



19.12.2018

NOTICE TO MEMBERS

Subject: Petition No 0518/2016 by M.L. (Romanian) on alleged non-compliance with an EU directive in connection with legal proceedings in Romania

Petition 0526/2016 by A.I. (Romanian) on alleged non-compliance with an EU directive in connection with legal proceedings in Romania

1. Summary of petition 0518/2016

Referring to confiscation proceedings against his company, the petitioner indicates that the appeal court has widened the scope thereof in the form of precautionary measures, followed by special measures to secure confiscated assets that exceed the terms of the original order. He takes the view that Romanian legislation fails to provide the guarantees stipulated under Directive 2005/212/JHA, as amended by Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union.

He adds that the Romanian legal system fails to protect fully the fundamental rights of citizens and that the authorities are failing to bring national legislation into line with EU law, thereby leaving major loopholes when it comes to upholding the rule of law.

Summary of petition 0526/2016

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He adds that the Romanian legal system fails to protect fully the fundamental rights of

citizens and that the authorities fail to bring national legislation into line with EU law, thereby leaving major loopholes when it comes to upholding the rule of law.

2. Admissibility

Declared admissible on 4 October 2016. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 22 September 2017

Petitions 518/2016 and 526/2016

Article 4 of Framework Decision 2005/212/JHA¹ requires Member States to take the necessary measures to ensure that interested parties affected by confiscation measures (including by the extended powers of confiscation foreseen in Article 3) have effective legal remedies in order to preserve their rights.

According to Article 14 of Directive 2014/42/EU², Framework Decision 2005/212/JHA (including Article 3 on the extended powers of confiscation) is partially replaced by Directive 2014/42/EU. The Directive broadens the scope of the extended powers of confiscation (Article 5) and introduces minimum common safeguards at EU level (Article 8).

In particular, on extended confiscation proceedings Directive 2014/42/EU foresees that the affected person shall have an effective possibility to challenge the circumstances of the case, including specific facts and available evidence on the basis of which the property concerned is considered to be a property that is derived from criminal conduct (Article 8, point 8).

The Commission considers, therefore, that the reference to the safeguards provided for in Framework Decision 2005/212/JHA is not pertinent. The safeguards foreseen in Framework Decision 2005/212/JHA are national safeguards in criminal proceedings, while Directive 2014/42/EU introduced minimum common safeguards at EU level, including specific safeguards applicable to extended confiscation proceedings. Moreover, Framework Decision 2005/212/JHA, including Article 3 on the extended powers of confiscation and the related safeguards, was partially replaced by Directive 2014/42/EU. For this reason the Commission considers that reference should be made only to the safeguards provided for in Directive 2014/42/EU.

Directive 2014/42/EU should have been transposed by Romania by 4 October 2016. On 19 July 2016, Romania communicated to the Commission legislative measures that would transpose the Directive only partially.

Therefore, the Commission services opened an infringement procedure for non-communication by sending a letter of formal notice to the Romanian authorities on 23 November 2016.

¹ Council Framework Decision 2005/212/JHA of 24 February 2005 on confiscation of crime-related proceeds, instrumentalities and property, OJ L 68 of 15.3.2005, p. 49.

² Directive 2014/42/EU of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, OJ L 127 of 29.4.2014, p. 39.

The Commission services are currently waiting for the Romanian authorities to communicate the national measures transposing in full Directive 2014/42/EU. Only then will the Commission be in a position to assess whether the Romanian legislation completely and correctly transposes also the provision in Article 8, point 8, of Directive 2014/42/EU.

On 24 March 2017 the Romanian authorities informed the Commission that a draft law completing the transposition of Directive 2014/42/EU would be adopted by the Romanian Parliament by 30 June 2017. Should the adoption of this law and its communication to the Commission be substantially delayed, the Commission would assess whether to continue with the next stage of the ongoing infringement procedure.

4. Commission reply (REV), received on 28 March 2018

Petitions 518/2016 and 526/2016

As discussed at the meeting of the Committee on Petitions of 28 November 2017, the Commission opened an infringement procedure for non-communication by sending a letter of formal notice to the Romanian authorities on 23 November 2016. In August 2017 the Romanian Government sent to the Romanian Parliament draft legislation for the adoption of the national measures that would transpose in full Directive 2014/42/EU¹.

The Commission services are in contact with the Romanian authorities pending the legislative procedure in the Romanian Parliament. As soon as this legislation is adopted by the Romanian Parliament and communicated to the Commission, the Commission will be in a position to assess whether the Romanian legislation as amended completely and correctly transposes Directive 2014/42/EU, including the safeguards and procedural guarantees.

Up to now, the Commission has not considered moving the infringement procedure to the stage of a reasoned opinion.

5. Commission reply (REV II), received on 19 December 2018

As discussed at the meeting of the Committee on Petitions on 28 November 2017, the Commission services opened an infringement procedure for non-communication by sending a letter of formal notice to the Romanian authorities on 23 November 2016. In August 2017 the Romanian Government sent to the Romanian Parliament the draft legislation for the adoption of the national measures that would transpose in full Directive 2014/42/EU².

The Commission services have been in contact with the Romanian authorities pending the legislative procedure. The legislation was finalised in the Romanian Parliament in July 2018, but was then referred to the Romanian Constitutional Court. Until this legislation is formally adopted and communicated to the Commission, the Commission is not in the position to assess whether the Romanian legislation, as amended, completely and correctly transposes Directive 2014/42/EU, including the safeguards and procedural guarantees.

¹ Directive 2014/42/EU of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, OJ L 127 of 29.4.2014, p. 39.

² Directive 2014/42/EU of the European Parliament and the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, OJ L 127 of 29.4.2014, p. 39.

On 8 November 2018, the Commission sent a reasoned opinion to the Romanian authorities for failing to fully communicate the national measures taken to implement Directive 2014/42/EU. The Romanian authorities now have two months to notify the Commission of all measures taken to ensure full implementation of this Directive, otherwise the Commission may decide to refer the case to the Court of Justice of the European Union.

On 13 November 2018, the Commission adopted its latest report on developments in Romania to meet its commitments on judicial reform and the fight against corruption, in the context of the Cooperation and Verification Mechanism (CVM). The report takes stock of the situation since November 2017 and notes that recent developments have reversed the course of progress and called into question the positive assessment made by the Commission in 2017. As a result, the report sets out eight additional recommendations to remedy the current situation. In particular, the Commission recommended to freeze the entry into force of the changes to the Criminal Code and Criminal Procedure Code, which also transpose some provisions of Directive 2014/42/EU, and to reopen the revision of the Criminal Code and Criminal Procedure Code fully taking into account the need for compatibility with EU law and international instruments.