

THE INSTITUTION OF LEGISLATIVE DELEGATION IN THE FIELDS OF ECONOMICS AND FINANCE. AN OVERVIEW OF THE TIMEFRAME 2010-2014

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Abstract: *According to the Romanian Constitution (Art. 115, paragraph 1), the Government, as a body of the Executive Power, is endowed with attributions belonging to the Legislative function, specific to the Parliament. Thus, we are dealing with what the juridical science calls “legislative delegation”. On this basis, the Government may issue simple ordinances, under a special enabling law and emergency ordinances - in case of special circumstances, which both represent primary normative acts with the power of a law. In this paper we approach the issue of the legislative delegation during the recent five years (2010-2014), focusing on a few aspects relating to the fields of finance and economics.*

Keywords: The Constitution, Parliament, Government, Ordinances / Emergency Ordinances

JEL Classification: K4

Introduction

The theme of the institution of legislative delegation was the subject of numerous papers (Pivniceru and Tudose, 2012; Safta, 2014; Maracineanu, 2008; Karoly, 2009; Saramet and Toma-Bianov, 2012), which underlines its importance in the current context. To a lesser extent, we also covered this theme in several books and papers (Bostan, 2014a-d), focusing on the economic and financial aspect. In the national law, the legislative delegation assumes that the normative act is no longer issued by the Parliament but by the Government, which may adopt: simple ordinances, under a special enabling law (concerning both the period during the parliamentary recess, as well as the rest of the year) and emergency ordinances (EO) - in special situations.

Any such normative act, in fact primary acts with the force of a law, represents a means to initiate a law (Maracineanu, 2008), the procedure being completed by the Legislature, by a form of (1) approving the ordinance, (2) amending and approving it or (3) rejecting it. The enabling of the Government, by law, by the Parliament, to issue ordinances, comes under the provisions of article 108 and article 115 of the Romanian Constitution (2003), assuming the establishment of their field – excepting the field of organic laws – and the date by which they may be issued. By the same law, the Parliament reserves its right to approve such ordinances, according to the legislative procedure.

The legislative procedure based on delegation, though controversial, as the Parliament loses its attribute as the sole legislative authority of the country is still quite commonly used. Therefore, we will further refer to the motivations involved and to the frequency encountered in practice.

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1. Juridical bases of the government empowerment to issue ordinances. Fields, subfields and normative acts referred to in the enabling laws (2010-2014)

1.1. Government Ordinances

The Government is empowered to issue ordinances in fields outside the scope of organic laws from the date of the entry into force of the enabling law to its expiry date, usually not before the end of the ordinary session of the Parliament and until the activity of the Parliament is resumed in the same type of session. If we refer only to 2014, such fields envisage multiple aspects (Law no. 119, 2014).

We mention that various fields stand out, such as the field of public finances and the economy, with measures referring to 18 subfields, the transport and the infrastructure with measures referring to 11 subfields, the agriculture and environment with measures referring to 8 subfields, regional development and public administration with measures referring to 7 subfields, European funds with measures referring to 5 subfields etc. We underline that according to Art. 115, paragraph (3) of the Constitution of Romania (2003), the ordinances issued by the government must be submitted to the Parliament for approval, according to the legislative procedure, until the resumption of the parliamentary activity in the next ordinary session. The non-compliance with the time limit entails the suspension of the effects of the ordinance.

During the previous years, the government ordinances (OG) have covered approximately the same fields only with a different number of measures referring to subfields. For example, in 2013, we encountered the empowerment of the Executive (Law no. 182, 2013) to regulate on the Information Society (amending and supplementing certain normative acts in the field of electronic communications, information society services, postal services and cyber-crime), social protection and inclusion (a. amending and supplementing GEO no. 70/2011 on social protection measures during the cold season; b. regulations on the social inclusion of Roma), education and research (a. the regulation of some issues of content for education and scientific research; b. regulations on service inventions).

Another important field that was covered by the legislative delegation was the public procurement, a field with significant importance for the business environment. Hereby, the regulations issued by the Government referred to: a) amending and supplementing GEO no. 34/2006 concerning the awarding of public contracts, the public works concession contracts and services concession contracts; b) amending and supplementing GEO no. 30/2006 regarding the verification

function of the procedural aspects related to the awarding process of the public procurements contracts; c) amending and supplementing GEO no. 74/2005 regarding the organization of the National Authority for Regulating and Monitoring Public Procurements.

In 2012, we witnessed the empowerment of the Executive (Law no. 127, 2012) to (also) regulate in the field of administration and internal affairs, aiming to regulate the legal framework necessary for the automatic search of the reference data in relation to the Member States of the European Union and to ensure the recognition of the laboratory activities on fingerprint data. In the field of culture, the empowerment referred to: a) amending and supplementing GO no. 9/1996 referring to the improvement of the financing system of public cultural institutions and the remuneration system of their personnel, and b) amending and supplementing GEO no. 189/2008 regarding the management of public cultural institutions. The legal regime of the contraventions was also considered, modifying and supplementing the provisions of GO no. 2/2001. In the year 2011 rather particular fields (Law no. 131, 2011) as the field of constructions were envisaged, the empowerment regarding: a) amending and supplementing Law no. 372/2005 referring to the energy performance of buildings; b) amending and supplementing Ordinance no. 20/1994 referring to the measures to reduce the seismic risk of existing buildings; c) amending the Law no. 152/1998 on the establishment of the National Housing Agency.

Regarding the activity in the field of health we mention as important: a) the regulations referring to the transfer of the personnel qualified to evaluate the conformity of medical devices and management systems from the National Agency for Medicines and Medical Devices to the Technical Office for Medical Devices Certification and 2) the measures referring to the verification and control of health units with beds by the Ministry of Health and the subordinated institutions. The empowerment of the Executive also covered several regulations on towing illegally parked vehicles in the sector of public administration and internal affairs.

Finally, the year 2010, characterized from the economic perspective by a severe crisis, was differentiated by the empowerment of the Government by the Parliament, by law (Law no. 138, 2010) to issue ordinances aiming to obtain an important economic impact. The regulatory fields and subfields of action / the main measures are presented in Table 1.

Table 1 - The fields regulated by GO, for which the Government was enabled by “legislative delegation” (2010)

Fields regulated by GO	The subfield / main measures
I. Finances and economy	1. Budgetary correction; 2. Amending and supplementing Law no. 30/1991 on the organization and functioning of the financial control;

	<ol style="list-style-type: none"> 3. Amending and supplementing Law no. 321/2006 on the regime of assigning non-refundable grants for programs aimed at supporting the activity of Romanians everywhere; 4. Amending and supplementing GEO no. 51/1998 referring to the recovery of some state assets; 5. Amending and supplementing GEO no. 23/2004 establishing some measures for the reorganization of the Authority for Bank Assets Recovery; 6. Amending and supplementing Law no. 36/2008 on some measures to privatize the company "Automobile Craiova" - SA; 7. Measures for the transposition of the EU legislation harmonizing the conditions for the marketing of products; 8. The amendment of Annex no. 3 of GEO no. 116/2006 referring to the social protection of the employees subject to collective redundancies; 9. Amending and supplementing GEO no. 95/2002 regarding the defense industry; 10. Amending and supplementing GEO no. 54/2002 regarding the establishment and maintenance of the minimum safety stocks for crude oil and petroleum products; 11. Regulations referring to the management of the external non-refundable grants for the objective "European territorial cooperation".
II. Agriculture:	<ol style="list-style-type: none"> 1. The establishment of a temporary state aid scheme aiming to ensure the access to finance in agriculture; 2. The regulation of the conditions to evaluate and assess the damages caused by the natural phenomena that generate natural disasters in limited areas in agriculture, addressed to the farmers which are not insured; 3. The regulation of the control of the operations part of the financing system by the European Agricultural Guarantee Fund.
III. Transport:	<ol style="list-style-type: none"> 1. Amending and supplementing GO no. 112/1999 regarding the free travel on the CFR – the Romanian railway; 2. Amending and supplementing GEO no. 109/2005 on road transports; 3. The granting of a loan to the Romanian National Company of Motorways and National Roads SA; 4. Regulations on the preliminary measures for transport infrastructure developments.

Obviously, during the above-mentioned year, other domains were also covered - justice, public administration and internal affairs, youth and sport - but we will not insist upon them.

1.2. Emergency Ordinances

This type of normative acts issued by the Executive requires only that the situation or circumstances invoked by the Government for their adoption to be justified in terms of the extraordinary situations whose regulation cannot be postponed. The urgency must be motivated within the contents of the ordinance "(Saramet and Toma-Bianov, 2012), also being required the highlight of the elements of public interest. Among the reasons occasioned by the adoption of a GEO can be found, for example "the commitment of the Government to continue the economic and financial reforms in order to maintain the economic stability ... and to ensure the adequate improvement of the relevant legal framework", as in the case of GEO no. 90/2014 amending and supplementing the Law on Capital Market (GEO no. 90, 2014).

It was added the fact that “the fail to urgently adopt the particular normative act would lead to the preservation of a legal system inconsistent with the whole evolution in terms of secondary legislation and with the requirements of the participants on the capital markets” and that “any delay in aligning the primary legislation with the current needs of the market and of the secondary legislation would lead to the impermissible maintenance of certain discrepancies among the legal provisions in this matter”. When GO no. 26/2013 on strengthening financial discipline of certain economic operators in which the State or the administrative-territorial units are single or majority shareholders or own a majority share (GEO no. 88, 2014) was amended and supplemented, there have been mentioned the obligations of the Romanian state “assumed before the International Monetary Fund and the European Commission, concerning the deadlines for the submission, by the economic operators, of the annual and multiannual revenue and expenditure budgets”.

Equally important was also considered “the need to regulate some aspects insufficiently legislated by GEO no. 70/2014 on staff salaries in the public health system and the public system of social assistance in 2015”, any delay increasing the risk to generate “the appearance of discrimination for the same socio-professional category of the public system of social assistance”. The adoption of certain measures aiming to streamline the management system of the structural instruments (GEO no. 85, 2014) was justified by stating their purpose “to avoid the automatic suspension of the funds allocated to Romania and to record a continuous increase of the degree of absorption”, taking into consideration the fact that the “lack of the direct and sustained intervention of the Ministry of European Funds in the effective management of funds and activities related to Sectoral Operational Programme – Environment (SOP ENV) and Sectoral Operational Programme – Transport (SOPT) lead to an increased risk of automatic suspension of funds”. It was also emphasized the fact that the failure to adopt the specific measures would lead to the “failure to ensure the absorption of the funds allocated to Romania”.

Regarding the amendment and supplement of the Fiscal Code, recently, as the government had to mention the elements which represent the public interest and constitute an extraordinary situation, whose regulation cannot be postponed, several issues were invoked (GEO no. 80, 2014):

- the provisions of (EU) Regulation no. 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of VAT;

- the need to change the currency (from Lei to Euro) in which shall be made the special statements of VAT and shall be paid the VAT due in the Member States of consumption (starting with 2015) by taxable persons which shall apply the special arrangements for electronic services, etc., provided by the non-taxable persons;

- the need to prevent the fluctuations in excise revenue to the state budget depending on the variation of the exchange rate Lei/ Euro set by the European Central Bank on October 1st, each year, depending on which the level of the excise for the following year is set in Lei, to preserve the real value of the income and to ensure the predictability, assuming the establishment of the excise level in Lei and the update according to the increase in consumer prices;

- the need to take urgent measures to support the economic growth, without which the funding of the economy on short- and medium-term might be affected, to meet the commitments assumed in the agreements with the IMF, referring to the efficiency of the tax system, taking into account the consultation between the Romanian Government and the IMF on developing a new tax regime in the field of oil and natural gas;

- the need to maintain the budget deficit at the level agreed with the international organizations, requiring the extension of the period of application of special measures for the taxation of the exploitation of the natural resources, until the entry into force of the new tax system for the taxpayers in the field of oil and natural gas.

Referring to the risks of the failure to urgently adopt the specific GEO, it was stated that they are given by the possible “emergence of certain important difficulties in complying with the accounting obligations and, hence, with the tax duties by the taxpayers, physical persons engaged in activities in order to obtain income”. When it was necessary to urgently adopt certain derogative measures from the provisions of Law no. 500/2002 on public finance and Law no. 69/2010 on the fiscal-budgetary responsibility (GEO no. 73, 2014), it was considered that the failure to promote those measures could lead to negative consequences such as certain considerable risks.

Among them, we mention “the risk to mismatch the budget planning with the budget execution for the first ten months of the year, which can lead to a distorted image of the budgetary expenditure estimated for 2014 affecting the possibility of granting funds to the main credit coordinators for a better exercise of their activity until the end of the year” and “the risk to accumulate increasingly large amounts estimated in titles which became executory during the next period, having as their object the granting of salary rights to the personnel in the public sector, impacting the expenditure and the budget deficit”.

The latter could have occurred by the failure in 2014 to pay the installment for the year 2015 for the payment obligations consisting of executory titles intended to confer the salary rights to the personnel in the public sector.

2. Trends and developments in adopting government ordinances/ government emergency ordinances (GO/ GEO) with economic and financial provisions (2010-2014)

In our attempt to assert the magnitude of the legislative process by means of legislative delegation, we stopped upon the issue/ adoption of simple ordinances, under a special enabling law and emergency ordinances – in case of special circumstances, in relation to the data and information published in the Official Gazette following the publication of this type of normative acts. We considered their total number, highlighting the percentage of those with economic and financial content (Table 1), as they have evolved during the last five years.

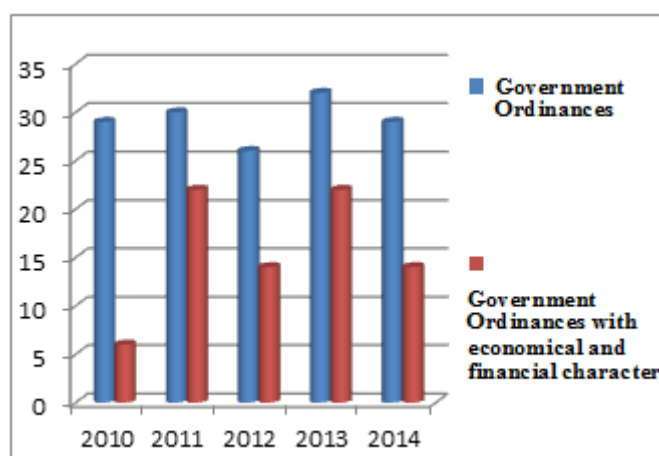
Table 1 - The evolution of the number of GO/GEO issued during 2010-2014

Year	GO*	GEO*
2010	29 (6)	131 (52)
2011	30 (22)	125 (42)
2012	26 (14)	95 (26)
2013	32 (22)	115 (47)
2014	29 (14)	94 (43)

**Note:* The numbers in parenthesis represent the number of GO/GEO with economic and financial content.
Source: The Official Gazette of Romania

We consider the charts presented below (Chart 1 and 2) to be highly suggestive in reflecting the trend of the number of GO/GEO, with economic and financial content issued during 2010-2014.

Figure 1 - The trend of the number of GO with economic and financial content (2010-2014)

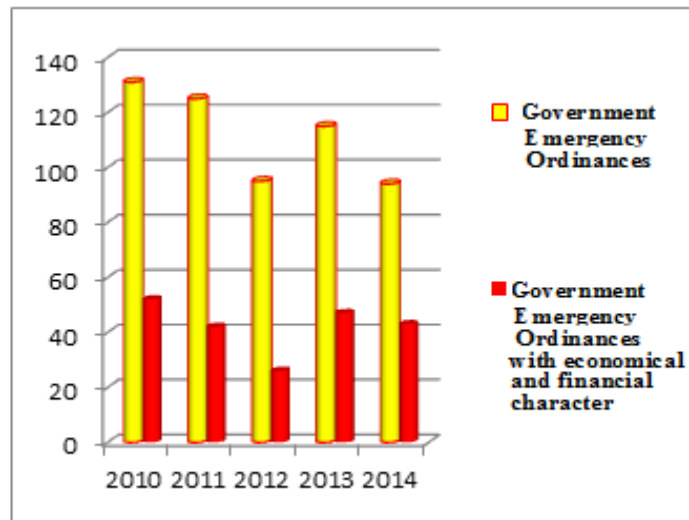


Source: The Official Gazette of Romania

If the total (annual) number of Government Ordinances stays around 30, it appears that the number of GO with economic and financial content varies greatly from year to year, in an irregular

line, with variable increases or decreases. For example, in 2010, that percentage was 21%, in 2012 and 2014, approx. 50%, and in 2011 and 2013 it reached approx. 70%.

Figure 2 - The trend of the number of GEO with economic and financial content (2010-2014)



Source: The Official Gazette of Romania

Regarding the annual number of GEO, we observe a clear trend of decrease for the period under review; from 131 in 2010 to 94 in 2014. However, when it comes to the GEO with economic and financial content, their number also varies irregularly from one year to another, drawing an irregular line. Their largest percentage was recorded in 2010 – 49 %, and the lowest in the year 2012 – 27 %. In the last year analyzed (2014), the percentage in question was of approx. 45%, accounting for 43 GEO with economic and financial content, out of a total number of 94.

As we have previously shown in other papers (Bostan, 2014e), the anti-crisis measures that the Government had to establish by normative acts under its jurisdiction, did not represent, by far, a reason to amplify the total number of GO/ GEO in the period that followed the year 2009, the year of the maximum decline in terms of finance and economics.

Conclusions

The institution of the “legislative delegation” has a particular importance in the present context. The effectiveness of this regulatory system led, in the period under review, to resort to the adoption of simple ordinances and emergency ordinances, whenever the economic and social context required the urgent solving of a certain problem. For this, the Government is enabled, under the conditions described in this paper, to issue ordinances in fields outside the scope of the organic laws.

The object of regulation may cover multiple aspects, the most common – during the period under review – were related to public finance and economy, transport and infrastructure, regional development and public administration, European funds, agriculture etc. Obviously, the ordinances must be submitted to the Parliament for approval, by the time its activity is resumed in the next ordinary session.

The issue of Emergency Ordinances assumes that the situation or situations invoked by the Government for their adoption is justified in terms of the extraordinary circumstances whose regulation cannot be postponed.

During the period under review, the emergency status and the elements of public interest were frequently linked to the external agreements of the Government in terms of conducting financial and economic reforms, adapting the legal framework to the European standards, maintaining the continuous growth of the degree of absorption of the funds allocated to Romania and avoiding the possible suspensions. The extent of the legislative process by means of legislative delegation was not a considerable one, the total (annual) number of government ordinances being of approx. 30, the economic and financial ones varying between 21% and 70%.

Regarding the annual number of GEO, we observe a clear trend of decrease for the period in question – from 131 in 2010 to 94 in 2014, the percentage of those with economic and financial content standing at approx. one third of the total.

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