

# PRELIMINARY OBSERVATIONS ON THE DELEGATION OF POWERS TO NATIONAL AND EUROPEAN UNION LEVEL

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## **Abstract**

*In the context of Romania's accession to the European Union, have created the conditions to issue a new category of delegation of powers at the national level, used in the management of EU funds. Thus, delegation under delegation agreements concluded between ministries function with role management authorities and legal entities subordinated, coordination or subordination or coordination outside a hierarchy is a concrete way to exercise the powers conferred by the provisions Romania Community and pursue assimilated by delegating temporary administrative office.*

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How applicable national legal administrative delegation relate to the accession of Romania to the European Union only two types of delegation: delegation of signature, administrative operation does not alter the distribution of powers of delegation and delegation of power.

With the distinctive features impersonal character, devolution will manifest the transfer of administrative functions, administrative operation embodied in the instrument of delegation or temporary transfer of powers, duties or functions.

Constant practice reveals a rigid central administration used, in the legal act of delegation, due to lack of power. Central authorities are constantly resorting to the legal system of delegation only to situations where the volume of tasks is very high.

At EU level, delegation of powers must be reported to two dimensions. A dimension averted aimed delegation conferred by the European Parliament and the Council of Europe and the European Commission extended size perspective of delegation of powers to the European Union Member States under the principle of subsidiarity and the mechanism of shared management.

Small size of the delegation at EU level will representativeness according to future Community regulations for EU funds, delegation of authority that European Parliament and the Council of Europe gives to the European Commission to adopt delegated acts aimed at including "defining rules and specific conditions on requests from Member States ". Acts adopted in the execution of the delegation of power shall be notified simultaneously to the Commission, the Parliament and the Council of Europe and will enter into force only if no objection has been raised by the European Parliament or the Council within two months of on their notification act, or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. This period shall be extended by 2 months at the initiative of the European Parliament or the Council. This legislative solution to create an early warning system (early warning) was envisioned as legal solution by the European Commission since 2009 by the Commission Communication to the European Parliament and the Council - Implementation of Article 290 of the Treaty on the Functioning of the European Union

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But legal solution provided by the proposed Regulations was extended period extending analysis to the Commission by the European Parliament acts of the Council or one to two months to formulate appropriate period of 2 months objections by the European Parliament and the Council Europe.

We note also that the delegation of authority, made under art.290 of the Treaty on the Functioning of the European Union since January 1, 2014, is ordered for an indefinite period, thus some old grievance European Commission mentioned in art.3.2 Communication from the Commission to the European Parliament and the Council - Implementation of Article 290 of the Treaty on the Functioning of the European Union to limit short-term delegations, with the possibility of revocation, either by Parliament or by the Council of Europe.

Expanded in size, the EU delegation mechanism "shared management" effectively gives the subsidiarity principle and is useful in carrying through a partial delegation of European Union Member States of tasks required to manage funds. In this regard the implementation mechanism shared, much of the management functions and powers are performed by national entities but although nationally are responsible for carrying out the functions and powers have been conferred on them the Commission Europe can not exercise genuine control authority only very limited control, which leads to a limitation of their liability in the European Union.

Moreover, the Commission Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - first scoreboard on simplifying the CMF 2014-2020, dated 09/20/2012, states that "The Council proposed In many cases, especially in shared management (CAP, Cohesion Fund, Fisheries and Maritime Affairs), the conversion of delegated acts in implementing acts in order to strengthen the right of Member States to exercise control (through comitology procedures) and to reduce the monitoring carried out by PE). This proposal raises questions about the scope of the nature of the acts covered by Articles 290 and 291 of the Treaty (TFEU) and has important institutional consequences.

Parliament proposes, however systematically, the conversion of implementing acts delegated acts, which puts him on an equal footing with the Council. These positions are totally inadequate in terms of indicative programming documents and annual work programs to be quickly adopted and then adapted to allow a rapid response to changing circumstances and effective implementation of programs. Such acts should be delegated in accordance with the Treaty would significantly impede implementation at operational level and would extend the grant and the deadline. Also, it would be totally inadequate programming documents within RELEX instruments that are not legislative documents by nature and it is necessary, in most cases, to discuss and reach an agreement with the recipient countries. It should be remembered that programming documents are used to implement the relevant legal instruments and not for their regulation, they therefore do not have all the legal characteristics (establish general rules and mandatory EU law) required to define a delegated act.

In the context of Romania's accession to the European Union, have created the conditions to issue a new category of national delegation of powers used in the management of EU funds.

Thus, delegation under delegation agreements concluded between ministries function with role management authorities and legal entities subordinated, coordination or subordination or coordination outside a hierarchy is a concrete way to exercise the powers conferred by the provisions Romania Community and pursue assimilated by delegating temporary administrative office.

In practice there is still reluctance of courts to qualify the instrument of delegation mentioned above, based on its legal basis. In analyzing the nature of this delegation arranged by delegation agreements, which is governed inter alia, Art. 42, para. (1) reported the Art.2 section 6

of Regulation (EC) no. 1083/2006 laying down general provisions on the Structural Instruments, the courts was not carried out exhaustively by the court, it is only qualify summarizing administrative documents prepared under this delegation only by reference to the object value action aiming administrative act issued.

A proper qualification purpose and nature of the legal character of the delegation agreements, it is necessary to establish proper jurisdiction to hear cases materials aimed documents in virtue of this delegation.

In this regard I appreciate that jurisdiction to hear cases brought before the trial that concern legal documents drawn under agreements to delegate functions have been conferred functions by central administration bodies with the role of Managing Authorities are regardless of their value for the Courts of Call the first instance as they are not covered by the provisions of Article 10. (1) of Law 554/2004, as amended and supplemented.

Also point out that I found a reluctance of courts to make effective the provisions of art. 19, para. (3) of the Treaty on U.E. published in J.O.U.E. no. C115/09.05.2008 conjunction with Article 267, par. (3) of the Treaty on the Functioning U.E. published in J.O.U.E. no. C115/09.05.2008, in the sense of investing Court of Justice of the European Union with a request to determine the nature and legal character of the delegation made under Regulation EC no. 1083/2006 laying down general provisions on the Structural Instruments, by a judgment at the outset, although still believe that this approach finds its full contribution.

In this context, to a uniform interpretation of the purpose and nature of delegation, review draft Code of Administrative Procedure, whose preliminary theses were approved by Government 1360/2008, have been adopted until now, for reasons that I believe that the activity exceed the necessity of reforming public administration is more current with how the draft Administrative Procedure Code of Romania does not come to set up explicitly in the public administration, the notion of administrative mandate both in its nominal form and as a general rule, resuming only to mention the effects of lack of competence, the training of the administrative procedure for the validation of administrative acts made against an appearance of legality, legislative solution that inclined to believe it will create effects as perverse "effects are exempted from dissolution administrative work produced for the benefit of people, if there was an appearance of legality of administrative activity and those people were not aware of illegality." (article 40 paragraph 2 of the Administrative Procedure Code).

In conclusion, we can say that until the adoption of the Code of Administrative Procedure, the task of national reconciliation legal rules with Community law in terms of determining the nature and legal classification of administrative delegations of powers exercised under Community regulations and management of shared national court which acts primary to try the principle of consistent interpretation at the expense of the principle of direct effect.

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