# [RO] ANCOM Law Goes to the Constitutional Court

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On 15 January 2018, the Romanian President, Klaus Iohannis, sent to the Constitutional Court a notice on the Law on the approval of the Government Emergency Decree No. 33/2017, which stipulates that the president and vice-presidents of the National Authority for Management and Regulation in Communications in Romania (ANCOM) shall be appointed by the plenum of the parliament by the majority vote of the present senators and deputies (see IRIS 2009-5/31, IRIS 2017-7/29 and IRIS 2018-1/36).

Prior to the aforementioned Government Emergency Decree, the ANCOM management was appointed by the President of Romania, at the proposal of the government, and there were no provisions about the maximum period to propose nominations for the vacant ANCOM management positions. The President of Romania argued that overseeing ANCOM, as mentioned by both European regulations and by the relevant constitutional provisions, had become a genuine guardianship control under which the legislative power can dismiss ANCOM's leadership without complying with the requirements of Directive 2009/140/EC. The President drew attention to the lack of evidence to justify the use of the Emergency Decree and to highlight the existence of the extraordinary situation and the urgency of the regulation.

Iohannis considers that the law adopted by parliament contains a number of new provisions to the decree which have been approved by a procedure contrary to the principle of bicameralism. He pointed out that the Senate, as a decision-making chamber, had adopted a series of amendments detailing the procedure for appointing ANCOM's management, but had also adopted some amendments amending other texts of Government Emergency Decree No. 22/2009 which had not been considered by the government and, consequently, by the Chamber of Deputies. These changes concerned: the remuneration of the ANCOM president and vice-chairs; the assimilation of the positions of president and vice-president of ANCOM to a ministerial position, namely secretary of state; the procedure for the dismissal of the president and vice-presidents of ANCOM; the submission to the parliament of ANCOM’s annual report and the effects of the rejection of this report by parliament (dismissal of ANCOM’s management); the regulation of the situation in which the vacancy of the position of President of ANCOM takes place.

Klaus Iohannis also drew attention to the fact that the legislative interventions in the Law on the approval of the Government Emergency Decree No. 33/2017 ran

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counter to Directive 2002/21/EC, as amended by Directive 2009/140/EC, by affecting ANCOM's independence, impartiality and neutrality. The president stated that as a result of the above-mentioned decree, only the government and the parliament remained in the procedure to appoint ANCOM's management, and any participation of the president in the procedure to designate ANCOM's president and his/her substitutes had disappeared, which raised the question of whether the management of this autonomous administrative authority would be able to function within the parameters of independence, neutrality and impartiality as established by the European regulations, thus endangering not only the functioning of ANCOM as a genuine regulatory authority, but also the legislative harmonisation within the European Union.

***The Sesizare de neconstituționalitate asupra Legii privind aprobarea Ordonanței de urgență a Guvernului nr. 33/2017 pentru modificarea și completarea art. 11 din Ordonanța de urgență a Guvernului nr. 22/2009 privind înființarea Autorității Naționale pentru Administrare și Reglementare în Comunicații***

http://www.presidency.ro/ro/media/comunicate-de-presa/sesizare-de-neconstitutionalitate-asupra-legii-privind-aprobarea-ordonantei-de-urgenta-a-guvernului-nr-33-2017-pentru-modificarea-si-completarea-art-11-din-ordonanta-de-urgenta-a-guvernului-nr-22-2009-

*Referral of unconstitutionality to the Law on the approval of Government Emergency Ordinance No. 33/2017 for the modification and completion of Article 11 of the Government Emergency Decree No. 22/2009 on the establishment of the National Authority for Administration and Regulation in Communications*

***The Ordonanţa de urgenţă a Guvernului nr. 33/2017 pentru modificarea şi completarea art. 11 din Ordonanţa de urgenţă a Guvernului nr. 22/2009 privind înfiinţarea Autorităţii Naţionale pentru Administrare şi Reglementare în Comunicaţii***

http://www.cdep.ro/proiecte/2017/100/80/3/oug153.pdf

*Government Emergency Decree No. 33/2017 for the modification and completion of Article 11 of the Government Emergency Decree No. 22/2009 on the set up of the National Authority for Management and Regulation in Communications*

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