

PARTICULARITIES REGARDING THE NATIONAL SYSTEM FOR THE MANAGEMENT OF EUROPEAN AFFAIRS

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Abstract:

The national authorities with attributions in the fields in which drafts of legal acts are initiated (responsible ministries or specialized bodies) participate in the European decision-making process, according to the legal provisions that outline the National System for the Management of European Affairs, promoting the national positions regarding these drafts. The coordination committee of the National System for the Management of European Affairs has the task of designating the institutions responsible for the development and support of mandates and general mandates. The national system for managing European affairs with a view to Romania's participation in the decision-making process of the European Union institutions is led, in our country, by the delegated minister for European affairs within the Ministry of Foreign Affairs.

Keywords: *European affairs, national positions, mandate, general mandate, negotiation*

Practical aspects regarding the national system for the management of European affairs

National participation in the European decision-making process and the transposition or application of European legislative acts are closely connected, constituting interdependent stages of the same process, which must be unique and coherent.

In Romania, the national system for managing European affairs with a view to our country's participation in the decision-making process of the institutions of the European Union is under the coordination of the Ministry of Foreign Affairs. The legal framework is GD no. 34/2017 [1], which establishes the *decision-making levels* at which the coordination of the decision-making process and the adoption of Romania's positions in relation to the issue of European affairs are carried out, respectively the Government of Romania, and the Coordination Committee of the National System for the Management of European Affairs and the working groups.

The inter-institutional coordination within this process belongs to the (coordination) Committee, made up of representatives of the ministries and other specialized bodies, with positions of secretary of state or other positions with the rank of secretary of state, with attributions in the field of European affairs, which will be accompanied by officials from the structures responsible for managing European affairs. The Permanent Representative or Deputy Permanent Representative of Romania to the EU may be invited to attend these meetings, which are held weekly and usually take place at the government headquarters. It is a working body, without legal personality, led, under the guidance of the prime minister, by the delegated minister for European affairs from the Ministry of Foreign Affairs (Art. 6, paragraph 1).

The duties they exercise can be grouped around two major directions: a) establishing the list of general mandates of Romania that will be elaborated within the national system of coordination of European affairs; b) preparation of negotiation mandates at the level of the European Union, within the Committee of Permanent Representatives of the governments of the member states (Coreper) and the Council of the European Union.

In this sense, the Coordination Committee discusses and approves projects of general mandates, which are sent for approval at the Government level, but also designates the institution responsible for the elaboration and support of mandates or general mandates. A close connection can be found between the tasks assigned to the Committee, a structure that analyzes the annual lists of draft legal acts of the European Union for which the two Chambers of the Parliament will initiate the parliamentary examination procedure.

Committee members, based on Art. 6 paragraph 2 of GD no. 34/2017, follow and can request the ministry or the specialized body that elaborates the general mandates to inform and consult the local authorities, employers' organizations, trade unions, civic organizations or other organizations active in the fields that are the object of the draft legal acts of the European Union, but also on the proposals for acts implementing mandatory legal acts of the European Union.

The mandate projects, including the general mandate, must include elements [2] that refer to: a brief description of the topic on the agenda of the Council of the European

Union and Romania's objectives in relation to this topic, but also a brief presentation of the EU legal acts in force at the European level and of other international commitments previously assumed by the Romanian side in the respective field. Also included are the limits that can be accepted by Romania in the negotiation process and possible negotiating positions of other member states, the European Commission and the European Parliament or its committees.

The impact on the state, which the drafts of European legal acts have, as well as the proposals for implementing acts of requisite European legal acts, impact analyzed from an economic, social or environmental point of view should not be neglected either. Also among the elements of the draft mandate is the list of normative acts from Romania that regulate the matter to which the draft European act refers, as well as an analysis of the changes that would result in the adoption of the respective draft act.

The approval of the general mandate is carried out by the Ministry of Foreign Affairs, through the Minister of Foreign Affairs and the Delegate Minister for European Affairs, then approved by the Prime Minister and promoted at all levels of negotiation within the Council of the European Union.

The other types of mandates, submitted with the approval of the Minister Delegate for European Affairs within the Ministry of Foreign Affairs, are assumed as follows:

- the mandates for negotiation at the level of working groups within the EU Council or at the level of committees are assumed at a corresponding decision level, according to the internal regulations of each institution in the National System for the Management of European Affairs;

- the mandates for negotiation at the Coreper level and the mandates for negotiation at the level of the other committees established by the EU treaties or by intergovernmental decision, agreed within the Coordination Committee, are assumed at a decision level at least at the level of the Secretary of State.

In addition, the mandates for negotiation at the level of the formations of the Council of the European Union are approved by the Ministry of Foreign Affairs, through the Minister of Foreign Affairs and the Delegate Minister for European Affairs and approved by the Prime Minister.

Practice has also highlighted the existence of *exceptional situations*, when the evolution of negotiations results in a situation different from the one included in the mandate. In this case, the representative of Romania in the Council of the European Union can support a new position, but only after consulting the responsible ministry/specialized body. The new position, accompanied by the written presentation of the reasons for the decision, must be sent later to the prime minister and the delegated minister for European affairs within the Ministry of Foreign Affairs.

If this situation intervenes at the level of Coreper, the representative of Romania in this committee can support a new position only after consulting the responsible ministry/specialized body. Also, the written presentation of the reasons for the decision is subsequently sent only to the management of the respective institution and the delegate minister for European affairs within the Ministry of Foreign Affairs (MFA).

The register of mandates is the tool that ensures the traceability of documents analyzed at the EU and national level, from the first presentation (for example, from the launch of the legislative proposal) until the end of the decision-making procedure to adopt/reject the document. The organization and coordination of this register [3] is the responsibility of the delegated minister for European affairs within the MFA.

The principles underlying the elaboration, approval and adoption of mandates

The institutional mechanisms that ensure the development of mandates for European affairs activities are based on a series of principles [4], between which there is a close correlation. Their proper application has a major impact on the entire process, facilitating the fulfillment of Romania's obligations as an EU member state.

The principle of cooperation ensures the development of a sustainable position both with internal partners and with European partners. *Professionalism* takes into account the quality of the works prepared, the observance of the deadlines for the fulfillment of the measures, the efficiency and effectiveness of the staff in all the activities undertaken. Based on *the principle of flexibility*, the mechanism of the negotiation process must be defined by flexibility, which allows it to be permanently adapted to changes occurring at the institutional or European level.

Ensuring a unified position is achieved according to *the principle of interministerial concertation*; in this sense, the relationship of the MFA and the other ministers with the European partners is carried out in compliance with the procedural framework for the elaboration and support of Romania's position, defined by the national norms in the field.

The principle of coherence in the process of elaborating and supporting Romania's position presupposes the existence of a fluid circuit of information, undistorted, which allows the transmission of a clear and unified message, based on an appropriate work procedure. Any person involved in the process of elaborating Romania's position, based on *the principle of information and persuasion*, has the duty to defend the interests of our country and the professional obligation to ensure that internal or external interlocutors are informed of the official position of the MFA, as well as the reasons behind its foundation.

Aspects regarding the development of mandates for European affairs activities at the level of the Ministry of Internal Affairs

The seat of the matter is represented by the provisions contained in Chapter V of *Order no. 143/2015* [5] regarding the activities of international relations and European affairs at the level of the Ministry of Internal Affairs (MIA), amended and supplemented.

When initiating a draft legislative act of the European Union, an impact assessment is made according to the procedure established by the order of the secretary of state coordinating the activity of international relations and European affairs.

The competence to develop *the draft mandate or general mandate* in relation to a draft legislative act of the European Union or its *detailed elements* belongs to the coordination structure (within the MIA) whose competence is the field of which the respective project is part, based on the evaluation of impact. The procedure [6] regarding the elaboration of mandate projects, general mandate and detailed elements is established by the disposition of the secretary of state coordinating the activity of international relations and European affairs.

Draft mandates or general mandates for a subject under debate at the European Union level are drawn up by a main responsible MIA structure, designated by the coordination structure, which can be a unit, an institution or a structure of this ministry. The main task is to carry out an analysis that results in the technical elements of the

mandate and the position elements, based on which the draft mandate or general mandate or its detailed elements are drawn up.

In Order no. 143/2015, amended and supplemented, clear clarifications [7] are made regarding *the technical elements of the mandate*, which include the result of the assessment carried out by the MIA structure regarding the impact that the measures that make up the subject under debate at the European Union level can have on its field of competence. *The elements of the position* concern the objectives to be achieved within the debates at the European Union level regarding the respective subject, but also the possible alternatives that could be accepted within the negotiations.

The elements detailing the assumed mandates are sent to the Permanent Representation of Romania to the European Union, but with the approval, as the case may be, of the Secretary of State coordinating the activity of international relations and European affairs or of the head of the coordination structure whose competence lies in the field of which the respective subject is part of.

After completing the internal notice/approval procedures, the coordination structure ensures the speedy electronic transmission of the mandate to the Ministry of Foreign Affairs for approval. In the situation where the opinion of the MFA is negative, the mandate is retransmitted to the coordination structure, which has the obligation of redoing the mandate. The renewed mandate or, as the case may be, the justification for not taking over the MFA's observations shall be sent to the MFA as soon as possible.

Conclusions

At the national level, an attempt was made to increase the efficiency of the management system for European affairs through a clearer delimitation of competences through secondary legislation related to the coordination of European affairs.

In practice, however, there are a number of dysfunctions in the activity of the Committee for the Coordination of European Affairs. First of all, the existence of inter-institutional conflicts and dysfunctions was found. Most of the time, the meetings of the Committee are attended by civil servants and not only secretaries of state, as they should be, which indicates the lack of importance of this institution for the actors involved, including the government.

These dysfunctions must be removed, in order not to generate significant problems in the process of managing European affairs by the Romanian Government, because the non-resolution of inter-institutional conflicts can have a negative impact on the quality of Romania's effective participation in the decision-making process of the European Union.

In many institutions in Romania involved in the management of European affairs, there are not enough financial allocations for the training of expertise in the field, an aspect that indicates the lack of availability of the authorities to solve this problem, or even the misunderstanding of the importance that an adequate professional training of the staff has in the efficient coordination of European affairs. A thorough analysis is required in order to maintain the stability of the coordination system through the development and adoption by the management structure of European affairs of a strategy for continuous professional training of civil servants to strengthen the administrative capacity. The programs offered should be innovative, up-to-date and based on the acquisition of both practical and analytical skills.

It can be noted that the lack of coherent and relevant solutions for all these problems can attract risks [8] such as: diminishing the administrative capacity of the actors involved in the management of European affairs; maintaining ineffective institutional arrangements; the intensification of inter-institutional conflicts; low absorption of European funds; an intensification of the infringement procedures applied to Romania by the European Commission. In the inter-institutional relations of the field of European affairs, but also of the entire Romanian administration, the culture of institutional cooperation and dialogue must replace the traditional one.

References:

[1] GD no. 34/2017 *regarding the organization and functioning of the National system for the management of European affairs with the aim of Romania's participation in the decision-making process of the European Union institutions*, published in the Official Gazette issue 84/30 Jan. 2017.

[2] In conformity with Art. 9 paragraph 4 of GD no. 34/2017.

[3] Art. 2 point 25 of GD. no. 9/2020 to amend and supplement certain normative acts in the field of foreign affairs, published in the Official Gazette issue 20/14 Jan. 2020.

[4] See also "*Ghidul de Procedură privind asigurarea reprezentării active și eficiente a Ministerului Afacerilor Interne în grupurile de lucru ale Consiliului UE și Comisiei Europene*", Ministry of Internal Affairs, Direction of European Affairs and International Relations, [online], available at: <https://www.mai.gov.ro/wp-content/uploads/2019/09/DAERI-Ghid-2.pdf>, p.8, accessed on 10th October 2022.

[5] ORDER of the Minister of Internal Affairs no. 143/2015 on the activities of international relations and European affairs at the level of the Ministry of Internal Affairs, published in the Official Gazette issue 857/18

November 2015, amended and supplemented by Order no. 20 of 4 February 2016, published in the Official Gazette issue 86 of 5 February 2016.

[6] Letter b) of paragraph (1) of Art. 101 was modified by point 51 of Art. I of ORDER no. 20 of 4 February 2016 published in the Official Gazette issue 86 of 5 February 2016.

[7] Art. 64, paragraphs 2 and 3 of Order no. 143/2015.

[8] See also Iordan Gheorghe Bărbulescu (coord.), Oana Andreea Ion, Nicolae Toderaș, “*Coordonarea afacerilor europene la nivel național. Mecanisme de colaborare între Guvern și Parlament în domeniul afacerilor europene. Studiu comparativ în statele membre UE*”, [online], European Institute of Romania, Bucharest, 2013, p. 106, available at: http://ier.gov.ro/wp-content/uploads/publicatii/spos_2_2012.pdf , accessed on 10th October 2022.