

**THE EMPLOYEES' UNION FROM THE  
COMMUNICATIONS REGULATORY  
AUTHORITY**

For urgent analysis

**To:**

**The European Commission,**

**Directorate-General for Communications Networks, Content, and Technology**

**In attention of his Excellency, Roberto Viola**

Through this memorandum, we submit for your analysis the occurrence of a situation that definitely affects the organizational independence and functional capacity of the National Authority for Administration and Regulation in Communications (ANCOM or the Authority), aspects that are guaranteed by art. 6 and art. 8 para. (1) of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code, analyzed in the context of recitals (34), (37) and (39) of the same directive, act European legislation whose rules must be respected under the terms of the Treaty on the Functioning of the European Union, and of art. 1 paragraph (11) of the Government Emergency Ordinance no. 22/2009 regarding the establishment of the National Authority for Communications Administration and Regulation, approved by Law no. 113/2010, with subsequent amendments and additions.

Law 296 / 26.10.2023 regarding some fiscal and budgetary measures to ensure the financial sustainability of Romania in the long term (hereinafter referred to as the Law), was promulgated. The measures considered, once applied at ANCOM level, inevitably lead to a deep, dramatic reorganization of all the internal structures of the Authority, with direct negative consequences on the effectiveness of the activities, on affecting the budget, on the ability to determine its organizational structure, diminishing independence. Practically, it represents a political interference that affects the functional independence of ANCOM. At this moment, ANCOM is on the verge of a massive, improper and dysfunctional reorganization, imposed by the Law, simultaneously with the major impact on the investment budget, a reduction that will be reflected in the way in which ANCOM can exercise its duties as a regulator of the communications market and manager of the radio frequency spectrum, but also of the newest Digital Services Act coordinator role in Romania. Although some institutions were exempted from this Law, ANCOM is not exempted.

The immediate effects of the Law are a new organizational chart that will enter into force from 15.12.2023 if the institution remains under the Law. The workflows were completely affected by the abolition of more than 100 necessary management positions, the destructuring of the functional departments, regional directions, county offices through excessive centralization, disconnected from the functional reality, the merging of departments with different activity objects made up of specialists with different specialisations and attributions. Besides, more than 20

specialists retired before the deadline, and the young ones are already looking for other jobs. No workflows were simulated, the new organisation was made only to comply with the provisions of the new Law, but specialists realize that starting from 15.12.2023 ANCOM will be dysfunctional. The current organizational chart can be viewed on our website [www.ancom.ro](http://www.ancom.ro), and the new one to enter into force on 15.12.2023 is attached at the end, the new organisation under which ANCOM will not be able to operate. It is the first time since the establishment of the institution that its efficient operation is seriously affected.

As you of course know, the organization and operation of ANCOM is regulated by the Government Emergency Ordinance no. 22/2009 on the establishment of the National Authority for Administration and Regulation in Communications, approved by Law no. 113/2010, with subsequent amendments and additions, the normative act being adopted in the context of previous steps taken by the European Commission during 2009. In accordance with Art. 117 para. (3) from the Constitution of Romania, republished, by art. 1 paragraph (1) from the Government's Emergency Ordinance no. 22/2009, the establishment of ANCOM as an autonomous public authority with legal personality, under parliamentary control, financed entirely from its own revenues was ordered. This mode of organization and operation of ANCOM responds to the needs of ensuring independence and the ability to administer and regulate in the field of electronic communications, in order to ensure the fulfillment in good conditions of the tasks with which the Authority was entrusted, in accordance with the mandatory requirements arising from European legislation, requirements repeatedly emphasized by the European Commission, an essential principle that has been transposed into national legislation.

The need to ensure the stability, independence and impartiality of the regulatory authority in the field of communications are the reasons why ANCOM was brought under parliamentary control, being subject to rules adopted by the Legislature, but the concrete exercise of these attributes must be seen in the context of a real functional autonomy, which presupposes the absence of any external interference as defined in art. 1 paragraph (11) of the Government Emergency Ordinance no. 22/2009.

## **I. PRESENTATION OF THE EFFECTS THE LAW, THAT AFFECTS THE ANCOM ACTIVITY**

### **1. The law ordered the cancellation of vacancies**

The cancellation of vacancies envisaged by the Law frustrates any intention of ANCOM to effectively manage certain projects that are being considered in the next period and for which, taking into account the complexity of the regulatory act, it is necessary to attract personnel with expertise in certain key fields (engineers, economists, lawyers, etc.).

The imposition of personnel regulations (by abolishing vacant positions) prevents the regulatory authority from taking autonomous decisions regarding the way of executing the budget and organizing the activity, thus functional independence is affected and the way of fulfilling the regulatory duties and market monitoring is hindered.

### **2. The law establishes the minimum number of positions within some internal structures**

The law envisages the abolition of office-type structures and coordination functions at these levels, as well as the establishment of a minimum number of posts that must be included within a service, a department or a general directorate, this provision having a major negative impact on the entire organizational structure of ANCOM.

We believe that the change in the organizational structure of ANCOM is affecting the institutional capacity of ANCOM to monitor and react to market changes, considering that this has as its sole criterion the placement in a minimum number of positions, without taking into account the fact that



the organizational structures within the Authority reflect the specialization of the staff in its areas of competence, the current organization being based on criteria related to specific attributions and specialized workflows. In fact, the creation of organizational structures that would accumulate complex workflows (even if they are very different or complementary) generates a voluminous coordination activity in the charge of a single person who will acquire new attributions and will be responsible on aspects non-related to his competence, or even out of competence, an aspect that generates difficulties or dysfunctions in terms of quality management of market regulatory/monitoring acts. In the mean time, a lot of good managers remain with no leading positions even they are very qualified, or at leasts they are downgraded to lower execution positions.

**Practically, through the abolition of offices and county offices, combined with the merging of structures and services with personnel from different specializations, led by people who do not have professional training related to all specializations, work relationships and workflows within ANCOM are affected, respectively, the institution's ability to act in authorization, regulation, monitoring and control activities, which, among others, are basic activities for fulfilling the obligations arising from the Government's Emergency Ordinance no. 22/2009 concerning the establishment of the National Authority for Communications Administration and Regulation**

### **3. The law establishes the maximum percentage of management positions**

According to the Law, the number of management positions in ANCOM's organizational structures would be **a maximum of 8%** of the total number of actually occupied positions. This proposal establishing a valid general threshold does not take into account the diversity of the legal duties of the concerned authorities, nor the specifics of the activity of the various entities affected by the provisions of the Law, in our case, the possible needs of the regulatory authority in the field of electronic communications.

Thus, the direct consequences of the application of the Law **are affecting ANCOM's autonomy**, since the concept of autonomy is not limited only to the norm of establishment, but also considers the way in which, after establishment, such an authority can organize its activity and fulfill public duties established by law.

As we mentioned, the high degree of specialization determines the need for a rigorous coordination that involves a hierarchical leadership that ensures the quality of the results obtained by ANCOM.

From the ANCOM's perspective and the multitude of legal attributions conferred on it by the Legislature, the artificial creation, based on strictly numerical criteria, of cumbersome and rigid organizational structures, which simultaneously hold attributions on several levels, will diminish the necessary flexibility and speed. to adopt some decisions, essential characteristics specific to the regulatory process.

### **4. The law establishes a tax on the authority's revenues**

The new Law introduces a special tax that reduces the authority's revenues to an unprecedented level, so the functioning of the authority is severely affected. According to Govern Ordonance no. 22/2009, the authority must have financial independence, the revenues being collected and administered by the authority under the supervision of the Parliament. The activity of the authority can be carried out in a transparent, objective, non-discriminatory, impartial and independent way, only if the revenues are sufficient and guaranteed. Taxing them additionally means that the entire future plan of the authority is affected, in all areas. In this situation, the authority, in order to function,

will have to collect the monitoring fee from the providers of electronic communications on the market (something that has been avoided in the last 15 years), a fact that will lead indirectly, either to the transfer of these taxes in the costs of communication service subscriptions charged to the population, or in limiting the investments of providers of communication networks and services.

Therefore, the consequences of the application of this normative act, which endangers the independence of ANCOM and the capacity to implement in Romania the European regulatory framework in communications by drastically affecting the autonomy and labor relations within ANCOM, are incalculable for the activity of the institution. Thus, the Romanian state can no longer guarantee the quality of the public service provided in the activity of regulating and ensuring the competitiveness of the electronic communications market and postal services, of administering and monitoring the radio frequency spectrum and of controlling compliance with legal obligations by operators on these markets.

In relation to these considerations, we appreciate that the communications market in Romania must continue to be regulated by a professional and independent body that offers guarantees regarding the level of competence and specialization absolutely necessary for the administration of a field of strategic importance, so that ANCOM's measures should be well-founded and beneficial for a market that functions as a catalyst for all other sectors of the economy.

Also, the implementation of these organizational measures cannot have a positive impact on the state budget considering the distinct constitution of ANCOM's resources.

## **II. THE CURRENT ORGANIZATION OF ANCOM AND THE NORMATIVE ACTS THAT ARE VIOLATED BY THE EFFECTS OF THE LAW**

### **The main roles of the regulatory authority in the field of electronic communications:**

- the implementation of the national policy in the field of electronic communications, audiovisual communications and postal services, including through market regulation and technical and economic regulation in these fields;
- administration and management of limited resources in the field of electronic communications, including, but not limited to, radio frequency spectrum, numbering resources and other associated technical resources, including monitoring of radio frequency bands with non-governmental use. ANCOM recently received, through Law no. 198/2022, and attributions regarding the monitoring of the use of radio frequency bands with governmental use status in order to identify possible uses of the radio spectrum by persons other than the institutions provided for in art. 18 para. (1) and (2) of Government Emergency Ordinance no. 111/2011;
- verifying and controlling the fulfillment of obligations regarding the efficient and effective use of the radio frequency spectrum with non-governmental use and controlling the fulfillment of obligations regarding the use of numbering resources and associated technical resources;
- exercising the powers of the authority to supervise and control the market of radio equipment and equipment in the field of electromagnetic compatibility.

### **Normative acts that are violated by the effects of the Law**

1. **Are violated the provisions of the Government Emergency Ordinance no. 22/2009** on the Organization and performance of the Authority's activity, according to which, "In the exercise of its regulatory powers provided for by this emergency ordinance, ANCOM's activity will not be restricted by any other authority, it being decision-making, organizational and functionally independent from the other authorities public." [art. 1 paragraph (11) of the Government Emergency Ordinance no. 22/2009]. At the same time, the approval of the organizational structure, the state of functions and the number of positions within ANCOM is among the powers



of the President of the Authority, as provided by the provisions of art. 13 para. (1) lit. f) from the Government Emergency Ordinance no. 22/2009.

2. **The Principle of organizational, functional and decision-making independence of ANCOM is violated**, a principle originating from Directive (EU) 2018/1972, transposed, among others, by Government Emergency Ordinance no. 22/2009. It was also found in the previous legislation, both at the European level (Directive 2002/21/CE) and at the national level, considering its importance for the good organization and performance of ANCOM's activity and, thus, for the good conduct of some markets which generated annually, in Romania, revenues of over 4 billion euros from electronic communications networks and services and postal services.
3. **The provisions of Directive (EU) 2018/1972 which regulate the field of electronic communications are violated**, clearly establishing, both through art. 6, art. 8 para. (1) and art. 9, but also through the considerations related to these articles, the decision-making independence of the national regulatory authority in establishing the resources necessary to achieve the objectives that fall under the responsibility of such an authority.
  - According to **recital no. 34** of Directive (EU) 2018/1972, national regulatory authorities should benefit from all the necessary resources, in terms of staff, expertise and financial means, to carry out their tasks.
  - According to **recital no. 37** of the same directive, the independence of a national regulatory authority requires that it, within the limits of its budget, benefit from autonomy in terms of managing its human and financial resources.

**As a result, the Law significantly affects the functional and financial independence of ANCOM, including by limiting its ability to decide on the optimal way of internal organization, which ensures the implementation in Romania of the European regulatory framework in the field of electronic communications, which represents a violation of the obligations assumed by Romania, as we will show below.**

The provisions of art. 6 of Directive (EU) 2018/1972 are violated: it establishes Romania's obligation to ensure that ANCOM, in its capacity as the national regulatory authority in the field of electronic communications, benefits from:

- a) functional independence, i.e. the possibility to exercise its regulatory powers in the field of electronic communications impartially;
- b) financial independence, i.e. the possibility of possessing adequate human and financial resources for the fulfillment, in conditions of impartiality, of the duties entrusted to it.

**Thus, art. 6 para. (2) of Directive (EU) 2018/1972 that is also violated**, provides the following: "(2) Member States ensure that national regulatory authorities exercise their powers in an impartial, transparent and timely manner. Member States shall ensure that national regulatory authorities have sufficient human and financial resources to carry out the tasks entrusted to them."

**Art. 8 para. (1) of Directive (EU) 2018/1972 is violated by the new Law. it establishes additional requirements regarding the independence of regulatory authorities:**

"(1) Without prejudice to Article 10, national regulatory authorities shall act independently and objectively, including in the design of internal procedures and the organization of staff, shall operate in a transparent and accountable manner, in accordance with Union law, and shall not neither seek nor receive instructions from any other body in relation to the performance of the tasks assigned to them under domestic law transposing Union law. [...]"

**Art. 9 of Directive (EU) 2018/1972 is violated by the Law. It provides that:**

"(1) Member States ensure that the national regulatory authorities have separate annual budgets and that they benefit from autonomy in the execution of the allocated budget. Budgets are published.

(2) Without prejudice to the obligation to provide national regulatory authorities with adequate financial and human resources to fulfill the tasks assigned to them, financial autonomy does not exclude supervision or control in accordance with domestic constitutional law. Any control exercised over the budget of national regulatory authorities shall be exercised in a transparent and public manner.

(3) Member States shall also ensure that national regulatory authorities have adequate financial and human resources to enable them to participate and contribute actively within BEREC."

The intention of the European Union legislator to adopt art. 6 para. (2), art. 8 para. (1) and art. 9 of Directive (EU) 2018/1972 is formulated, as I stated above, in recital no. 34 of the preamble of the same directive, which states the following: "(34) In accordance with the principle of separation of regulatory and operational functions, Member States should guarantee the independence of the national regulatory authority or authorities in order to ensure the impartiality of their decisions. This requirement of independence does not affect the institutional autonomy, nor the constitutional obligations of the member states or the principle of neutrality in relation to the property regime in the member states, provided for in Article 345 of the TFEU. National regulatory authorities [...] should have all the necessary resources, in terms of staff, expertise and financial means, to carry out their tasks." (s.n.s.).

**At the same time, recital no. 35 of Directive (EU) 2018/1972 outlines the independence requirements that the regulatory authority must fulfill: "(35) Certain tasks under the directive, such as ex ante market regulation, including the imposition of access and interconnection obligations, and the resolution of disputes between businesses, are tasks that should only be carried out by national regulatory authorities, i.e. bodies that are independent both of the sector and of any external intervention or political pressure. [...]."**

In the same note, recital no. 37 of the same Directive provides the following: "(37) [...] It is important that national regulatory authorities **have their own budget** in order to be able, in particular, to *recruit qualified staff in sufficient numbers*. To guarantee transparency, this budget should be published annually. Within the limits of their budget, **they should have autonomy in the management of their human and financial resources.**"

As can be noted, in the logic of EU Directive 2018/1972, these two concepts – functional independence and financial independence – are interdependent. Affecting ANCOM's ability to recruit qualified staff, to maintain them and to decide on its own organizational and operating mechanisms, at the same time affects ANCOM's ability to adequately and impartially exercise its regulatory powers in the field of electronic communications.

The principles of functional and financial independence of the regulatory authority envisaged by the EU Directive 2018/1972 were properly reflected by the provisions of the Government Emergency Ordinance no. 22/2009. In addition to the provisions of art. 1 paragraph (11) of this regulation which expressly regulates the decision-making, organizational and functional independence of the Authority, cited previously, we reiterate the complementary provisions of the Government's Emergency Ordinance no. 22/2009 which come to strengthen the principles underlying the organization of ANCOM.



Thus, relevant in this sense are the provisions of art. 14 para. (31) of the Government Emergency Ordinance no. 22/2009, provisions according to which "(31) - Within the limits of the approved annual revenue and expenditure budget, **ANCOM decides on the management of its human and financial resources.**", art. 181 para. (1) from the same normative act establishing the fact that "Art. 181. - (1) **ANCOM must have adequate technical, financial and human resources to fulfill the tasks assigned to it. [...]**".

At the same time, art. 18 para. (5) and (5<sup>1</sup>) of the same normative act provide that "(5) **In its activity, ANCOM has the obligation to exercise its powers in a transparent, objective, non-discriminatory and impartial manner**, respectively, in a timely manner, and to- and maintain operational and financial independence from:

- a) providers of electronic communications networks and services;
- b) manufacturers or authorized representatives of manufacturers of radio equipment or equipment in the field of electromagnetic compatibility, importers or distributors of such equipment;
- c) postal service providers.
- d) any other persons who act in such a way as to endanger the exercise of his duties independently.

(5<sup>1</sup>) **ANCOM, its management members and staff will not request or accept instructions of any kind from any other institution, body or authority in the exercise of their duties conferred by law."**

**So, all fo the above are violated by the Law 296/2023, and affects ANCOM**

**About Digital Services Coordinator status:** Considering the fact that ANCOM was designated by the Government, through Memorandum registered with no. 20/7237/M.N./28.02.2023, as coordinator of digital services in the context of Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 regarding a single market for digital services and amending Directive 2000/31/ WHAT THE. The application of the European legislative act at the national level requires that the entity designated as coordinator of digital services benefits, according to art. 50 of the Regulation, the resources necessary to carry out their tasks, including sufficient technical, financial and human resources to adequately supervise all intermediary service providers falling within their sphere of competence and to act in full independence from private and public bodies. Also, in order not to adversely affect the independence of its digital service coordinator, each Member State must ensure that it has sufficient autonomy in the management of its budget, within the general budget limits. Regarding the obligations of the Romanian state regarding the application of Regulation (EU) 2022/2065, we are able to show that ANCOM is involved in the discussions held at the national level for the adoption of the necessary measures in order to apply the European norm, but its effective application could be affected in the absence of real autonomy and independence in the decision-making process regarding the organizational structure of ANCOM.

Another fact is that ANCOM's independence is analyzed by the Organization for Economic Cooperation and Development (OECD) from the perspective of the Authority's mode of operation and organization in the sense of ensuring an institutional separation from the Government, as well as from the point of view of the appointment and dismissal of management, but also from the perspective of the way of ensuring material resources and of the Authority's decision-making autonomy regarding the allocation of these resources.

Even BEREC (Body of European Regulators for Electronic Communications) has repeatedly expressed its clear position regarding the need to ensure the independence of national regulatory authorities, in all its aspects: financial, organizational autonomy, including in terms of administration human resources of regulatory authorities.

BEREC calls on the European Commission to continue to actively monitor developments and take firm action when concerns arise regarding the weakening of the institutional set-up (of NRAs) for the correct application of the regulatory framework. In particular, the Commission should guard against any national action which, in clear opposition to the objectives set out in the sectoral directives, could undermine the ability of independent regulatory authorities to fulfill their regulatory roles effectively.

Such interference in the effective execution of their tasks by eroding their powers, competences, or resources, threatens the efficient functioning of national markets and ultimately the single market."

The current organizational chart of ANCOM ensures that activities are carried out in accordance with the characteristics of the necessary activities, while allowing a sufficient degree of detail of the activities carried out at the level of each compartment, both economic, technical and legal regulation, as well as support, and optimal cooperation between employees on multidisciplinary workflows. During its activity, the Authority has implemented and continues to implement complex, large-scale projects, within which involvement at different decision levels is necessary.

These projects and activities are mainly carried out through collaboration within multidisciplinary teams, brought together for the purpose of specific projects. The teams are made up of personnel specialized in the fields of activity of the services they belong to, and the members are simultaneously involved in different projects. Thus, restructuring on general criteria is not appropriate given that the respective knowledge cannot be transferable.

**Effects on the fulfillment of the obligations resulting from Romania's status as a member state of the European Union and the process of accession to the OECD**


As we presented above, the entry into force of some measures that would affect the independence of the national regulatory authorities, in all its aspects: financial, organizational autonomy, including in terms of the administration of their human resources, is of a nature generate negative effects by referring to the general regulatory framework at community level - Directive (EU) 2018/1972, but also at the level of the Organization for Economic Cooperation and Development (OECD).

**In concrete terms, the adoption of the measures proposed by the Law is likely to lead to the initiation at European level of procedures for violation of European law (infringement) represented by Directive (EU) 2018/1972.**

**Considering that the arguments presented above are both pertinent and justified, we kindly ask you to support us, in the sense of eliminating ANCOM from the provisions of the Law, in order to ensure the independence of the Authority according to European legal requirements.**

**With the hope that the above will contribute to clarifying the status of ANCOM from the perspective of the regulatory object of the Law, we assure you of our full consideration,**

For and on behalf of ANCOM employees,

  
President of The Employees' Union From The  
Communications Regulatory Authority



