



15.3.2019

NOTICE TO MEMBERS

Subject: Petition No 0642/2018 by G. A. (Romanian), on behalf of Save the Children Romania, on the alleged wrongful transposition of Directive 2015/849 into Romanian law

1. Summary of petition

According to the petitioner, the Romanian government has recently adopted a draft law for the transposition of Directive 2015/849, on the prevention of the use of financial systems for the purpose of money laundering, that imposes on NGOs excessive reporting duties about their donors, supporters or “real beneficiaries” of their services and activities, or else risk immediate dissolution. In practice, this would mean that the petitioner’s organisation would have to report the personal data of all children, parents, journalists and supporters, which, he/she argues, would limit donations, raise personal data use issues and deter citizens from associating with NGOs. The petitioner further claims that these disproportionate regulations originated in the inaccurate translation into Romanian of the term “foundations,” as it appears in the Directive 2015/849, which in Romanian encompasses non-profit organisations, and seeks clarifications on this matter.

2. Admissibility

Declared admissible on 8 November 2018. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 15 March 2019

The legal notion of ‘foundations’ should be taken in its broadest meaning so as to cover a wide diversity of structures established in Member States for various non-profit purposes and at whose disposal a fund was afforded. Foundations, associations and other non-governmental organisations are relevant to this discussion as long as they pursue economic activities in the sense established by the Court of Justice of the European Union, and which could enter within

the scope of application of Directive 2015/849 (hereafter the 4th Anti-Money Laundering Directive (AMLD))¹, as based on Article 114 of the Treaty on the Functioning of the European Union.

Given the fact that the 4th AMLD is of minimum harmonisation, Member States are allowed in principle to extend its scope of material or personal application. However, any extension of Article 2(1) of the Directive needs to be based on a national risk assessment. In this case, Member States can designate non-profit organisations (NPOs) as obliged entities in well defined circumstances, where a national risk assessment includes clear evidence of generalised misuse of NPOs for terrorist financing or money laundering.

In the case at hand, of utmost relevance is also the concept of beneficial owner as laid down in the 4th AMLD. It refers to the natural person who ultimately controls/owns a legal entity or arrangement. Hence, in this case, the beneficial owner does not refer/apply to the beneficiaries of services offered to others for charitable purposes.

As the guardian of the Treaties, the Commission has the duty to ensure that transposition of EU Directives - in this case the 4th AMLD - is correct. The Romanian draft law transposing the 4th AMLD, as adopted by the European Parliament on 24 October 2018, is not promulgated to date. In order for the Commission to assess the Romanian national legislation, the Romanian authorities need first to notify to the Commission the main anti-money laundering law promulgated by the President and published in the Official Journal. Hence, the Commission cannot at this stage formally assess the conformity and completeness of the draft law transposing the 4th AMLD in Romanian law.

The Commission attaches great importance to fundamental freedoms, including the freedom of association and of assembly. Hence, it follows closely any legislative changes that may infringe fundamental rights and present discriminatory effects. While the Commission cannot issue in this case specific recommendations to the Romanian government or to the civil society representatives, it would like to underline that the fight against money laundering and terrorist financing is a key priority, and a correct transposition of the Union legal framework in all Member States is essential.

Conclusion

The verification of the relevant Member State national legislation takes place during the completeness and conformity checks and only after the Member States have promulgated and formally notified to the Commission the anti-money laundering law transposing the 4th AMLD. However, the Commission will ensure that no Member State will misuse the 4th AMLD so as to achieve objectives that are different from the aim of the EU legislation of

¹ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (Text with EEA relevance), *OJ L 141, 5.6.2015, p. 73–117*.

preventing money laundering and terrorist financing, in particular by affecting fundamental freedoms.