

INSTITUTION:
SOLVIT ROMANIA
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Case 2899/24/RO
Case 3596/24/RO

The undersigned INCORPORO S.R.L, with its office in Cluj County, Cluj-Napoca City, Aurel Vlaicu Street, No. 2, Block 5A, Staircase I, 7th Floor, Apartment 28,

Represented by

Deleanu Stefan-Lucian, in the capacity of administrator with full powers of the company in the process of registration "INCORPORO S.R.L", identified by ID card CJ1001126, CNP 5021019330205, residing in Cluj County, Cluj-Napoca City, Aurel Vlaicu Street, No. 2, Block 5A, Staircase I, 7th Floor, Apartment 28,

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We hereby attach the following to Case 2899/24/RO:

Enquiry regarding misapplication of Comission Recommendations by SOLVIT Romania

Summary of steps and timeline

On May 25, 2024, INCORPORO has notified SOLVIT Romania of a mis-application of unional law in regards to non-recognition of Bulgarian Trust Provider issued signatures by Romanian Courts in their administrative proceedings. This misapplies Regulation 910/2014, and also represents a missapplication of TFUE, due to the clear discrimination based on authoritative body country not being in Romania. It's clear to anybody that if courts deny cases from being heard, this presents as a form of unfair competition to foreign trust providers. We have found Romania ignores validity frequently for Austrian, Spanish, as well as Bulgarian QES signatures. This situation is systemic and affects everything, from administrative body to the courts supposed to correct this issue. National bodies are as such incapable of resolving it internally, and not only that, the possibility of resolving it internally doesn't matter in determining the jurisdiction of SOLVIT.

On June 14, 2024, SOLVIT Romania decided to close the case as not within the jurisdiction of SOLVIT due to being “exclusively of an internal nature”, ignoring the evident facts of the case.

On June 18, 2024, SOLVIT Romania was given additional information to clarify the existence of a cross-border situation, believing that SOLVIT Romania is intent on following the Comissions’ recommendation and acting in good faith. We have contacted SOLVIT Romania my phone, and we were notified that SOLVIT Romania was in fact reanalysing the case.

In July 2, 2024, SOLVIT Romania received another complaint, regarding non-recognition of another country’s trusted validation service by the court system in Romania, again the High Court of Cassation and Justice.

On July 15, 2024, SOLVIT Romania has answered to a distinct case (3596/24/RO), similar and tied to the initial one, closing the case as being similar to the one sent at 25.05.2024 - as being one strictly of internal matter, due to it being notified by a Romanian Entity, “Strictly in relation to authorities in Romania”. SOLVIT Romania cited it as being similar to the initial case, leading us to believe that in truth, SOLVIT Romania didn’t reanalyse the original case, or if they did, didn’t notify us as the Comission Recommendation requires.

Obvious jurisdictional capacity and disinterest in taking action

The Romanian Authority the case was against was the High Court of Cassation and Justice (ICCJ), in Romania. While the High Court of Cassation and Justice is by itself a court, SOLVIT does have jurisdictional capacity over courts’ faults in missaplication of EU law, in some cases.

Since the decision was final and non-appealable, and the decision was not in regards to the validity of the signature itself, but was a distinct matter where the court denied the validity of the signature, this is not a court matter but an administrative matter in regards to the court institution.

The above falls in line with the definition put forth by the **European Comission Recommendation of 17.9.2013 on the principles regarding SOLVIT**. In this regard, we invite SOLVIT Romania to re-verify Title I (Objective and Definitions), Section B (Definitions), paragraph 4, which clearly covers this as a specific case:

‘Legal proceedings’: formal proceedings for the resolution of a dispute before a judicial or quasi-judicial body. **This excludes administrative appeals against the same authority that has caused the problem;**

So, it is obvious that the Comission prepared for **THIS SPECIFIC SITUATION** - applications against a judicial or quasi-judicial body do not fall under “Legal proceedings”. The case would only fall under the definition of “Legal Proceedings” if it was involving a dispute of the decision to the European Court of Justice, which is likely the only judicial body that has the capacity to reverse this in our specific decision. We do not have the funds to hire legal counsel and pursue legal action against Romania as a country, and it is clear that Romania is leveraging this for evading responsibility for their lack of application of unional law.

Another reason brought fourth in the last clarification from SOLVIT was that since the applicant was a Romanian entity, this wouldn’t be covered by SOLVIT.

First and foremost, SOLVIT is not a national body but a cross-border initiative by the European Commission. The Romanian government is mandated to take measures to resolve issues internally for this not to be resolved through more drastic means, such as by a formal infringement procedure that may involve significant fines for Romania, especially since this is a systemic issue and affects EU interests. It functions on top of Commission Recommendations that clearly define these two cases as well within the bounds of jurisdictional capacity of SOLVIT.

Even by ignoring the TFUE, which is the fundamental treaty forming the EU, applying the latin maxim of “ubi lex non distinguere debemus”, nowhere did the European Commission decide to discriminate based on nationality.

Secondly, unional law clearly denies such arguments, and these arguments coming from an European Body show us the European Project is failing in many regards. The decision to close the case breaches at least the following articles of the TFUE:

1. **Part Two, Article 18** - “Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, **any discrimination on grounds of nationality shall be prohibited**”. Denying a matter due to the fact that the applicant is a Romanian citizen and it is in regards to a Romanian company proves that Romania ironically discriminates on grounds of nationality by denying cases from their own citizens.

While it is likely such extreme situation was not directly thought of at the moment of the signing of the TFUE, it seems this is in line with Romanian Government policies of making sure citizens are treated fairly, and their clear respect for their citizens’ rights.

2. **Part Three, Article 56** - “Within the framework of the provisions set out below, **restrictions on freedom to provide services within the Union shall be prohibited** in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended”.

Since the revenue source for QTSP providers is issuance of qualified electronic signatures / seals / validations / etc, it’s clear that denying their legal equivalence according to European Regulation 910/2014 is equivalent to levying an interdiction for them to provide services within Romania.

3. **Part Three, Article 114** - Romania abused of the clauses allowing the European Commission or other member states to intervene only in specific situations, by de facto not recognizing issuers instead of implementing a law with the effect to deny QTSP powers in Romania, contrary to Regulation (EU) 910/2014

Finally, and the most blatantly erroneous reason produced by SOLVIT Romania was the lack of cross-border elements:

1. As is customary to all hard or soft law by the European Union bodies, preambles clearly mention the reasons for the implementation of additional acts, to clarify the reasonings that stay behind a modification of the law. In the case of the Commission Recommendation, paragraph (8) and paragraph (9) of the preamble clearly show that the Commission further increased the jurisdiction of the informal body, and these new defitions (solidified in the

definitions part of the act) cover the issue CLEARLY.

2. The definition of a 'Cross-border problem', "a problem an applicant in one Member State encounters involving a potential breach of EU law governing the internal market by a public authority in another Member State" clearly applies here, as both the rights of the issuer are broken, and due to misapplication of EU law, beneficiaries of such services (QES Signatures) have their rights ignored.

It feels wrong for me to be forced to educate the Ministry of Exterior in Romania, especially the SOLVIT Romania body, on what 'the internal market' means, so luckily the European Commission has included a definition in the preamble, citing from the TFEU / TEU:

Article 26 of the TFEU **defines the internal market as an area without internal borders in which the free movement of goods, persons, services and capital is ensured.** Article 4, paragraph 3 of the TEU requires Member States to take any appropriate steps to comply fully with their obligations in accordance with Union law.

Unlike the seeming definition for Solvit Romania that cross-border requires physical presence in two countries and residence in another, this is not the definition in this document. Cross-border relationships include ANYTHING where there is a cross-border element.

One, any legal acts (European Regulations, European Directives) constructed on top of the TFEU represent in themselves cross-border acts - a "cross-border" body is putting laws into effect that are directly or indirectly applicable in all member states. The Regulations are built for the interests of all member states, and the breach of EU Law affects all of them and the integrity of the whole European Project.

Secondly, even if that wasn't "cross-border" enough for Solvit Romania, the de-facto non-recognition of a signature issued by QTSP empowered by a foreign member state (Bulgaria) is the modern equivalent of non-recognition of Notary Public documentation, or unrecognition of professional qualifications. The former is the first example given on the official European Commission site on the matter.

Finally, and contrary to the decisions taken by SOLVIT Romania, the official page of the Ministry of Exterior in Romania clearly extends SOLVIT applicability to Romanian citizens. Our case seems to ignore this, which is seriously making us to believe this is approached politically, and not professionally, by a government body whose scope is not to do politics with the ICCJ and to protect such entities from responsibility because they represent the administrative body of the Judicial Power in Romania

SOLVIT Romania

The SOLVIT Romania Center operates within the Ministry of Foreign Affairs - Legislative Harmonization Department, under the coordination of the Government Agent for the EU Court of Justice.

The importance of the SOLVIT center's activity can be appreciated, on one hand, **through its role in real evaluation of the level of correct application of European law in Romania** (cases where **Romanian citizens** or citizens of other EU states **report a problem in their relationship with the Romanian administration**) and the level of correct application of European law in other states, in

terms of the rights enjoyed by Romanian citizens (cases where Romanian citizens report a problem in their relationship with the administration of an EU member state).

We send this to the commission so the commission can see that Romania is in bad faith providing information to present a picture of functioning of Romania, while in fact Romania is systematically suppressing any form of breaches for the creation of a positive image in the European Union.

Similar to a young child lying about doing his homework and learning to play computer games, Romania is bypassing the necessity of taking actual measures for the implementation of European Regulations that are favourable to everyone (as nobody can deny the favourable effect joining the European Project had for Romanians' quality of life) in the attempt to get rid of measures put in place by the European Commission (eg: The Cooperation and Verification Mechanism - CVM) to in bad faith receive non-deserved European Funding.

It is obvious that this strategy has been ineffective at protecting the interests of Romanian citizens within the EU, as the dissatisfaction with the public sector is evident in Romania, and has been very effective at causing damages for other member states that have in good faith attempted to help Romania grow under the European Funding mechanisms.

With sorrow, I believe that Romania shows less and less respect for the European Project, in lieu of strengthening the bond with European Institutions and empowering them to drive positive change nationally.

SOLVIT România

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Centrul SOLVIT România funcționează în cadrul Ministerul Afacerilor Externe - Direcția Armonizare Legislativă, aflată în coordonarea Agentului guvernamental pentru Curtea de Justiție a UE.

Importanța activității centrului SOLVIT poate fi apreciată, pe de o parte, prin prisma rolului de evaluare reală a nivelului de aplicare corectă a dreptului european în România (cazuri în care cetățenii români sau ai altor state UE sesizează o problemă în relația cu administrația românească) și a nivelului de aplicare corectă a dreptului european în alte state, în sensul drepturilor de care se bucură cetățenii români (cazuri în care cetățenii români sesizează o problemă în relația cu administrația unui stat membru UE).

Ministerul Afacerilor Externe

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Formular online:

<http://ec.europa.eu/eu-rights/enquiry-complaint-form/home?languageCode=ro&origin=solvit-web/>

Demands from Solvit Romania

As delaying responses is a traditional form of denial of justice in Romania, and is used to discourage applicants from seeking legal recourse or taking measures against grave breaches to the rule of law, **we demand a response from SOLVIT Romania in regards to the matter in 5 business days.**

The European Commission Recommendations clearly set short guidelines to keep SOLVIT effective at resolving issues. Further delays will only strengthen the proof that Romania is acting in bad faith to preserve the interest of hiding breaches for political reasons.

If, on the other hand, Romania's SOLVIT network refuses to take such actions, we will take measures both internally as well as notify all member states of the breaches of EU law by the body responsible for ensuring it's respected, as well as work towards proving the losses caused to them by Romania as well as the bad faith of the Ministry of Exterior in Romania in protecting the interests of member states in Romania.