



**INSPECTORATE GENERAL  
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**DECISION no. 373 of July 21, 2005, on the approval of the Surveillance Procedure as regards electromagnetic compatibility in the market of radio equipment and telecommunications terminal equipment, as well as of other electric and electronic equipments**

Having regard to the provisions of Law no. 510/2004 on the reorganisation of the Inspectorate General for Communications and Information Technology, with the subsequent completions,

having regard to the provisions of Law no. 608 /2001 on product conformity assessment, with the subsequent amendments and completions,

on grounds of the provisions of Government Decision no. 891/2004 for the establishment of some measures regarding the market surveillance in relation with the products from the regulated fields provided in the Law 608/2001 on product conformity assessment, completed and amended by Government Decision no.140/2005,

on grounds of the provisions of Government Decision no. 88/2003 on radio equipments and terminal telecommunications equipments and the mutual recognition of their conformity, amended and completed by Government Decision no. 236/2004,

on grounds of the provisions of Government Decision no. 497/2003 on electromagnetic compatibility requirements of the electric and electronic devices in order to be placed on the market and put into operation, amended and completed by Government decision no. 1554/2004,

**the President of the Inspectorate General for Communications and Information Technology**

issues this decision:

**Art. 1.** – We hereby approve the Surveillance Procedure as regards electromagnetic compatibility in the market of radio equipment and telecommunications terminal equipment, as well as of other electric and electronic equipments provided in the annex attached to this decision.

**Art. 2.** – This Decision shall be published in the Romanian Official Journal, Part I.

President of the Inspectorate General for Communications and Information Technology

**Marius Catalin Marinescu**

**ANNEX:**

**Surveillance Procedure as regards electromagnetic compatibility in the market of radio equipment and telecommunications terminal equipment, as well as of other electric and electronic equipments**

Published in the Romanian Official Journal no. 746 of August 17, 2005

## Surveillance Procedure of July 21, 2005, as regards electromagnetic compatibility in the market of radio equipment and telecommunications terminal equipment, as well as of other electric and electronic equipments

### CHAPTER I: General Terms

#### Art. 1: References

This procedure has been elaborated in accordance with:

- Law no. [608 /2001](#) on product conformity assessment, with the subsequent amendments and completions;
- Government Decision no. [891/2004](#) for the establishment of some measures regarding the market surveillance in relation with the products from the regulated fields provided in the Law [608/2001](#) on product conformity assessment, completed and amended by Government Decision no. [140/2005](#);
- Government Decision no. [88/2003](#) on radio equipments and terminal telecommunications equipments and the mutual recognition of their conformity, amended and completed by Government Decision no. [236/2004](#);
- Government Decision no. [497/2003](#) on electromagnetic compatibility requirements of the electric and electronic devices in order to be placed on the market and put into operation, amended and completed by Government decision no. [1554/2004](#);
- Guide to the Implementation of Directives Based on the New Approach and the Global Approach, European Communities, 2000;
- CEPT/ECC Report 15 - Market Surveillance, Radio Equipment Inspection, Spectrum Monitoring and the Enforcement Aspects of these Activities, Messolonghi, September 2002.

#### Art. 2: Purpose and scope

(1) This procedure regulates, based on art. 36 of Government Decision no. [891/2004](#), amended and completed by Government Decision no. [140/2005](#), the manner of conducting, by the Inspectorate General for Communications and Information Technology, the activities of monitoring the market of radio equipments and terminal telecommunications equipments as regards compliance with the provisions of Government Decision no. [88/2003](#), amended and completed by Government Decision no. [236/2004](#), respectively of other electric and electronic equipments as regards compliance with the provisions of Government Decision no. [497/2003](#), amended and completed by Government Decision no. [1.554/2003](#).

(2) The provisions of this procedure shall not apply to the activities of monitoring the market of radio equipments and terminal telecommunications equipments, respectively of other electric and electronic equipments launched on the market before the entry into force of Government Decision no. [88/2003](#), amended and completed by Government Decision no. [236/2004](#), respectively of Government Decision no. [497/2003](#), amended and completed by Government Decision no. [1.554/2003](#).

### CHAPTER II: Definitions and abbreviations

#### Art. 3: Definitions

(1) Within this procedure, the definitions applicable in Article 4 of Law no. [608/2001](#), with the subsequent amendments and completions, Article 2 of Government Decision no. [891/2004](#), with the subsequent amendments and completions, Article 5 of Government Decision no. [88/2003](#), amended and completed by Government Decision no. [236/2004](#),

and in Article 2 of Government Decision no. [497/2003](#), amended and completed by Government Decision no. [1.554/2003](#), shall also apply.

(2) For the purpose of this procedure, the definitions provided in paragraph (1) shall be completed as follows:

a) safeguard clause – procedure permitting the Ministry of Communications and Information Technology to take all the necessary steps for the withdrawal from the market or from service, to forbid the commercialisation or *putting into service* or to restrict the free circulation of equipments which, having been assessed to fall within the scope of Government Decision no. [88/2003](#), amended and completed by Government Decision no. [236/2004](#), respectively of Government Decision no. [497/2003](#), amended and completed by Government Decision no. [1.554/2003](#), do not comply with the applicable provisions of these regulations;

b) entity – something that can be individually taken and described;

c) conformity enforcement – all the activities and sanctions that may be used pursuant to Government Decision no. [88/2003](#), amended and completed by Government Decision no. [236/2004](#), respectively to Government Decision no. [497/2003](#), amended and completed by Government Decision no. [1.554/2003](#), in view of ensuring the highest possible protection of the health and safety of users and of any other person, as well as the best possible quality of radio communications for the radio spectrum users authorized under the legal conditions.

These activities include the adequate action taken by the General Inspectorate for Communications and Information Technology against the active or possible sources of harmful interferences and against the unauthorized spectrum use. As well, they may include all types of investigation activities, such as market surveillance, radio equipment and telecommunications terminal equipment inspections and spectrum monitoring;

d) inspection – examination of a product design, of a product, service or process or of an installation and the assessment of their conformity with specific requirements or with general requirements, based on a professional appraisal;

e) radio equipment inspection – inspections conducted on the site where radio equipment is installed, including measuring, in order to assess whether they comply with the provisions of Government Decision no. [88/2003](#), amended and completed by Government Decision no. [236/2004](#), or of Government Decision no. [497/2003](#), amended and completed by Government Decision no. [1.554/2003](#), and whether their use observes the individual licence for the use of the respective frequency and/or the frequency terms of use;

f) placing on the market – action taken in order to make available, for the first time, cost-free or for a charge, a product in the regulated field, in view of supplying and/or using it;

g) records of market surveillance - documents providing objective evidence of the activities conducted and of the degree of compliance with the provisions of the applicable Government Decisions;

h) spectrum monitoring – spectrum monitoring is the verification of emissions which must comply with the individual licence for the use of the respective frequency and/or with the terms of use stipulated therein, as well as with the decisions of the president of the Inspectorate General for Communications and Information Technology regarding harmful interferences;

i) major nonconformity – nonconformity due to which the equipment fails to comply with the essential applicable requirements, provided by Government Decision no. [88/2003](#), amended and completed by Government Decision no. [236/2004](#); or by Government Decision no. [497/2003](#), amended and completed by Government Decision no. [1.554/2003](#);

j) minor nonconformity – isolated or sporadic breach of the provisions of Government Decision no. [88/2003](#), amended and completed by Government Decision no. [236/2004](#) or Government Decision no. [497/2003](#), amended and completed by Government Decision no. [1.554/2003](#), which does not prevent the equipment to fulfil the essential applicable requirements;

- k)** management of market surveillance – set of coordinated activities conducted in view of guiding and controlling the market surveillance activity, including the set up of the market surveillance policy, of the market surveillance objectives, the planning and control of the market surveillance activity, ensuring and improving the market surveillance activity;
- l)** procedure – set of specifications describing - on the adequate detail level - the manner of conducting an activity;
- m)** proportionality – the measures, resources and entities of an organisational structure involved in a market surveillance activity must be correlated with the existing level of risk or nonconformity, whereas the impact of the respective measure on the free movement of products must not be greater than required for achieving the market surveillance objectives;
- n)** market surveillance management system – system establishing the policy and objectives in the field of market surveillance, by means of which the respective objectives are achieved, guiding and controlling the entities of the organisational structure in the field of market surveillance;
- o)** organisational structure – set of responsibilities, authorities and relationships between persons arranged in a diagram, by means of which an organisation exercises its functions;
- p)** market surveillance – set of adequate measures, resources and entities of the organisational structure, by which the Inspectorate General for Communications and Information Technology ensures and warrants – in an unbiased manner – that the products placed on the market and/or put into service observe the provisions of the applicable technical regulations, irrespective of their origin, while complying with the principle of fair competition.

Market surveillance is achieved by conducting control activities (in accordance with the conformity assessment procedures) on the radio equipments and telecommunications terminal equipments, as well as on other electric and electronic equipments existing on the market or which are to be placed on the market, prior to the users' purchasing the equipments.

Market surveillance involves the checking of compliance with the provisions of Government Decision no. [88/2003](#), amended and completed by Government Decision no. [236/2004](#), respectively of the Government Decision no. [497/2003](#), amended and completed by Government Decision no. [1.554/2003](#), i.e. compliance with the adequate applicable technical essential requirements or of the administrative requirements as regards marking, labelling, the Statement of Conformity and other documents, such as usage instructions.

If a nonconformity has been confirmed and proved (e.g. by measurement), subsequent action shall be possible and required in view of discovering and remedying the nonconformity, whenever possible.

#### **Art. 4: Abbreviations**

The abbreviations used in this procedure shall be as follows:

- a)** ANPC - National Authority for Consumer Protection;
- b)** ASRO – Romanian Standardisation Association;
- c)** SCEM – Electromagnetic Compatibility Unit;
- d)** CLC – IGCTI's local control centre;
- e)** CEPT - European Conference of Postal and Telecommunications Administrations;
- f)** DoC – Statement of Conformity;
- g)** DT – IGCTI territorial division;
- h)** ECC – Electronic Communications Committee within CEPT;
- i)** IGCTI – Inspectorate General for Communications and Information Technology;
- j)** MCTI – Ministry for Communications and Information Technology;
- k)** UE – European Union;

- l) Government Decision no. [88/2003](#) – Government Decision no. [88/2003](#) on radio equipments and terminal telecommunications equipments and the mutual recognition of their conformity, amended and completed by Government Decision no. [236/2004](#);
- m) Government Decision no. [497/2003](#) – Government Decision no. [497/2003](#) on electromagnetic compatibility requirements of the electric and electronic devices in order to be placed on the market and put into operation, amended and completed by Government decision no. [1554/2004](#).

### **CHAPTER III: Placement on the market**

#### **Art. 5: Placement on the market**

- (1) The concept of placement on the market refers to individual equipments, not to a specific type of equipment, irrespective whether it has been manufactured as an individual unit or as a series product. The concept of placement on the market determines the moment when a piece of equipment shifts, from the first time, from the stage of being manufactured in Romania or imported from the EU or from a third party to the stage of being supplied and/or used in Romania. Since the concept of placement on the market refers only to the first moment when the respective equipment is available for supplying and/or usage in Romania - after the entry into force of Government Decision no. [88/2003](#), respectively of Government Decision no. [497/2003](#) -, it refers only to new equipments manufactured in Romania and to new or used equipments imported from the EU or from a third party. A manufacturer must ensure that each equipment and, respectively, all the equipments he produces comply with the provisions of the applicable Government Decision.
- (2) The concept of first usage refers to the first time a piece of equipment is used in Romania by the end-user of equipment within the scope of Government Decision no. [88/2003](#), respectively of Government Decision no. [497/2003](#). Equipments which are ready for use immediately after their placement on the market, that do not need to be mounted or installed and that feature supply conditions (storage, transportation etc.) which do not influence their performance indicators, shall be deemed to be used immediately after placement on the market, if it is impossible to determine the date of their first use.

#### **Art. 6: Suppliers**

- (1) Legal or natural persons who conduct commercialisation activities after the product placement on the market, hereinafter referred to as distributors, shall be able to identify the manufacturer, its authorised representative or, as the case may be, any other person responsible for placing on the market the respective equipment or the person who provided the respective equipment.
- (2) If the supplier cannot identify the person in charge of placing on the market or of putting into service the respective equipment or the person who provided the equipment, the control body's action shall be directed against the supplier.

### **CHAPTER IV: Responsibilities for market surveillance**

#### **Art. 7: Organisational structure for conducting market surveillance activities**

- (1) In view of monitoring radio equipments, terminal telecommunications equipments, as well as other categories of electric and electronic equipments placed on the market, IGCTI has been entrusted with the capabilities provided by Article 35 (2) of the Government Decision no. [88/2003](#) and of Article 13 (1) letter a) or the Government Decision no. [497/2003](#).
- (2) The organisational structure of IGCTI is adapted to accomplishing market surveillance throughout Romania. The entities of the organisational structure responsible for achieving the provisions of this procedure are the following:
- a) local control centres;



- b) territorial divisions;
- c) Electromagnetic Compatibility Unit;
- d) Spectrum Planning Division;
- e) Communications Executive Division.

## **CHAPTER V: Manner of conducting market surveillance (monitoring)**

### **Art. 8: Monitoring the equipments placed in the market or put into service**

- (1) The objective of monitoring equipments is that of checking whether the equipments correspond to the provisions of Government Decision no. [88/2003](#), respectively of the Government Decision no. [497/2003](#), at their placement on the market and, if relevant, at their putting into service.
- (2) The equipments placed on the market or put into service shall be monitored by the control personnel of the IGCTI CLC and DT.
- (3) In view of monitoring the equipments placed on the market, IGCTI must have the required competences and resources in order to:
  - a) regularly visit the commercial, industrial and storage sites;
  - b) regularly visit, if necessary, the work places and other areas where the equipments are put into service;
  - c) organise random inspections of small batches;
  - d) take equipment samples for analysis and testing.
- (4) The control personnel have the right to request any piece of information required for achieving the control objectives. Information on equipments and on the sites where these are commercialised, stored or operated, as well as the legal or natural person who owns them shall be recorded in the database.
- (5) The control personnel shall monitor also the equipments exhibited in trade fairs, shows, demonstrations and other such performances and shall check whether visible indications clearly specify that equipments breaching the provisions of Government Decision no. [88/2003](#), respectively of the Government Decision no. [497/2003](#) cannot be commercialized or put into service in Romania or in the European Union unless they observe the applicable Government Decisions. Information regarding the equipment exhibited in trade fairs, shows, demonstrations etc. shall be fed into the database, together with their owner's identity.

### **Art. 9: Non-conformity**

- (1) Breach of the provisions of the applicable Government Decision that do not prevent the equipment to comply with the essential applicable requirements is deemed minor non-conformity.
- (2) Breach of the essential requirements provided by the applicable Government Decision is deemed major non-conformity.

### **Art. 10: Conformity assessment for the equipments placed on the market or put into service**

- (1) The assessments conducted by the IGCTI CLC and DT control personnel may be:
  - a) administrative (formal) assessments;
  - b) thorough assessments.
- (2) Administrative (formal) assessments are conducted in order to check the following, as the case may be:
  - a) existence and manner of CE marking: dimension and form of the CE marking, CE marking the equipment, the package, the usage instructions, other documents accompanying the equipment;
  - b) existence of the identification number for all the notified bodies involved;
  - c) existence of the class identifier: dimensions and form of the class identifier, application of the class identifier marking on the equipment, on the package, on the usage

instructions, on other documents accompanying the equipment, equipment identification data;

**d)** existence of the identification data of the manufacturer or of the person responsible for placing the equipment on the market (importer), as well as of the type, batch and/or series;  
**e)** existence of DoC in Romanian, accompanying the product, as the case may be: full DoC, brief DoC, reference on the website or other contact point where the manufacturer's DoC is available;

**f)** correct selection of the procedures for conformity assessment;

**g)** existence, in the usage instructions, of sufficient information for the use in accordance with the equipment destination and, as the case may be, of sufficient information for the identification of interfaces for connection with the public telecommunications network on which the respective terminal equipment is meant to be used, of information regarding the permission for usage of the radio equipment in Romania, respectively in other EU member states;

**h)** administrative assessments shall be fed into the form entitled "Control Report", provided in this procedure and shall be stored in the market surveillance database.

**(3)** If, following administrative assessments, a major nonconformity is found (for example: lack of usage instructions in the Romanian language or of the unofficial statement of conformity provided to the user, erroneous usage and application of the CE marking as regards the format, size, visibility, legibility or the characteristic of being undeletable etc.), the corresponding legal sanction shall be applied: fine and interdiction to commercialize the equipments by the date jointly established together with the dealer, in view of completing the correction.

**(4)** Thorough assessments concern the assessment of product conformity with the essential requirements provided by Government Decision no. [88/2003](#), respectively by Government Decision no. [497/2003](#), by means of checking the content of the manufacturer's DoC and by adequately applying the conformity assessment procedures provided by the applicable Government Decision. There shall be assessed whether:

**a)** the conformity assessment procedure in the DoC has been used in accordance with the provisions of the applicable Government Decision;

**b)** the standards in the DoC are adequately applied and are specified in the harmonized standards list, approved by orders no. [381/1.620/2004](#) and no. [42/2005](#), according to Government Decision no. [88/2003](#), respectively Government Decision no. [497/2003](#);

**c)** if the harmonised standards are not observed, the technical specification applied bears the approval of the notified body involved. There shall be checked the competence of the body notified for the conformity assessment procedure, as per the "List of bodies notified under Directive 1999/5/EC", respectively in the "List of bodies notified under Directive 89/336/EEC", issued by the European Commission.

**(5)** Thorough assessments shall be documented in a "Thorough Assessment Report", whereas the result of thorough assessments shall be stored in the market surveillance database. If, following a thorough assessment, a major nonconformity is assessed (e.g.: lack or erroneous application of the conformity marking, lack or erroneous original DoC), the corresponding legal sanctions shall be enforced: fine and interdiction of the equipment commercialisation. Once with the sanction, the control personnel shall jointly establish, together with the dealer, the date on which the latter may submit the relevant technical documentation for the equipment conformity assessment, as requested by the control personnel (e.g.: test reports) for additional checking, and by which the corrections must be enforced.

**(6)** Failure to submit the requested technical documentation by the established term or the dealer's refusal to submit such documentation may be a good reason for considering that the respective equipment is not in conformity with the essential requirements and MCTI may be notified in view of forbidding the market placement or withdrawal of the equipment.

#### **Art. 11: Checking technical documentation**

- (1) Where, following thorough assessments, there are doubts regarding the equipment conformity, without possibly providing sufficient evidence thereof, the control personnel may establish a second assessment phase, which consists of checking the technical documentation of the equipment. This phase envisages the principle of proportionality, based on the importance and risk level involved, as well as the principle of ensuring the protection of undertakings against useless burdens. Upon the control personnel's request, the technical documentation must be made available to the SCEM within a reasonable term, jointly established with the manufacturer, the latter's authorized representative in Romania or in the European Union or by another person in charge of placing the equipment on the market.
- (2) The technical documentation may be stored in any format, including as hardcopy or on a CD-ROM, on the condition it is made available throughout the period and under the conditions provided by the applicable Government Decision.
- (3) The equipment dealer shall request from the manufacturer or from its legal representative and shall present to the control personnel, within the term jointly established with the latter, the whole technical documentation provided by the applicable Government decision or only the parties deemed relevant by the control personnel, in view of assessing the equipment conformity. First, there will be required the list of harmonised standards applied either partially or thoroughly, test reports and the approval of the notified body involved, as the case may be.
- (4) Failure to present the technical documentation under the conditions provided in paragraphs (1) and (3) may be a sufficient reason to assess the equipment nonconformity with the requirements provided by the applicable Government Decision and may be a good reason for proposing MCTI to forbid the market placement or withdrawal of the equipment.
- (5) The technical documentation checking shall be documented in a "Technical Documentation Checking Report", whereas the result of the technical documentation checking shall be recorded in the market surveillance database. Where, following the technical documentation checking, a major nonconformity is assessed (for example, a lacking or erroneous testing report on the essential applicable requirement), SCEM shall send the control personnel the decision of upholding the interdiction to commercialize the respective equipments and of taking a number of samples from the respective equipment, which are to be tested in laboratory by the laboratory testing programme deemed sufficient to remove all doubt regarding the product nonconformity.
- (6) The impossibility of taking test samples or the dealer's refusal to make them available to the control personnel shall be deemed solid grounds for assessing nonconformity with the essential requirements and, consequently, to propose MCTI to forbid the market placement or withdrawal of the respective equipment.

#### **Art. 12: Laboratory tests**

- (1) Due to manufacturing tolerance, radio equipment, terminal telecommunications equipment or any other electric or electronic equipment hardly meets all the technical parameters provided in the reference regulations/standards for all the tested samples, excepting the case when the manufacturer tests 100% of its production. As well, certain individual products may have faults and therefore several samples may be required. The CENELEC (Comité Européen de Normalisation Electrotechnique) standards provide that the products should meet the requirements with a certain statistically defined degree of certainty. The ETSI (European Telecommunications Standards Institute) standards take the shared risk approach. This means that measurement uncertainty is never added to or deducted from the measured value, but the measured value is directly compared to the extreme value provided in the standard.



(2) SCEM shall establish the number of samples required in order to obtain a certain degree of statistic certainty and to avoid testing faulty or out-of-order equipment. For mass consumption electronic equipments, manufactured in large batches, 3 to 5 samples may be considered a sufficient and required minimum number for any conclusive statistical analysis. Nevertheless, one-piece testing may also be used as a basis for informing the manufacturer on the problem, as well as for requesting additional information on the product. The test samples should be selected by the control personnel, so that the possible correlation between the samples of one type of equipment should be prevented by sample gathering from different production batches.

(3) In the first stage, the samples shall be included in a preliminary testing programme. The preliminary testing term herein shall denominate any testing facility owned by IGCTI (e.g.: CEM and maintenance laboratories within the DT or in the mobile spectrum monitoring units) and used in order to measure certain parameters, such as frequency, transmitter power and spurious emissions. If the manufacturer cooperates as regards the removal of nonconformity, the reporting of results obtained by means of the regular testing equipment available in any of the DT laboratories or in the spectrum monitoring system will be sufficient, the preliminary tests being conducted on-site or in the DT laboratory in view of making decisions and sparing money.

(4) The preliminary tests shall be documented in a "Preliminary testing report", whereas the result of the preliminary tests shall be stored in the market surveillance database. If the results of the preliminary testing programme do not lead to corrective actions of removing the nonconformity or to removal of uncertainty regarding nonconformity, the samples taken shall go through a full testing programme regarding the fulfilment of the essential requirements provided by the applicable Government Decision. The testing programme shall be conducted in the IGCTI central laboratory, which has an accredited capacity of conducting such tests.

(5) The tests shall be documented in a "Test Report" which shall be sent to the SCEM, the test result being stored in the market surveillance database. If the results of the testing programme do not remove uncertainty regarding the nonconformity, the Spectrum Monitoring Division of IGCTI shall propose MCTI to forbid the placement on or the withdrawal from the market of the respective equipments, whereas the expenses incurred during the laboratory tests shall be recovered from the person who placed on the market or put into service an equipment that does not meet the provisions of the applicable Government Decision.

#### **Art. 13: Corrective action**

(1) If the control personnel finds does not conform to the provisions of Government Decision no. [88/2003](#), respectively of the Government Decision no. [497/2003](#), they must take the necessary measures and act in view of enforcing conformity. Corrective actions depend on the nonconformity degree, which shall be established on a case-by-case basis, in accordance with the proportionality principle, as follows:

**a)** the control personnel shall request the manufacturer or the manufacturer's legal representative to devise the equipment placed on the market or put into service in accordance with the provisions of the applicable Government Decision;

**b)** if the measures initiated did not drive to the expected results or are deemed insufficient, the control personnel must take the adequate measures to restrict or forbid the placement on the market or the putting into service of the respective equipment and/or to ensure the withdrawal of such equipment from the market. The withdrawal from the market of equipment with nonconformities may be performed by the manufacturer, by its authorised representative or by other person in charge of placing the equipment on the market.

(2) During the market surveillance actions, the control personnel must analyse and decide – on a case-by-case basis – whether the nonconformities assessed are major or minor ones.

**(3)** As regards the nonconformities assessed, prior to making a decision, the control personnel shall notify the party involved, ensuring its possibility of being consulted. If the problem raised is urgent, due to serious or imminent danger, the control personnel shall take the necessary measures without further consulting the party involved.

**(4)** Lack of reaction from the party involved, within the term established by the control personnel, shall entitle the control personnel to take the decision they may deem adequate.

**(5)** A decision, either on restricting or forbidding the placement on the market or the putting into service, or on the withdrawal from the market of any piece of equipment must be reasoned, while the manufacturer, its authorised representative or any other person in charge of placing the equipment on the market, as the case may be, must be notified thereon, in written form. Such a notification will also include information on the term within which a complaint may be submitted, in compliance with the regulations in force.

**(6)** In case of identifying major nonconformities, the control personnel must take the necessary steps in order to fulfil the conformity requirements, having regard to the principle of proportionality. In such cases, if no other measure is sufficient to achieve conformity, MCTI, upon IGCTI's proposal, shall restrict or forbid the placement on the market, as well as the putting into service of the respective equipment and shall decide to withdraw it from the market. This fact usually involves the safeguarding clause. The control personnel must ensure that the respective measures are complied with within the established term.

**(7)** A measure of forbidding or restricting the placement on the market or the putting into service of a piece of equipment may be temporary, in order to allow the control personnel to get sufficient evidence regarding the major nonconformity of the respective equipment.

#### **Art. 14: Safeguarding Clause**

**(1)** A measure of forbidding or restricting the placement on the market or the putting into service of a piece of equipment, as well as the measure of withdrawing the respective equipment from the market, in case a nonconformity is assessed as regards a systematic, design error or a whole series of equipment, however limited the series may be, shall trigger the safeguarding clause.

**(2)** IGCTI shall inform the manufacturer, in written format, as well as the latter's authorised representative or any other person in charge of placing the equipment on the market, as the case may be, on the respective decision and on the reasons for forbidding or restricting the placement on the market or the putting into service of a piece of equipment, as well as the measure of withdrawing the respective equipment from the market. Such a notification shall include information on the addressee's right to challenge this decision, as well as on the term within which an appeal may be submitted, under the legal conditions.

**(3)** A nationwide measure forbidding or restricting the placement on the market or the putting into service of a piece of equipment shall be soundly grounded (for example, based on tests or assessments), so as to provide sufficient evidence on the errors regarding the design or manufacturing of the respective equipment and to indicate a predictable, potential or existing danger or any other major nonconformity, even if the products are correctly manufactured, installed, maintained or used in compliance with their purpose.

**(4)** IGCTI shall communicate MCTI, if not otherwise provided, the measure forbidding or restricting the placement on the market or the putting into service of a piece of equipment, as well as the measure of withdrawing the respective equipment from the market, by means of a notification comprising:

**a)** a reference to the Government Decision and, especially, to the essential requirements in reference to which the nonconformity was assessed;

**b)** manufacturer's name and address, as well as of its authorised representative and, additionally, as the case may be, the name and address of other persons in charge of the placement on the market or putting into service of equipments;

**c)** a copy of the DoC;

- d) name and identification number of the notified body involved in the conformity assessment procedure, as the case may be;
- e) information on the procedure followed by the control personnel in view of assessing the equipment conformity;
- f) a thorough assessment and evidence to ground the respective measure, e.g. harmonised standards or other technical specification used by the control personnel, test reports issued by IGCTI, any other proof or data required for grounding the respective measure.

#### **Art. 15: Sanctions**

- (1) The control personnel, upon the assessment and documentation of a non-conformity, shall apply the sanction provided by Government Decision no. [88/2003](#), respectively by Government Decision no. [497/2003](#).
- (2) Contravention assessment and sanctioning shall be conducted in accordance with the provisions of Government Ordinance no. [2/2001](#) on the legal regime of contraventions, approved with amendments by Law no. [180/2002](#), with the subsequent amendments and completions.

#### **Art. 16: Market surveillance database**

- (1) The market surveillance database is a system destined to information storage, exchange and communication between all the entities of the IGCTI organisational structure, on the surveillance of the market of radio equipment and of terminal telecommunications equipment, of other electric and electronic equipment in the competence fields entrusted to IGCTI by the Government Decision no. [88/2003](#) and by the Government Decision no. [497/2003](#).
- (2) The database features a search engine enabling the user to find a specific product and the relevant assessment results, as the case may be.
- (3) The database contains information on the equipments assessed by the IGCTI control personnel, during the market surveillance activity. The database contains both the data resulted from the monitoring activity, the control reports, the test reports, the assessment reports, the correction activities decided and their result, the sanctions enforced, as well as additional information such as: conformity statements or excerpts from the usage instructions. Along with the data regarding the equipments, the database shall contain data on the manufacturer, its authorised representative or any other person in charge of placing on the market or put into service the respective equipment or on the dealer.
- (4) Communications with the database shall be established through the Internet and features two types of access:
  - a) public (free) access destined to the mass users, allowing the search of specific products and the relevant assessment results;
  - b) restrictive access, allowed upon entering a password by the personnel in the IGCTI organisational structure, enabling access to data and entry of data regarding all the control actions conducted on a specific product, the control personnel thus preventing double checks.
- (5) The database is also meant to provide information to the National Authority for Consumer Protection, the national Customs Authority and other authorities, based on their collaboration protocols concluded with the IGCTI.

#### **Art. 17: Market surveillance planning**

- (1) Market surveillance shall be conducted in accordance with the principle of proportionality, i.e. the surveillance objectives and the resources allotted therefor must be proportional with the risk level or with the nonconformity degree, while the impact on the free movement of radio equipments, terminal telecommunications equipments, of other electric or electronic equipments shall not exceed the extent required for the achievement of the market surveillance objectives.

(2) SCEM shall elaborate market surveillance strategies for the current year based on the statistic reports on the previous year's market surveillance results: market analysis, product groups in the market, structure of the manufacturers, importers and distributors, analysis of the harmful interference risk on the communications services. Furthermore, SCEM shall optimise, statistically-based, the market surveillance process.

(3) Based on the annual market surveillance strategy, the IGCTI territorial divisions shall elaborate quarterly market surveillance plans for their territorial competence area. The quarterly market surveillance plans must be correlated within the IGCTI territorial divisions, so as to prevent double checks.

(4) Market surveillance control actions shall be:

a) planned, based on the quarterly plan;

b) unplanned, determined by the need to settle a complaint. The control personnel shall receive and analyse the complaints of the equipment users or manufacturers, of the latter's authorised representatives or of other persons in charge of placing on the market or of putting into service the equipment, with regard to unfair competition, and shall take action in view of enforcing the required steps. In each and every case, IGCTI shall communicate the complainant information on the direct results obtained from investigating the specific complaint subject.

## **CHAPTER VI: Information exchange**

### **Art. 18: Action taken in view of improving the standards**

(1) The shortcomings of the harmonised standards assessed during the market surveillance activity shall entail their review by the standardization bodies.

(2) Should the situation provided in paragraph (1) occur, IGCTI transmits ASRO the proposal of reviewing the respective harmonised standard, along with all the data required for grounding the review proposal.

### **Art. 19: Informing the store or warehouse staff on the control personnel's legal right to conduct market surveillance activities**

IGCTI shall provide for presenting the Government Decision no. [88/2003](#), of the Government Decision no. [497/2003](#) and of other applicable regulations, as well as of the market surveillance activities, during information meetings with the store or warehouse staff, with the representatives of manufacturers, importers or suppliers.

### **Art. 20: Mass-media contact**

(1) Local newspapers and local radio stations may get involved in the market surveillance campaigns, thus informing the public on this activity. This will not bring along additional costs, since the local mass media do not always have fresh news available. Thus, the public receives such information in a systematic and direct manner, which contributes to increased consumer awareness.

(2) IGCTI shall publish, in nationwide newspapers and/or speciality magazines, annual statistic reports on the market surveillance results.

(3) IGCTI shall release public statements specifying the equipments assessed or susceptible to be uncertain, as well as the manufacturers, their authorised representatives or the persons in charge of placing on the market or putting into service equipment, whose practices and activities jeopardize the essential interests and requirements provided by Government Decision no. [88/2003](#), respectively by Government Decision no. [497/2003](#).

## **CHAPTER VII: Final and transitory provisions**

### **Art. 21: Provisions regarding the financial regime of the samples taken in view of assessing conformity**

(1) Samples shall be taken for tests and assessments on a lending basis, IGCTI giving them back at the end of assessments and tests. If, during the tests, the samples taken in

view of assessing the equipment conformity with the applicable essential requirements were deteriorated, the corresponding amount for them shall be born by IGCTI. If, during a test, IGCTI finds that the manufacturer, its authorised representative or any person in charge of placing on the market or putting into service the equipment in breach of the essential requirements provided by the applicable Government Decision, IGCTI shall recover the incurring costs from the person who placed on the market or put into service the respective equipment with nonconformities, as the case may be.

(2) Making available – cost-free or for a charge - equipment assessed to have nonconformities, equipment forbidden or temporarily restricted from placement on the market, as well as putting into service such equipment shall determine IGCTI to request the competent state bodies to enforce complementary sanctions: seizure or confinement of the respective equipment, at the expense of the manufacturer, of its authorised representative or of the person in charge of placing the respective equipment on the market, as the case may be.

**Art. 22: Sealing equipments with nonconformities**

In pursuit of accomplishing their market surveillance attributions, the control personnel shall have the right to seal equipments that do not comply with the essential requirements provided by Government Decision no. [88/2003](#), respectively by Government Decision no. [497/2003](#).

**Art. 23: Police support**

Where the control personnel deems adequate in view of accomplishing their duties, they have the right to ask for and to receive support and assistance from the police department.

**Art. 24: Personnel training**





In view of accomplishing their market surveillance duties, IGCTI shall pursue and take action in order to update the knowledge of the personnel involved in such activities, by means of annual training programmes.

**Art. 25: Market surveillance registration**

The market surveillance documents shall be registered with the IGCTI central registry, respectively with the DT registry, and shall be archived at the issuing organisational entity.

**ANNEX:**



	<b>INSPECTORATE GENERAL FOR COMMUNICATIONS AND INFORMATION TECHNOLOGY</b>		TERRITORIAL DIVISION:		
			Local Control Centre:		
			Mandated for control action:		
<b>Supplier</b>			<b>CONTROL REPORT</b>		
Name/Company				<input type="checkbox"/> Gov. Dec no.88/2003	<input type="checkbox"/> Gov. Dec no.497/2003
Locality		Post code			
Address					
Tel., fax				Information person:	
E-mail, website				Contact person/position:	
<b>Person in charge for placement on the market</b>					
Name/Company					
Locality		Post code			
Address					
Tel., fax				Information person:	
E-mail, website				Contact person/position:	
<b>Package info</b>					
CE marking	<input type="checkbox"/> CE marking is present	<input type="checkbox"/> CE marking is <b>absent</b>	Identification no. of the notified body:		
Equipment class	<input type="checkbox"/> No	<input type="checkbox"/>  (class 2)	<input type="checkbox"/> operation frequency/frequencies:		
<b>Manufacturer:</b>					
Equipment:		Model:		Series:	
Year of manuf.:		Type:		Lot no.:	
Data on usage in Romania:	<input type="checkbox"/> Available (what, where) >>> <input type="checkbox"/> <b>Not available</b>				
Data on usage according to purpose:	<input type="checkbox"/> Available (what, where) >>> <input type="checkbox"/> <b>Not available</b>				
<b>Marking on the equipment</b>					
CE marking	<input type="checkbox"/> CE marking is present	<input type="checkbox"/> CE marking is <b>absent</b>	Identification no. of the notified body:		
Equipment class	<input type="checkbox"/> No	<input type="checkbox"/>  (class 2)	<input type="checkbox"/> Other marking? :		
<b>Manufacturer:</b>					
Equipment:		Model:		Series:	
Year of manuf.:		Type:		Lot no.:	
<b>Information in the accompanying documents</b>					
CE marking	<input type="checkbox"/> CE marking is present	<input type="checkbox"/> CE marking is <b>absent</b>			
Equipment class	<input type="checkbox"/> No	<input type="checkbox"/>  (class 2)	<input type="checkbox"/> operation frequency/frequencies:		
<b>Statement of conformity</b>	<input type="checkbox"/> the statement is included		<input type="checkbox"/> the statement is <b>not</b> included		
	<input type="checkbox"/> Unofficial statement in the Romanian language:		<input type="checkbox"/> Full statement is available at the following web address:		
Equipment:		Model:		Series:	
Year of manuf.:		Type:		Lot no.:	
Data on usage in Romania:	<input type="checkbox"/> Available (what, where) >>> <input type="checkbox"/> <b>Not available</b>				
Data on usage according to purpose:	<input type="checkbox"/> Available (what, where) >>> <input type="checkbox"/> <b>Not available</b>				
Interfaces of interconnection with the public networks:	<input type="checkbox"/> Available (what, where) >>> <input type="checkbox"/> <b>Not available</b>				
Remarks:					
<input type="checkbox"/> See side two :					
Quantity:		Unit price €:		Signature of the mandated person	Date:

