



19.12.2019

NOTICE TO MEMBERS

Subject: Petition No 0100/2019 by Emanuel Delia (Maltese) on Malta's failure to implement the EU anti-money laundering legislation

1. Summary of petition

The petitioner denounces the failure of the Maltese Government and institutions to apply EU law, in particular Directive 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

He alleges that the authorities have failed to investigate specific allegations of corruption and money laundering exposed in the Panama Papers relating to people in high positions of power.

The petitioner has already filed a complaint on this matter with the European Commission.

2. Admissibility

Declared admissible on 7 May 2019. Information requested from Commission under Rule 227(6) (former rule 216(6)).

3. Commission reply, received on 19 December 2019

The Commission has on several occasions condemned in the strongest possible terms the assassination of Daphne Caruana Galizia, and has repeatedly stated that the Maltese authorities and institutions must deliver on their clear commitment to do everything in their power to ensure that the perpetrators of the assassination are brought to justice.

In general terms, the rule of law, including an independent, efficient and quality justice system, is one of the pillars on which the EU is founded, and is a prerequisite for the effective application of EU law and for mutual trust. The Commission fully agrees with the Council of

Europe on the importance of effectively addressing rule of law-related shortcomings identified also by the Commission (i.e. Country Report on Malta published in February 2019 and the country-specific recommendations adopted by the Council in July 2019). The Maltese government committed with the Commission to proceed with the necessary reforms, including in particular reforms of the judiciary and the Attorney General's office. The Commission insisted that these reforms must be compliant with EU law and European standards relating to the rule of law and judicial independence, and must be based on the Venice Commission's recommendations and on the findings and recommendations in the European Semester context. The Commission has strongly encouraged Malta to properly consult the Venice Commission on draft legislation and repeatedly asked for the timeline for the presentation of all draft legislation related to the implementation of the Venice Commission recommendations.

The Commission is closely following the developments including in the framework of the European Semester.

The Commission takes note of recent major developments in the criminal investigation into the murder of Daphne Caruana Galizia, including publicly available information as to the manner in which the Maltese Financial Intelligence Unit, in application of rules stemming from the Anti-money Laundering Directive, has contributed to the criminal investigation.

In respect of the claim that by not properly investigating the murder, Malta has breached its obligations under the Anti-money Laundering Directive, the Commission wishes to highlight the fact that the Directive constitutes the Union's main pillar in respect of preventing money laundering and terrorist financing, and not a criminal law instrument applicable in respect to law enforcement investigations. The Commission has carried out an assessment of the completeness of Maltese legislation transposing the Directive, and maintains a continuous dialogue with the Maltese authorities to ensure its proper application. In addition, Malta has recently been evaluated by the Council of Europe's dedicated body as to the effectiveness of its anti-money laundering framework. The Commission fully shares the assessment made public by the Council of Europe, which found important shortcomings in the manner in which the Maltese criminal legal framework is applied in practice.

Conclusion

The Commission is not in a position to follow up on the issue raised by the petitioner, particularly as regards the alleged non-transposition of the Union legal framework on the prevention of money laundering and terrorist financing.

The petitioner can bring the case to the national authorities, including the judiciary, and if the petitioner considers that his rights or freedoms guaranteed by the European Convention on Human Rights have been violated, he may lodge a complaint with the European Court of Human Rights after having exhausted all national remedies.