

SECRETARIAT GENERAL

SECRETARIAT OF THE COMMITTEE OF MINISTERS
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COMMITTEE
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Contact: Clare Ovey
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Date: 25/09/2017

DH-DD(2017)1042

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1302nd meeting (December 2017) (DH)

Communication from the applicant (08/09/2017) in the case of SOCIETA EDILIZIA IMMOBILIARE BRAGADIN S.R.L. v. Italy (Application No. 2463/05).

Information made available under Rule 9.1 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1302^e réunion (décembre 2017) (DH)

Communication du requérant (08/09/2017) dans l'affaire SOCIETA EDILIZIA IMMOBILIARE BRAGADIN S.R.L. c. Italie (Requête n° 2463/05) **[anglais uniquement]**

Informations mises à disposition en vertu de la Règle 9.1 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

DI TANNO e ASSOCIATI
Studio Legale Tributario

DGI
08 SEP 2017
SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

Rome, September 8, 2017

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Dott. Renzo Amadio
Dott. Fabio Brunelli
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Prof. Dott. Tommaso Di Tarino
Dott. Fabrizio Iacuitto
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The Committee of Ministers of the Council of Europe
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Avenue de l'Europe
F-67075 Strasbourg Cedex
France

Cc: The Registrar
European Court of Human Rights
Council of Europe
F-67075 Strasbourg Cedex
France

Cc: Ministero dell'Economia e delle Finanze
Direzione Centrale Servizi del Tesoro
Via XX Settembre, 97
00185 Roma

Cc: Presidenza del Consiglio dei Ministri
Dipartimento Affari Giuridici e Legislativi
Piazza Colonna, 370
00187 Roma

Re: ECHR Decision of November 25, 2014 on Application No. 2463/2005 – duties of the Italian State to pay damages plus any tax which may be chargeable to the applicant (so-called “tax exemption clause”).

Dear Sir/Madam,

I undersigned, Enrico Pauletti, on behalf of Società Edilizia Immobiliare Bragadin S.r.l. (hereinafter “SEIB” or the “Company”), based in Rome (RM), Via di Torre Rigata, n. 16, 00131, Tax Code No. 03886151004 and VAT No. 03886151004, upon mandate given to me by the Legal Representative of the Company Dott. Alfredo Gianni, born in Rome on 25/9/1966, Tax Code No. GNNLRD66P25H501Z, signing this letter for confirmation, hereby represent the following.

SEIB – Committee of Ministers of the Council of Europe
Department for the execution of ECHR judgments
ECHR just satisfaction – *Application of "tax exemption clause"*.
8.9.2017

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GIVEN THAT

1. The Company filed an application against the Italian State before the ECHR Court, registered under No. 2463/2005, concerning the compensation due for the public expropriation for public utility of a land.
2. During the procedure before the ECHR Court, the parties agreed upon a friendly settlement of the same (hereinafter, the "**Friendly Settlement**") in accordance with Art. 39 of the European Convention of Human Rights, by signing a Statement of Agreement proposed by the ECHR. The Statement of Agreement provided for the payment of Euro 4,202,602.43, to cover any material and moral damages as well as costs and expenses, **plus any amount due as a tax on the amount so agreed** (so-called "tax exemption clause").
3. As a result, the ECHR issued its Decision on November 25, 2014, by which acknowledged the Friendly Settlement between the parties – as satisfying the requirements of the European Convention of the Human Rights ("*La Cour (...) estime que celui-ci s'inspire du respects des droits de tels que les reconnaissent l'homme et ses protocoles the Convention (...)*") – and, consequently, struck the application out of its list of cases, in accordance with Article 39 of the Convention.
4. The Italian State has fulfilled its obligation to pay the sum of Euro 4,202,602.43 to the Company, within three months from date of notification of the decision, as provided for in the Friendly Settlement.
5. However, the compensation received by the Company contributed entirely to the determination of the taxable income for the purpose of the Italian Corporate Income Tax ("**IRES**") in the tax return concerning the tax year 2014, at the tax rate of 27,50%.
6. Therefore, based both on the constant and uncontested practice of the ECHR according to which the compensation recognized by the ECHR **must be "net" of taxes** and on the text of the friendly settlement concluded by the parties in accordance with Art. 39 of the Convention, the Company requested the Italian State on May 20, 2016, addressing a communication to the Presidency of the Council of Ministers - Department of Legal and Legislative Affairs, to pay an additional amount equal to Euro **1.594.090,58**. This sum represents, in fact, the *gross-up* necessary, taking into account the applicable IRES, to make the compensation equal to Euro 4,202,602.43 net of any tax.



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7. To date, the **Italian State has not provided any response to the Company** in relation to this further amount due. Moreover, the Italian State has not even provided any availability on the alternative request made by the Company, regarding the possibility that the Italian tax authorities consider as not taxable the compensation received by the Company and, therefore, that the Company may be entitled to amend its Tax Return and claim a refund of the taxes paid with regard to tax year 2014.
8. The Company has proceeded to inform the Department of the Committee of Ministers about the Italian State's un-fulfillment (see letters of November 14 2016 and May 26 2017). **The case will be examined in the 1294 DH meeting** (September 19, 20 and 21 2017).
9. On July 6 2017, the Department of Committee of Ministers informed the Company that on June 27 2017 it had received a letter from the Italian State (**see Annex 1**). According to this letter, the Italian State (i.e. the Ministry of Economy and Finance, hereinafter "MEF") is evaluating that SEIB could be entitled to a refund of the paid taxes and anyway undertook to quickly brief the parties about the development of the case: *Le Gouvernement italien pour ce faire s'est adressé au Ministère de l'Economie et des Finances en lui posant de même la question sur les possibles modalités de recouvrement des impôts déjà versés. Le Gouvernement italien tiendra le Comité des Ministres informé des prochains développements.*
10. By a letter of July 12 2017 (**see Annex 2**) the Company called on the MEF to quickly take concrete measures in order to enforce the right and complete fulfillment of the Friendly Settlement.
11. To date, after the receipt of the latter communication (received on June 18, 2017), **the MEF has not provided any response to the Company.**

In the light of the foregoing:

- we stress that the Italian State **has not fully executed yet** nor the ECtHR's Decision of November 25, 2014 on the Application No. 2463/2005 nor the Friendly Settlement incorporated in the same Decision **and has not complied with the undertaking given with the June 27 2017 letter;**



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- in the run-up to the 1294 DH meeting (scheduled on **next September 19, 20 and 21 2017**), we require the Department for the execution of ECtHR judgments and the Committee of Ministers to take all the possible actions within their competence in the view of the full execution of the aforesaid Decision and Friendly Settlement by the Italian State, urging Italian authorities to adopt all the measures needed to that effect;
- we underline once more that – (i) in the absence of any effective remedy in the Italian legal system to enforce the full and effective implementation of the rights arising from the Decision in question and from the Friendly Settlement and (ii) in the absence of the required actions from the Department for the execution of ECtHR judgments and the Committee of Ministers – not only the Decision in question would be practically voided of its legal effects, in breach of article 46 ECHR, but the Applicant's approval of the Friendly Settlement would not be justified anymore, forcing him to ask the Court to restore the Application No. 2460/2005 on its list.

For any communication, please refer to Enrico Pauletti, Via Crescenzo, No. 14, 00193 Rome, tel. 06845661, fax 068419500, email: e.pauletti@ditanno.it; pec: e.pauletti@pec.it.

Annexes *ut supra* listed

Yours sincerely,

Enrico Pauletti

For acknowledgment,

SEIB, in the person of the President of the Board of Directives and legal representative

Dott. Alfredo Gianni