



## EUROPEAN COMMISSION

Directorate-General for Communications Networks, Content and Technology

Director-General

Brussels,  
CNECT/B-2/GB/clg

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Permanent Representative of  
Romania to the European Union  
Rue Montoyer 12  
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**Subject:        Functioning and independence of the national regulatory authority,  
                     ANCOM**

Your Excellency,

I am writing to you to follow up on my letter of 27 October (Ref. Ares(2017)5267377) in which I stressed the importance of independent and effective national regulatory authorities in a liberalised electronic communications market and raised a series of questions regarding the independence of the national regulatory authority ANCOM.

In particular, I enquired on the circumstances that led to the resignation of the former President of ANCOM, on the applicable legal procedure regarding the dismissal of the head of NRA and the legal stability and operational continuity of the NRA. To this date I have not received a response from the Romanian authorities.

Meanwhile, I took note that Mr Grindeanu was appointed as the new Head of NRA. Furthermore, it seems that the Romanian Senate is planning to amend the Emergency Ordinance no. 33 of 27 April 2017 in order to provide for new dismissal grounds and a dismissal procedure. I am attentively following the process and on the basis of the draft legislation discussed in the Economic Committee of the Romanian Senate I would like to draw your attention to certain aspects of the proposed provisions, regarding which I would like to share some preliminary concerns:

- 1)        *A de jure* dismissal of the Head of the NRA on the basis of the rejection of the annual report of ANCOM could seriously undermine the independence of the NRA.
- 2)        In the absence of judicial control of the decisions for any dismissal, the guarantees provided in Article 3(3 a) of the Framework Directive would be devoid of purpose. Moreover, Article 47 of the Charter of Fundamental Rights of the European Union provides for the right to an effective remedy and to a fair trial. According to Article 51 of the Charter, Member States are bound to respect this right when implementing Union law. In this context, it is not clear to my services whether dismissal

decisions taken by the Parliament are subject to judicial control under Romanian law. I would be grateful for a clarification in this respect.

3) We take note of the dismissal ground described as: [The head of NRA] "through his/her actions, seriously affected [...] the administrative capacity of the authority to carry out its powers conferred by law". Such a provision, while certainly pursuing the aim of administrative effectiveness, could give rise to significant legal uncertainty affecting the independence in its functions of the head of the NRA, in particular if the lack of judicial control were confirmed.

4) I take note of the additional dismissal procedure of the Vice-Presidents (proposed paragraph 5.3). As I understand, the Vice-Presidents are equally protected regarding grounds of dismissal, hence the reasoned request of the President could only be based on the dismissal grounds set out in the draft Law. Could you please confirm that this is the case?

My services are closely monitoring the ongoing legislative process and are open to have technical discussions with your authorities on the matter.

I would appreciate a response from the Romanian authorities to the above and my previous questions at your earliest convenience.

Yours faithfully,



Roberto Viola