*This is a Romanian to English translation meant to facilitate the understanding of this decision.*

*Should differences appear between the Romanian version and the English version, following translation,*

*the Romanian version shall prevail.*

**DECISION no. 130 as of 25 February 2015 on radio equipment and electronic communications terminal equipment and the mutual recognition of their conformity**

On grounds of art. II of Government Ordinance no. 8/2012 amending Government Ordinance no. 20/2010 on establishing certain measures for the unitary implementation of the European Union legislation harmonising the marketing conditions of products, as well as of art. 10 paragraph (3) of Government Emergency Ordinance no. 22/2009 on the establishment of the National Authority for Management and Regulation in Communications, approved by Law no. [113/2010](file:///C%3A%5CUsers%5Ccatalin.muresan%5Csintact%204.0%5Ccache%5CLegislatie%5Ctemp1771744%5C00132511.htm), with the subsequent amendments and completions,

On grounds of art. 108 of the Constitution of Romania, republished, and of art. 22 paragraph 1 of the Government Emergency Ordinance no. 111/2011 on electronic communications, approved, with amendments and completions, by Law no. 140/2012, with the subsequent amendments and completions,

**The Romanian Government** adopts the present decision.

**CHAPTER I:** **General Provisions**

**Art. 1**

The present decision establishes the regulatory framework for the placing on the market, free circulation and putting into service on the territory of Romania of radio equipment and telecommunications terminal equipment as well as the procedures for their conformity assessment and marking.

**Art. 2**

Without prejudice to the legislation in force, this decision also applies to the apparatus defined under art. 5 letter a), which:

**a)** includes, as an integral part or as an accessory, a medical device, including an active implantable medical device, within the meaning of the legislation regulating active implantable medical devices;

**b)** constitutes a component or a separate technical unit of a vehicle, within the meaning of the Regulation (EC) no. 661/2009 of the European Parliament and of the Council as of 13 July 2009 concerning type-approval requirements for the general safety of motor vehicles, their trailers and systems, components and separate technical units intended therefor.

**Art. 3**

The present decision shall not apply to equipment listed in Annex 1.

**Art. 4**

The present decision shall not apply to apparatus exclusively used for activities in the field of national defence, public order and national security, including the protection of the economic well-being of the State in the case of activities pertaining to State security matters, and the activities of the State in the area of criminal law.

**Art. 5**

**(1)** For the purpose of the present decision the following definitions shall apply:

**a)** *apparatus* - any equipment that is either radio equipment or electronic communications terminal equipment or both;

**b)** *equipment class* - a class identifying particular types of apparatus which under this decision are considered similar and those interfaces for which the apparatus is designed; apparatus may belong to more than one equipment class;

**c)** *technical construction file* - a file describing the apparatus and providing information and explanations as to how the applicable essential requirements have been complied with;

**d)** *electronic communications terminal equipment* - a product enabling communication or a relevant component thereof which is intended to be connected directly or indirectly by any means whatsoever to interfaces of public electronic communications networks;

**e)** *radio equipment* - a product, or relevant component thereof, capable of communication by means of the emission and/or reception of radio waves utilising the spectrum allocated to terrestrial/space radiocommunication;

**f)** *interface* - a network termination point, which is the physical connection point at which a user is provided with access to the public electronic communications network, or a radio interface specifying the radio path between radio equipment, both including their respective technical specifications;

**g)** *placing on the market* - the first making available of a product on the European Union market;

**h)** *making available on the market* - the supply of a product for distribution, consumption or use on the European Union market in the course of a commercial activity, whether in return for payment or free of charge;

**i)** *putting into service* - the first using, for the intended purpose, in the European Union, of the equipment which is within the scope of the present decision;

**j)** *harmonised**standard* - a technical specification adopted, under a mandate from the European Commission, by one of the European standardisation bodies listed in Annex I to the Regulation (EU) no. 1.025/2012 of the European Parliament and of the Council as of 25 October 2012 on European standardisation, amending Council Directives 89/686/CEE and 93/15/CEE and Directives 94/9/CE, 94/25/CE, 95/16/CE, 97/23/CE, 98/34/CE, 2004/22/CE, 2007/23/CE, 2009/23/CE and 2009/105/CE of the European Parliament and of the Council and repealing Council Decision 87/95/CEE and Decision no. 1.673/2006/CE of the European Parliament and of the Council;

**k)** *radio waves* - electromagnetic waves of frequencies from 9 kHz to 3,000 GHz, propagated in space without artificial guide;

**l)** *traceability* - identifying the persons responsible for manufacturing, import, acquisition inside the Community market, placing on the market and making available on the market of an apparatus.

**(2)** Within the purpose of this decision, the definitions under art. 4 paragraph (1) of the Government Emergency Ordinance no. 111/2011 on electronic communications approved, with amendments and completions, by Law no. 140/2012, with the susequent amendments and completions, as well as under Regulation (EC) no. 765/2008 of the European Parliament and of the Council as of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) 339/93, shall also apply.

**CHAPTER II:** **Essential Requirements**

**Art. 6**

**(1)** The following essential requirements are applicable to all apparatus:

**a)** the protection of the health and the safety of the user and any other person, including the objectives with respect to safety requirements contained in Directive 2006/95/CE of the European Parliament and of the Council as of 12 December 2006 on the harmonisation of the laws of Member States relating to electrical equipment designed for use within certain voltage limits, but with no voltage limit applying;

**b)** the protection requirements with respect to electromagnetic compatibility contained in Directive 2004/108/CE of the European Parliament and of the Council of 15 December 2004 on the approximation of the laws of the Member States relating to electromagnetic compatibility and repealing Directive 89/336/CEE.

**(2)** Radio equipment shall be so constructed that it effectively uses the radio spectrum allocated to terrestrial or space radiocommunication and orbital resources so as to avoid harmful interference.

**(3)** In case the European Commission establishes additional requirements for the apparatus within certain equipment classes or for apparatus of particular types, the respective apparatus shall be so constructed that:

**a)** it interworks via networks with other apparatus and it can be connected to interfaces of the appropriate type throughout the European Union;

**b)** it does not harm the network or its functioning nor misuse network resources, thereby causing an unacceptable degradation of service;

**c)** it incorporates safeguards to ensure that the personal data and privacy of the user and of the subscriber are protected;

**d)** it supports certain features ensuring avoidance of fraud;

**e)** it supports certain features ensuring access to emergency services;

**f)** it supports certain features in order to facilitate its use by users with certain disabilities.

**CHAPTER III:** **Notification and publication of interface specifications**

**Art. 7**

**(1)** The National Authority for Management and Regulation in Communications, hereinafter called *ANCOM*, shall notify the interfaces which they have regulated to the European Commission, insofar as the said interfaces have not been notified under the provisions of Directive 98/34/CE of the European Parliament and of the Council as of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations.

**(2)** ANCOM shall notify to the European Commission the types of interface offered in Romania by the providers of public electronic communications networks.

**Art. 8**

**(1)** The providers of public electronic communications networks are obliged to publish and update, in an easily accessible manner, accurate and adequate technical specifications of the interfaces they provide, before services provided through those interfaces are made publicly available.

**(2)** The providers of public electronic communications networks are also obliged to provide, within a reasonable term but not later than 45 days, the information mentioned under paragraph (1), whenever such information is requested by interested parties.

**(3)** The technical interface specifications mentioned at paragraph (1) shall include:

**a)** details that permit the design of electronic communications terminal equipment capable of utilising all services provided through these interfaces;

**b)** all the information necessary to allow manufacturers to perform the relevant tests in order to verify the essential requirements applicable to the electronic communications terminal equipment.

**CHAPTER IV:** **Harmonised Standards**

**Art. 9**

**(1)** Where it meets the provisions of the relevant harmonised standards whose reference numbers have been published in the Official Journal of the European Union, or parts thereof, apparatus is presumed compliant with the essential requirements referred to in art. 6 above.

**(2)** The harmonised standards elaborated in view of applying Directive 2006/95/CE or Directive 2004/108/CE, whose reference numbers have been published in the Official Journal of the European Union, may be used as a basis for the presumption of conformity with the essential requirements under art. 6 above.

**(3)** Where a manufacturer has not applied the harmonised standards or has only applied in part a harmonised standard, the technical file shall include descriptions of, and explanations on, the solutions adopted for implementing the essential requirements.

**(4)** In the case mentioned under paragraph (3), the manufacturer has the obligation to request the opinion of a notified body.

**(5)** In case the conformity with the harmonised standards does not guarantee, as resulting from the tests performed in the laboratory, the implementation of the essential requirements under art. 6 above, ANCOM shall initiate, in justified cases, the procedure laid down in art. 5 paragraph (2) of the Directive 1999/5/CE of the European Parliament and of the Council as of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity.

**(6)** The list of Romanian standards which have adopted harmonised standards in the field of radio equipment and electronic communications terminal equipment shall be approved and updated by an order of the Minister for Information Society and shall be published in the Official Romanian Journal, Part I.

**CHAPTER V:** **Placing on the market**

**Art. 10**

The placing and making available on the market shall be permitted only for the apparatus which comply with the essential requirements under art. 6 above and the other relevant provisions of this Decision when it is properly installed, maintained and used for its intended purpose.

**Art. 11**

**(1)** The manufacturer or the person responsible for the placing the apparatus on the market has the obligation to provide the user with:

**a)** all information on the intended destination and use of the apparatus, including, in case of radio equipment, the value of the Specific Absorbtion Rate (SAR), in the form of a user manual, offered in written form or on CD-ROM, in Romanian language, without excluding the use of other international circulation languages;

**b)** the declaration of conformity to the essential requirements.

**(2)** The declaration of conformity whereby the manufacturer takes responsibility for the conformity of the apparatus shall be written in one of the official European Union languages and a copy thereof shall be translated in Romanian language.

**(3)** The declaration of conformity may be made available to the user by means of a webpage or on CD-ROM, where the user has access to these means, or on paper.

**(4)** Where the apparatus is not accompanied by a copy of the declaration of conformity, the user manual shall include a simplified declaration with the following form in Romanian language: „We hereby declare that this product complies with the essential requirements and other relevant provisions of the Directive 1999/5/CE." (*"Prin prezenta, declarăm că acest produs este în conformitate cu cerinţele esenţiale şi cu alte prevederi relevante din Directiva 1999/5/CE."*)

**(5)** The simplified declaration provided under paragraph (4) shall be accompanied by the exact address of the webpage where the declaration of conformity may be identified.

**Art. 12**

**(1)** In case of radio equipment, in view of observing the provisions of art. 11 paragraph (1) letter a), it is necessary that:

**a)** the indication that the radio equipment is destined to be also used in Romania be inscribed on the package and in the operating instructions;

**b)** the class indicator identified in Section B of Annex no. 7 hereto be applied on the equipment, package and operating instructions, allerting the user, when appropriate, with respect to any possible usage restrictions or requirements for obtaining a licence for the use of radio frequencies for the respective equipment.

**(2)** All information identified under paragraph (1) shall be emphasized in a clear, readable and accesible manner.

**Art. 13**

**(1)** In the case of radio equipment using frequency bands whose use is not harmonised throughout the European Union, the manufacturer, his authorised representative established within the European Union or the person responsible for placing the apparatus on the market shall notify, in writing, his intention to place such radio equipment on the market.

**(2)** The notification identified under paragraph (1) shall be submitted to ANCOM, shall be given no less than four weeks in advance of the start of placing on the market of this equipment, and shall provide:

**a)** information about the radio characteristics of the equipment, in particular frequency bands, channel spacing, type of modulation and RF-power;

**b)** when appropriate, the identification number of the body notified for the implementation of the provisions under Annex no. 4 or 5.

**(3)** ANCOM shall be responsible for assessing the information provided in accordance with the provisions of paragraph (2).

**(4)** The procedure for notifying the intention to place on the market radio equipment using frequency bands whose use is not harmonised throughout the European Union shall be adopted by decision of the president of ANCOM and shall be published in the Official Romanian Journal, Part I.

**Art. 14**

In case of electronic communications terminal equipment, information regarding their use shall be sufficient and properly highlighted in order to permit the identification of the interfaces to the public electronic communications networks to which they are destined to be connected.

**Art. 15**

Where the European Commission has adopted, for apparatus already placed on the market, additional requirements in accordance with the provisions of art. 6 paragraph (3) above, the respective apparatus may be maintained on the market during the period established in accordance with the decisions adopted by the European Commission.

**CHAPTER VI:** **Putting into service and right to connect**

**Art. 16**

Putting into service of the apparatus for its intended purpose shall be permitted when the respective apparatus complies with the appropriate essential requirements identified in art. 6 above and the other relevant provisions of this decision.

**Art. 17**

**(1)** ANCOM may impose a restriction on the putting into service of radio equipment only for reasons related to:

**a)** the effective and appropriate use of the radio spectrum;

**b)** avoidance of harmful interference;

**c)** matters relating to public health.

**(2)** The measure identified under paragraph (1) may be taken and not be oponent to the provisions of art. 16 above or to the conditions for the lawful usage of radio frequencies.

**Art. 18**

**(1)** The providers of public electronic communications networks have the obligation, upon request from the interested party, to connect the electronic communications terminal equipment to the adequate interfaces when the respective equipment observes the applicable essential requirements provided under art. 6 above.

**(2)** The providers of public electronic communications networks may not refuse to connect the terminal equipment under the conditions of paragraph (1) based on technical reasons, by invoking the enforcement of art. 19.

**Art. 19**

**(1)** ANCOM may authorise a public electronic communications network provider to refuse connection, to disconnect or withdraw from service an apparatus declared to be compliant with the applicable essential requirements, when it considers that such apparatus:

**a)** causes serious damage to a network;

**b)** causes harmful interference;

**c)** harms the network or its functioning.

**(2)** The authorisation identified under paragraph (1) shall be granted based upon a duly motivated request from the public electronic communications network provider, and such request shall include the following:

**a)** proof that one of the situations identified under paragraph (1) exists;

**b)** proof that the conformity assessment of the apparatus has been carried out that and the apparatus complies with the essential requirements;

**c)** reference to the harmonised standards which have been applied as well as to other standards or technical regulations provided for in the legislation in force;

**d)** clarifications and additional elements from the provider, when necessary.

**(3)** ANCOM shall inform the public electronic communications network provider on its decision, within 30 days, and shall specify the reasons for adopting it.

**(4)** Subsequently, ANCOM shall notify such authorisation, granted in accordance with the provisions of this article, to the European Commission.

**Art. 20**

**(1)** In emergency situations, the public electronic communications network providers may disconnect apparatus without prior authorisation from ANCOM, provided that both of the following conditions are complied with:

**a)** ANCOM is immediately informed;

**b)** the protection of the network requires the apparatus to be disconnected without delay;

**c)** the user can be offered a replacement solution without any delay or cost.

**(2)** The information to be sent to ANCOM shall be accompanied by proof with respect to the emergency procedure and to the fulfilment of the conditions specified under paragraph (1).

**(3)** After analysing the documentation submitted by the public electronic communications network provider according to paragraph (1), ANCOM shall decide, and inform the provider within 10 days, whether it maintains the measure regarding the disconnection of the apparatus in accordance with this article or it allows the apparatus to be reconnected.

**CHAPTER VII:** **Free movement of the apparatus**

**Art. 21**

**(1)** The placing on the market and putting into service on the territory of Romania of apparatus that observe all provisions herein shall not be prohibited, restricted or impeded, except for the cases identified under arts. 13, 17 and 41.

**(2)** The manufacturing, holding, import, publicity, sale or use, on the territory of Romania, of radio equipment destined to produce harmful interferences is prohibited.

**(3)** The display, at trade fairs, exhibitions, demonstrations etc., of apparatus which does not comply with this decision is permitted in Romania, provided that the respective apparatus bears a visible sign clearly indicating that it may not be marketed or put into service until it has been made to comply.

**CHAPTER VIII:** **Conformity Assessment**

**Art. 22**

**(1)** Prior to placing the apparatus on the market, the manufacturer or his authorised representative established within the European Union shall use the conformity assessment procedures provided for in arts. 23-26 below in order to demonstrate the implementation of the essential requirements under art. 6 above.

**(2)** The person responsible for placing the apparatus on the market has the obligation to ensure, before placing the apparatus on the market, that the manufacturer or his authorised representative has implemented the adequate conformity assessment procedure.

**Art. 23**

As an alternative to the procedures identified at arts. 24-26 below, the assessment of the conformity of the apparatus with the essential requirement provided at art. 6 paragraph (1) letter a) may be carried out by means of the procedures identified under Directive 2006/95/CE when the apparatus fall within the scope of this directive.

**Art. 24**

The terminal electronic communications equipment which does not make use of the spectrum allocated to terrestrial or space radiocommunication and the receiving parts of radio equipment shall be subject to the conformity assessment procedures provided in any one of Annexes no. 2, 4 or 5 hereto, at the choice of the manufacturer.

**Art. 25**

When harmonised standards identified under art. 9 paragraph (1) above have been applied, the radio equipment which does not fall within the scope of art. 24 shall be subject to the conformity assessment procedures provided in any one of Annexes no. 3, 4 or 5 hereto, at the choice of the manufacturer.

**Art. 26**

When harmonised standards identified under art. 9 paragraph (1) above have been applied or only applied in part, the radio equipment which does not fall within the scope of art. 24 above shall be subject to the conformity assessment procedures provided in any one of Annexes no. 4 or 5 hereto, at the choice of the manufacturer.

**Art. 27**

Records and correspondence relating to the implementation of the conformity assessment procedures referred to in arts. 23-26 above shall be in Romanian language or in an international circulation language accepted by the notified body involved.

**CHAPTER IX:** **CE Marking and inscriptions**

**Art. 28**

**(1)** Apparatus complying with all applicable essential requirements shall bear the CE conformity marking. The identification elements of the CE conformity marking are provided in Annex no. 7 hereto.

**(2)** The CE conformity marking shall be applied, before the apparatus is placed on the market, solely by the manufacturer, by his authorised representative established within the European Union, or by the person responsible for placing the apparatus on the market.

**(3)** Where the procedures identified in Annexes no. 3, 4 or 5 hereto are used, the CE marking shall be accompanied by the identification number of all the notified bodies involved, designated in accordance with art. 32 paragraphs (1) and (2) below.

**(4)** The identification numbers shall have the same height as the CE conformity marking.

**(5)** Where the person who affixed the marking is not identifiable, legal responsibility belongs to the holder of the apparatus at the time when non-compliance was discovered.

**Art. 29**

The CE conformity marking applied on radio equipment shall in addition be accompanied by the equipment class identifier where such indentifier has been assigned. The class identifier is presented in Annex no. 7 hereto.

**Art. 30**

**(1)** The CE conformity marking, applied by observing the provisions of arts. 28 and 29 above, shall be affixed visibly, legibly and indelibly, directly to the apparatus or to its data plate, as well as to the packaging and to the accompanying operating instructions.

**(2)** No apparatus, whether or not it complies with the applicable essential requirements, may bear any other marking which is likely to deceive third parties as to the meaning and form of the CE conformity marking specified in Annex no. 7 hereto.

**(3)** Any other marking may be affixed to the equipment provided that the visibility and legibility of the CE conformity marking are not thereby reduced.

**Art. 31**

Apparatus shall be identified by the manufacturer by means of type, batch and/or serial numbers and by the name of the manufacturer or the person responsible for placing the apparatus on the market.

**CHAPTER X:** **Notified Bodies**

**Art. 32**

**(1)** The Ministry for Information Society, hereinafter called *MSI*, is the notifying body responsible for establishing and carrying out the necessary procedures for the assessment and notification of conformity assessment bodies and for surveying the notified conformity assessment bodies in the field regulated by the present decision.

**(2)** MSI shall notify to the European Commission the bodies designated to carry out the tasks under Chapter VIII.

**(3)** The procedure regarding the designation at national level and the notification of the bodies which carry out the relevant tasks related to assessing the conformity of the products in the field regulated by the present decision shall be lawfully adopted by an order of the Minister for Information Society, in accordance with the requirements under Annex no. 6 hereto.

**CHAPTER XI:** **Market Surveillance**

**Art. 33**

**(1)** The market surveillance and control activity, aimed at ensuring the observance of the provisions herein and the observance, by the undertakings, of their obligations under Regulation (EC) no. 765/2008, as well as in view of identifying the traceability of apparatus along the distribution chain, shall be exerted by ANCOM and, in accordance with the legislation in the field of consumer protection, in case of apparatus acquired by natural persons, by the National Authority for Consumer Protection, hereinafter called *ANPC*.

**(2)** ANCOM and ANPC, hereinafter called *surveillance and control authorities*, shall act through their speciality personnel, respectively their specialised personnel, duly empowered for this purpose.

**(3)** MSI shall notify to the European Commission the market surveillance and control bodies and authorities.

**(4)** ANCOM and ANPC shall organise and carry out the surveillance and control activity in accordance with the provisions of arts. 15-29 of Regulation (EC) no. 765/2008.

**(5)** The personnel of the surveillance and control authorities, in view of fulfilling the provisions of the present decision, may require from the manufacturer or his authorised representative established within the European Union the translation of the products technical file and/or the EC declaration of conformity in the Romanian language.

**(6)** Where the manufacturer or his authorised representative are not established on the Romanian territory, the obligation identified under paragraph (5) shall be fulfilled by the person responsible for placing the apparatus on the market.

**(7)** In the case identified under paragraph (5) or (6), the personnel of the surveillance and control authorities shall specify the part of the documentation due to be translated. The authorised translation in Romanian language and the submission of the documents to the surveillance authority shall be made within a reasonable time, but no later than 30 days after the date of the request.

**Art. 34**

In view of enforcing the present decision, ANCOM and ANPC may conclude a collaboration protocol aimed at ensuring the exchange of information in order to improve the non-compliant product identification measures and to carry out the necessary actions for the removal of such products.

**Art. 35**

**(1)** The manufacturer, his authorised representative established within the European Union, the person responsible for placing the apparatus on the market or the distributor have the obligation to comply with the control and to have and submit for examination, following the request of the surveillance and control authorities personnel, the documents which prove the implementation of the provisions herein, upon observance of the legislation in force.

**(2)** The distributor or the user, legal or natural person, has the obligation to comply with the control and to communicate, following the motivated request of the surveillance and control authorities personnel, the person who provided him with the apparatus upon observance of the legislation in force.

**Art. 36**

**(1)** At any time, ANCOM or ANPC may decide, in accordance with their legal duties, to perform technical tests in order to verify the conformity of the apparatus with the applicable essential requirements, based on the relevant harmonised standards mentioned in the EC declaration of conformity.

**(2)** For the purpose of performing the tests as per paragraph (1), the manufacturer, his authorised representative established within the European Union, the person responsible for placing the apparatus on the market or the distributor have the obligation to allow the personnel of ANCOM or ANPC, as the case may be, to retain, based on a official report, an adequate number of samples of the apparatus to be submitted to testing.

**(3)** The costs resulting from performing the tests identified under paragraph (1) shall be borne by ANCOM or ANPC, as the case may be.

**(4)** Where the results of the tests show that the apparatus dose not comply with the essential requirements, all expenses resulting from the performance of the tests identified under paragraph (1) shall be fully borne by the manufacturer or by his authorised representative. Where the manufacturer or his authorised representative are not established on the Romanian territory, the expenses shall be fully borne by the person responsible for placing the respective apparatus on the market.

**(5)** Where the person resposible for placing the apparatus on the market is not identifiable or the controlled person does not provide information likely to lead to the identification of such, the expenses shall be borne by the controlled undertaking.

**(6)** By way of exception from the provisions of art. 29 paragraph (2) of Government Decision no. 306/2011 regarding some measures of market surveillance of products covered by EU legislation and their marketing conditions, the provisions of paragraphs (4) and (5) shall not apply in case the tests identified under paragraph (1) are performed in the own laboratory of ANCOM.

**Art. 37**

In case of expenses borne by ANCOM, their individualization in view of establishing the amount to be recovered in accordance with the provisions under art. 36 paragraph (4) above shall be made through a decision of the president of ANCOM, and the provisions or art. 14 paragraph (2) of Government Emergency Ordinance no. 22/2009 on the establishment of the National Authority for Management and Regulation in Communications, approved by Law no. 113/2010, with the subsequent amendments and completions, shall apply.

**CHAPTER XII:** **Contraventions and sanctions**

**Art. 38**

**(1)** The following deeds shall be deemed contraventions, insofar they are not committed under such conditions that might cause them to be considered, under the criminal law, as offenses:

**a)** failure by thepublic electronic communications networks providers to observe the obligations identified under art. 8 paragraph (1) above;

**b)** refusal of thepublic electronic communications networks providers to make available to any interested party the technical specifications for the interfaces offered;

**c)** placing on the market, making available on the market and/or putting into service of apparatus without complying with the essential requirements identified under art. 6 above;

**d)** refusal of the public electronic communications networks providers to connect, disconnect or withdraw from service an apparatus declared to be compliant with the essential requirements, where such compliance exists, without the authorisation obtained as per art. 19 above;

**e)** disconnection of an apparatus by the public electronic communications networks providers, where such disconnection that does not observe the conditions identified under art. 20 paragraph (1) letters a)-c) above;

**f)** failure by the manufacturer of the apparatus, the person responsible for placing it on the market or the person making it available on the market to fulfil the obligation to provide the data identified under art. 11 paragraph (1) above;

**g)** failure by the manufacturer of the apparatus, the person responsible for placing it on the market or the person making it available on the market to fulfil the obligations identified under art. 12 above;

**h)** introduction on the market of radio equipment, operating in frequency bands whose use is not harmonised throughout the European Union, without observing the notification procedure identified under art. 13 paragraphs (1) and (2) above;

**i)** manufacture, hold, import, publicize, sell or use radio equipment destined to produce harmful interferences;

**j)** display and/or use for demonstrations non-compliant equipment, during trade fairs, exhibitions and similar, without observing the provisions under art. 21 paragraph (3) above;

**k)** failure by the manufacturer or his authorised representative to observe the conformity assessment procedures according to Chapter VIII;

**l)** placing on the market, making available on the market and putting into service of apparatus without CE marking;

**m)** placing on the market, making available on the market, putting into service of apparatus without specifying the identification numbers of all the involved notified bodies, as per art. 28 paragraph (3) above;

**n)** placing on the market, making available on the market, putting into service of apparatus without specifying the identifier of the equipment class, as per art. 29 above;

**o)** affixing on the apparatus of messages likely to cause deceit as to the meaning and graphic form of the CE conformity marking;

**p)** refusal of the undertakings to comply with the market surveillance and control activity or to provide for examination purposes documents proving the observance of the provisions herein;

**q)** refusal of the users to comply with the market surveillance and control activity or to communicate, upon request from the surveillance authorities, the person who provided him with the apparatus;

**r)** refusal of the manufacturer, his authorised representative, the person responsible for placing on the market or the distributor of the apparatus to comply with the retaining of samples for the purpose of performing technical tests;

**s)** failure by the person responsible for placing the apparatus on the market to observe the obligations under art. 22 paragraph (2) above.

**(2)** The contraventions identified under paragraph (1) shall be sanctioned as follows:

**a)** those under letters a) and b), with fine ranging from RON 2,500 to RON 10,000;

**b)** those under letters c) and i), with fine ranging from RON 2,500 to RON 20,000;

**c)** those under letters d) and e), with fine ranging from RON 1,000 to RON 5,000;

**d)** those under letters f) and g), with fine ranging from RON 2,000 to RON 5,000;

**e)** those under letters h), k), l) and r), with fine ranging from RON 5,000 to RON 10,000;

**f)** those under letter j), with fine ranging from RON 2,500 to RON 5,000;

**g)** those under letters m) and n), with fine ranging from RON 1,000 to RON 2,500;

**h)** that under letter o), with fine ranging from RON 3,500 to RON 5,000;

**i)** those under letters p) and s), with fine ranging from RON 2,500 to RON 7,500;

**j)** that under letter q), with fine ranging from RON 500 to RON 1,000.

**Art. 39**

**(1)** The contraventions herein shall be assessed by the personnel of the surveillance and control authorities by means of a official report establishing the contravention and applying the sanction.

**(2)** The main sanctions for the contraventions identified herein shall be applied, according to the lawful duties:

**a)** by the personnel of the surveillance and control authorities, for the contraventions identified under art. 38 paragraph (1) letters a) and b), letters d)-s) above;

**b)** by means of written resolution of the president of ANCOM, inscribed on the official report establishing the contravention and applying the sanction, for the contravention assessed by the personnel of ANCOM, the contravention identified under art. 38 paragraph (1) letter c) above;

**c)** by means of the official report establishing the contravention and applying the sanction, for the contravention assessed by the personnel of ANPC, the contravention identified under art. 38 paragraph (1) letter c) above, according to the competence under art. 33 paragraph (1) above.

**Art. 40**

**(1)** Where, as a result of the administrative or technical verifications, the equipment bearing the CE conformity marking is proven not to comply with the essential requirements, ANCOM or ANPC also decides, according to the competence identified under art. 33 paragraph (1) above, as an additional sanction, by means of a decision or, respectively, an order, one of the measures specified under art. 21 paragraph 1 of Regulation (CE) no. 765/2008.

**(2)** Measures adopted in accordance with the provisions under paragraph (1) shall specify the reasons therefor.

**(3)** Measures related to unmarked or incorrectly marked products may be enforced only following a notification with respect to bringing the apparatus in compliance with the provisions on CE conformity marking, within a reasonable time, as the case may be.

**(4)** Measures adopted in accordance with the provisions under paragraph (1) may only be enforced after the manufacturere, his authorised representative or any other interested party had been given the possibility to previously express its viewpoint, except for the case when such a consultation is not possible due to the urgency of the measure to be enforced, in particular where the public interest is concerned.

**(5)** The order or, respectively, the decision identified under paragraph (1) may be challenged in front of the Contentious Administrative Court.

**(6)** The order or, respectively, the decision identified under paragraph (1) shall be published in the Romanian Official Journal, Part I.

**Art. 41**

ANCOM may prohibit or restrict, according to the conditions under art. 40 above, the placing on the market or may decide the withdrawal from the market of radio equipment, including the types of radio equipment deemed, due to justified reasons, to cause harmful interference, including interference with the existing or planned services in the frequency bands according to the National Table for Frequencies Allocation.

**Art. 42**

Where ANCOM has enforced a measure in accordance with art. 40 or 41 above, it shall notify such measure to the European Commission, specifying the reasons therefor and specifying whether the noncoformity is due to:

**a)** the incorrect application of the harmonised standards;

**b)** the inadequacies of the harmonised standards;

**c)** the non-compliance with the applicable essential requirements, identified under art. 6 above, in case of apparatus that does not meet the harmonised standards;

**d)** the causes related to the harmful interferences.

**Art. 43**

Measures enforced in accordance with art. 40 or 41 above shall be notified to the manufacturer or the person reponsible for placing the apparatus on the market, where applicable.

**Art. 44**

Measures enforced in accordance with art. 40 or 41 above shall be correlated with the degree of risk or non-conformity, and the impact of its action on the free movement of the apparatus shall not be higher than necessary, in view of ensuring the efficient and appropriate use of the radio spectrum, avoiding harmful interference or public health problems.

**Art. 45**

The provisions of the Government Ordinance no. 2/2001 on the legal regime of contraventions, approved, with the subsequent amendments and completions, by Law no. 180/2002, with the subsequent amendments and completions, shall apply to the contraventions identified herein.

**CHAPTER XIII:** **Final Provisions**

**Art. 46**

In case ANCOM or ANPC holds data and/or information regarding certain difficulties encountered, *de facto* or *de jure*, during the placing of radio radio equipment and electronic communications terminal equipment on the market of a third party state, it shall inform the European Commission thereon.

**Art. 47**

**(1)** The present decision shall enter into force within 30 days after it is published in the Romanian Official Journal, Part I.

**(2)** The Government Decision no. 88/2003 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity, republished in the Romanian Official Journal, Part I, no. 477 as of July 17, 2007, is hereby repealed as from the date the present decision enters into force.

**Art. 48**

Annexes nos. 1-7 are part of the present decision.

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The present decision transposes Directive 1999/5/CE of the European Parliament and the Council on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity, published in the Official Journal of European Communities, series L, no. 91 as of April 7, 1999.

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| **Signatures …** |

**ANNEX 1:** **Equipment not covered by this decision as referred to in** **art. 3 herein**

**1.** Radio equipment used by radio amateurs, according to art. 1, definition 53, of the International Telecommunications Union (ITU) Radio Regulations, unless the equipment is available commercially.

**2.** Kits of separate components, intended to be assembled by radio amateurs, and commercial equipment modified by and for the use of radio amateurs are not regarded as commercially available equipment.

**3.** Equipment falling within the scope of the legislation on marine equipment

**4.** Cabling and wiring

**5.** Receive only radio equipment intended to be used solely for the reception of sound and TV broadcasting services

**6.** Products, appliances and components in the field of civil aviation

**7.** Air-traffic-management equipment and systems

**ANNEX 2:** **Module A Internal Production Control**

The present annex describes the procedure whereby the manufacturer or his authorised representative established within the European Union ensures and declares that the products concerned satisfy the requirements of this decision.

**1.** The manufacturer shall establish the technical documentation that must enable the assessment of the conformity of the product with the essential requirements and must provide information regarding the design, manufacture and operation of the product.

**2.** In view of observing the provisions under point 1, the technical documentation must include:

**a)** a general description of the product;

**b)** conceptual design and manufacturing drawings, schemes of components, sub-assemblies, circuits;

**c)** descriptions and explanations necessary for the understanding of said drawings and schemes and of the operation of the product;

**d)** a list of the harmonised standards, applied in full or in part, and descriptions and explanations of the solutions adopted to meet the essential requirements of the decision where harmonised standards have not been applied or do not exist;

**e)** results of design calculations made, examinations performed;

**f)** test reports.

**3.** The manufacturer shall take all necessary measures in order that the manufacturing process ensures compliance of the manufactured products with the technical documentation referred to in points 1 and 2 and with the applicable requirements herein.

**4.** The manufacturer or his authorised representative established within the European Union shall keep the technical documentation at the disposal of the designated national surveillance and control authorities from any member state of the European Union, for inspection purposes, for at least 10 years after the date when the last product is manufactured.

**5.** Where neither the manufacturer, nor his authorised representative, are established within the European Union, the person responsible for the placing on the market shall have the obligation to keep the technical documentation available for inspections.

**6.** The manufacturer or his authorised representative established within the European Union shall affix the CE conformity marking on each product and shall draw up a declaration of conformity. The manufacturer of his authorised representative shall keep a copy of the declaration of conformity together with the technical documentation.

**ANNEX 3:** **Internal production control plus specific apparatus tests**

The present annex completes Annex no. 2 hereto with the following additional requirements:

**1.** For each type of apparatus, all essential radio test suites must be performed by the manufacturer or on his behalf.

**2.** The identification of the test suites that are considered to be essential is the responsibility of a notified body chosen by the manufacturer, except where the test suites are defined in the harmonised standards.

**3.** When determining the test suites to be performed, the notified body must take due account of previous decisions taken by notified bodies acting together.

**4.** The manufacturer, his authorised representative established within the European Union, or the person responsible for the placing on the market shall:

**a)** declare that tese tests have been performed;

**b)** declare that the apparatus complies with the essential requirements;

**c)** apply, during the manufacturing process, the identification number of the notified body. Where the essential radio test suites are defined in the harmonised standards, affixing the identification number of the notified body on the apparatus is no longer necessary.

**ANNEX 4:** **The technical construction file**

The present annex completes Annex no. 3 hereto with the following additional requirements:

**1.** The manufacturer must draw up the technical construction file, comprising the following elements:

**a)** the technical documentation described under point 2 of Annex no. 2 hereto;

**b)** the declaration of conformity with the specific radio test suites, described under point 2 of Annex no. 3 hereto.

**2.** The manufacturer, his authorised representative established within the European Union, or the person responsible for the placing on the market shall present the file to one or several notified bodies.

**3.** When the technical construction file is presented to several notified bodies, the entities identified under point 2 shall inform each of the notified bodies about the other bodies being presented with the file.

**4.** The notified body shall examine the technical construction file and, within 4 weeks after its receipt, it may:

**a)** issue an approval to the manufacturer, his authorised representative established within the European Union, or the person responsible for the placing on the market, whereby it specifies that the requirements herein have not been properly fulfilled and it may accordingly notify the other notified bodies that have been presented with the file; or

**b)** issue an approval to the entities identifed under letter a), whereby it specifies that the file proves the fulfilment of the requirements herein.

**5.** Upon receipt of the approval referred to at point 4, or by the end of the 4 weeks time, the apparatus may be placed on the market without prejudice to the provisions under art. 13 paragraph (1) above and under art. 41 above.

**6.** The manufacturer, his authorised representative established within the European Union, or the person responsible for the placing on the market shall keep the technical construction file at the disposal of the designated national surveillance and control authorities from any member state of the European Union, for inspection purposes, for at least 10 years after the date when the last product is manufactured.

**ANNEX 5:** **Full quality assurance**

**1.** Full quality assurance is the procedure whereby the manufacturer who satisfies the obligations identified under point 2 ensures and declares that the products concerned satisfy the applicable requirements herein.

**2.** The manufacturer shall affix on each product, as the case may be, the marking identified under arts. 28, 29 and 31 herein and shall draw up a declaration of conformity.

**3.** The manufacturer shall operate an approved quality system for design, manufacture and final product inspection and testing, as specified under points 4-17, and must be subject to surveillance, as specified under points 18-23.

**4.** In view of fulfilling the provisions under point 3, the manufacturer shall lodge an application for assessment of his quality system with a notified body.

**5.** The application shall include:

**a)** all relevant information for the products envisaged;

**b)** the documentation of the quality system.

**6.** The quality system must ensure compliance of the products with the applicable requirements herein.

**7.** All the elements, requirements and provisions adopted by the manufacturer must be documented in a systematic and rational manner in the form of written policies, procedures and instructions.

**8.** Such quality system documentation must ensure a common understanding of the quality measures and procedures such as quality programmes, plans, manuals and files.

The documentation must contain in particular an adequate description of:

**a)** the quality objectives, the organisational structure, the responsibilities and powers of the management with regard to design and product quality;

**b)** the technical specifications, including the harmonised standards, technical regulations and relevant test specifications that will be applied and, where the harmonised standards will not be applied in full, the means that will be used to ensure that the applicable essential requirements herein will be met;

**c)** the design control and design verification techniques, the processes and systematic actions that will be used when designing the products within the product category covered;

**d)** the techniques corresponding to manufacturing, quality control and quality assurance, the processes and the systematic actions that will be used;

**e)** the examinations and tests that will be performed before, during and after the manufacture process, and the frequency with which they will be performed, as well as the results of the tests performed before manufacture, where appropriate;

**f)** the means by which it is ensured that the test and examination facilities fulfil the appropriate requirements for the performance of the necessary tests;

**g)** the quality records, such as inspection reports and test data, calibration data, qualification reports of the personnel concerned etc.;

**h)** the means to monitor the achievement of the required design and product quality and the effective operation of the quality system.

**9.** The notified body shall assess the quality system in order to determine whether it satisfies the requirements under point 8.

**10.** The notified body shall presume compliance with the requirements under point 8 in respect of the quality system that implements the relevant harmonised standard.

**11.** The notified body shall assess in particular whether the quality control system ensures conformity of the products with the requirements herein, based on the relevant documentation supplied according to points 5 and 8 including, as the case may be, test results supplied by the manufacturer.

**12.** In view of fulfilling the requirement under point 11, the auditing team shall have at least one member experienced as an assessor in the product technology concerned. The evaluation procedure must include an assessment visit to the premises where the product is manufactured.

**13.** The decision shall be notified to the manufacturer. The decision must include the conclusions of the examination and the reasoned assessment decision.

**14.** The manufacturer must undertake to fulfil the obligations arising out of the approved quality system and to confirm that it upholds it so that it remains adequate and efficient.

**15.** The manufacturer or his authorised representative established within the European Union shall keep the notified body that has approved the quality system informed of any amending of the quality system.

**16.** The notified body must evaluate the modifications proposed as per point 15 and decide whether the amended quality system will still satisfy the requirements referred to at point 8 or whether a reassessment is required.

**17.** The decision of the notified body related to the provisions under point 16, including the conclusions of the examination and the reasoned assessment decision, shall be notified to the manufacturer.

**18.** The purpose of the quality system surveillance under the responsibility of a notified body is to make sure that the manufacturer duly fulfils the obligations arising out of the approved quality system.

**19.** For inspection purposes, the manufacturer shall allow the notified body access to the locations of design, manufacture, examination and testing, as well as storage and shall provide it with all necessary information, in particular:

**a)** the quality system documentation;

**b)** the quality files as foreseen by the design part of the quality system, such as results of analyses, calculations, tests;

**c)** the quality files as foreseen by the manufacturing part of the quality system, such as examination reports and test data, calibration data, qualification reports of the personnel concerned.

**20.** The notified body shall carry out audits at reasonable intervals to make sure that the manufacturer maintains and applies the quality system.

**21.** Following each audit, the notified body shall provide an audit report to the manufacturer.

**22.** Additionally, the notified body may pay unexpected visits to the manufacturer. During such visits, the notified body may perform tests or have them performed in order to verify the proper functioning of the quality system, where necessary.

**23.** Under the conditions identified under point 22, the notified body shall provide the manufacturer with a visit report and, if a test has been performed, with a test report.

**24.** The manufacturer shall keep the following at the disposal of the national surveillance authorities, for at least 10 years after the date when the last product is manufactured:

**a)** the documentation referred to at point 5 letter b);

**b)** the amendments to the quality system, provided under point 15;

**c)** the decisions and the reports of the notified body, referred to at points 17, 22 and 23.

**25.** Each notified body shall make available to the other notified bodies the relevant information concerning quality system approvals including references to the product(s) concerned, issued and withdrawn.

**ANNEX 6:** **Minimum criteria to be taken into account when designating notified bodies**

**1.** The notified body, its director and the personnel responsible for carrying out the tasks for which the notified body has been designated must not be a designer, manufacturer, supplier or installer of radio equipment or electronic communications terminal equipment, or a network operator or a service provider, nor the authorised representative of any of such parties. They must be independent and not become directly involved in the design, construction, marketing or maintenance of radio equipment or electronic communications terminal equipment, nor represent the parties engaged in these activities. These provisions do not preclude the possibility of exchanges of technical information between the manufacturer and the notified body.

**2.** The notified body and its personnel must carry out the tasks for which the notified body has been designated, with the highest degree of professional integrity and technical competence. They must be free from all pressures and risk of corruption, particularly financial, which are likely to influence their judgement or the results of any inspection, especially from persons or groups of persons with an interest in such results.

**3.** The notified body must have at its disposal the necessary personnel and facilities to enable it to carry out properly the administrative and technical work associated with the tasks for which it has been designated.

**4.** The personnel responsible for inspections shall have:

**a)** sound technical and professional training;

**b)** satisfactory knowledge of the requirements of the tests or inspections that are performed and adequate experience of such tests or inspections;

**c)** the ability to draw up the certificates, records and reports required to authenticate the performance of the inspections.

**5.** The impartiality of inspection personnel shall be guaranteed. Their remuneration shall not depend on the number of tests or inspections performed nor on the results of such inspections.

**6.** The notified body shall take out liability insurance unless its liability is assumed by the State or the State itself is directly responsible, in accordance with national legislation in force.

**7.** The personnel of the notified body is bound to observe professional secrecy with regard to all information gained in carrying out its tasks under this decision (except the authorities involved, the concerned notified body and the surveillance and control authorities) or any provision under the national legislation.

**ANNEX 7:** **Conformity marking and class identifier**

**SECTION A:** **CE conformity marking**

**1.** The CE conformity marking must consist of the initials "CE" taking the following form:



If the CE marking is reduced or enlarged, the proportions given in the above graduated drawing must be respected.

**2.** The CE marking must have a height of at least 5 mm, except where this is not possible on account of the nature of the apparatus.

**3.** The CE marking must be affixed to the product or to its identification plate, which is attached to it. Additionally the CE marking must be affixed to the packaging, if any, and to the accompanying documents.

**4.** The CE marking must be affixed visibly, legibly and indelibly.

**SECTION B:** **Class identifier**

**1.** - Art. 1 of the Commission Decision 2000/299/CE establishing the initial classification of radio equipment and telecommunications terminal equipment and associated identifiersdefines "Class 1" as the radio equipment and the telecommunications terminal equipment which can be placed on the market and be put into service without restrictions.

- Art. 2 of the Commission Decision 2000/299/CE defines "Class 2" as comprising radio equipment for which Member States apply restrictions on the putting into service or restrictions on the placing on the market.

**2.** No class identifier is assigned for "Class 1" equipment. An Equipment Class Identifier, usually known as the "warning" sign, is assigned to the radio emitting equipment in "Class 2" that make use of radio frequency bands whose use is not harmonised throughout the European Union. The "warning" sign is represented by a circle with an exclamation mark drawn inside it.



**3.** This sign is intended to warn the user with respect to certain potential restrictions or requirements related to the authorisation of the use of radio equipment, in some Member States.

**4.** The class identifier must have the same height as the "CE" letters.

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