested the relevant banks to modify the credit agreements and to return to the clients the amounts payable by the latter pursuant to the abusive contractual clauses.

Although some of the court decision issued in this field are final and irrevocable (some of them being issued by the Romanian Supreme Court of Justice), the defendant banks, not only failed to amend the contracts accordingly, but also failed to comply with the court decisions in any way and are showing no intention to do so in the future. Consequently, the borrowers shall be again forced to make use of the legal proceedings in order to obtain enforcement of the court decisions, damages or criminal sectioning of the abusive party.

- 3. Request the Romanian authorities to comply with: (i) the Romanian court decisions (including a decision issued by the Romanian Supreme Court of Justice in November 2011 in a referral proceeding for the interpretation of the law) which found illegal the diminishing, in some cases with up to 85%, of the special pensions (of militaries, aviators, court clerks, diplomats); (ii) the court decisions which found illegal the diminishing with 15% of the allowances granted to persons within the maternity allowance scheme; (iii) the court decisions which found illegal the diminishing with 25% of the salaries of persons employed in the public sector; and (iv) the court decisions which found illegal the diminishing of judges' salaries and benefits.**
- 4. Request the Romanian authorities to willingly return to the Romanian citizens the taxes incurred on second hand vehicles (first car registration tax, pollution tax, etc.) without forcing these persons to make use of the judicial**

**proceedings in order to recover such amounts. Romanian authorities need to act this way in order to comply with the relevant decisions of the CJEU.**

- 5. Urge the competent Romanian authorities to fully and immediately pay the damages due to the persons deprived of their properties during the communist regime and, later on, deprived of their right to damages for such abusive seizure of property. At the same time, request the Romanian authorities to abandon the project according to which the amount of such damages shall be diminished to 15% and paid within 12 years. Such a project breaches severely the pilot decision of the European Court of Human Rights of August 2010 against Romania (Case Atanasiu and other versus Romania).**
  
- 6. Draw the attention of the currently suspended Romanian President, Traian Băsescu, that court decisions need to be complied with, even if the debtor is the Romanian State, and even if the Romanian executive power is under the impression that the state budget lacks funds to pay the amounts imposed by court decisions. At the same time, draw the attention of the same President that just as the rules cannot be changed during the game when it comes to the impeachment of the president, nor can the Constitution be amended in order to prohibit the judges to compel the state to pay its obligations due to its citizens and companies residing therein. In fact, the European Court of human Rights has clearly stated in case A. Popa versus Romania that a state may not absolve itself of its pecuniary obligations on the grounds of underlying economic crisis.**

I thank you in advance for your attention to the issues presented above.

Sincerely yours,  
Gheorghe Piperea