



**GOVERNMENT of ROMANIA**

**EMERGENCY ORDINANCE**

**on electronic communications,**

**with the subsequent amendments and completions**

**(unofficially consolidated text including the legal provisions in force  
as of 26 July 2012)**

Having regard to Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive),

having regard to Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive),

having regard to Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive),

having regard to Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive),

considering the amendments made to the texts of the aforementioned directives as a result of the adoption of Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) no. 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws, respectively of Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities and 2002/20/EC on the authorisation of electronic communications networks and services,

having regard to Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts,

considering that Romania's obligation, as a Member State of the European Union, to ensure the transposition of Directive 2009/140/EC and Directive 2009/136/EC into the national legislation until 25 May 2011 at the latest was not fulfilled,

since, consequently to the non-observance of the transposition term for Directive 2009/140/EC and Directive 2009/136/EC, the European Commission initiated preliminary procedures foregoing the action for failure to fulfil obligations pursuant to Article 258 of the Treaty on the functioning of the European Union, Romania receiving on 18 July 2011 from the European Commission a letter of formal notice concerning the cases no. 2011/0939, respectively no. 2011/0940,

since, on 24 November 2011, the European Commission issued its reasoned opinion in the mentioned cases, the last pre-litigation phase of the action for failure to fulfil obligations, and decided to extend until 25 January 2012 the timeline for ensuring conformity and communicating the measures of transposition of these directives, before referring the matter to the Court of Justice of the European Union,

taking into account that a further delay in the fulfilment of the obligation to communicate the transposition measures may trigger the referral of the action for failure to

fulfil obligations against Romania to the Court of Justice of the European Commission, on grounds of Article 258 of the Treaty on the functioning of the European Union,

taking into account that Directive 2009/140/EC and Directive 2009/136/EC provided rights in favour of the end-users in a sufficiently concrete and detailed manner so that failure to ensure the effectiveness of such rights, a consequence of the non-transposition in due time of the indicated directives, directly affects in particular the interests of the electronic communications end-users,

taking into account that, according to Article 260 paragraphs (2) and (3) of the Treaty on the functioning of the European Union, Romania's liability for failure to fulfil the obligations to transpose Directive 2009/140/EC and Directive 2009/136/EC may be materialized both in the payment of a lump sum, as well as in a penalty payment to be calculated from the compliance term established in the reasoned opinion,

considering that the European Commission Communication SEC (2011) 1024 of 1 September 2011 set for Romania the minimum lump sum of 1,710,000 euros and the special "n" factor used to calculate the penalty payments of 3.29, the penalties ranging thus between approximately 2,000–130,000 euros/day of delay, which, bearing in mind the significant delay in transposing Directive 2009/140/EC and Directive 2009/136/EC, would have a considerable impact on the state budget,

taking into consideration that these matters concern the public interest, representing emergency and extraordinary circumstances which require immediate regulation,

on grounds of Article 115 paragraph (4) of Romania's Constitution, republished,

The **Government of Romania** adopts this Emergency Ordinance.

## **CHAPTER I**

### **General provisions**

**Art. 1.** – (1) This Emergency Ordinance aims to:

a) establish the general regulatory framework for the activities related to electronic communications networks and services, the authorisation regime for such activities, as well

as the specific measures intended for fostering competition in the market of electronic communications networks and services;

b) establish the regulatory framework for the relations between the operators, between the providers of electronic communications services and between the operators and the providers of electronic communications services with regard to the access to the public electronic communications networks and associated facilities and services;

c) lay down the rights and obligations of the operators and of the persons requesting the interconnection or access to the networks installed, operated, controlled or made available by them or to the facilities or services associated to these networks;

d) set out the regulatory framework for the relations between the providers of electronic communications networks and services, on the one hand, and the end-users, on the other hand;

e) ensure the end-users' right to access the services within the scope of universal service.

(2) This Emergency Ordinance mainly regulates:

a) the rights and obligations of the providers of electronic communications networks and services;

b) the regime of limited resources;

c) the end-users' rights;

d) the universal service;

e) the obligations of the providers of electronic communications networks and services with significant market power.

**Art. 2.** – In exercising the duties provided for in this Emergency Ordinance, the National Authority for Management and Regulation in Communications, hereinafter referred to as *ANCOM* or the *regulatory authority*, shall pursue the objectives laid down in the 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.

**Art. 3.** – (1) The provisions of this Emergency Ordinance shall not apply to the provision of electronic communications networks and services by the public institutions or authorities within the national defence, public order and national safety system, according to the legal competences granted in this regard, as well as to the electronic communications networks and services intended for Romania's diplomatic representations from abroad, which observe certain specific regulations.

(2) The provision of certain public electronic communications networks or publicly available electronic communications services to the public institutions or authorities within the national defence, public order and national safety system, as end-users, shall be achieved under the conditions of this emergency ordinance.

**Art. 4.** – (1) For the purposes of this emergency ordinance, the following definitions shall apply:

1. *general authorisation* – the legal framework ensuring rights for the provision of electronic communications networks and services and laying down sector specific obligations that may apply to all or to specific types of electronic communications networks or services;

2. *user* – any natural person or legal entity using or requesting a publicly available electronic communications service;

3. *subscriber* – any natural person or legal entity who or which is party to a contract for the provision of certain publicly available electronic communications services offered by a provider of such services, irrespective of whether the payment is made prior or after the provision of the service;

4. *end-user* – any user not providing public electronic communications networks or publicly available electronic communications services;

5. *consumer* – any natural person who uses or requests a publicly available electronic communications service for purposes which are outside his/her trade, business or profession;

6. *electronic communications network* – transmission systems and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite electronic communications networks, fixed (circuit-

and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed;

7. *provision of an electronic communications network* – the establishment, operation, control or making available of an electronic communications network;

8. *provider of electronic communications networks* – a person whose business consists wholly or partly in the provision of an electronic communications network under the conditions of the general authorisation regime;

9. *electronic communications service* – a service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks, including telecommunications services and transmission services in networks used for broadcasting, but exclude services providing, or exercising editorial control over, content transmitted using electronic communications networks and services; it does not include information society services, as defined in Article 1 point 1 of Law no. 365/2002 on electronic commerce, republished, which do not consist wholly or mainly in the conveyance of signals on electronic communications networks;

10. *public electronic communications network* – an electronic communications network used wholly or mainly for the provision of publicly available electronic communications services;

11. *interference* – the effect of a redundant energy which appears at the reception point in an electronic communications network using the radio frequency spectrum, caused by an emission or a radiation or induction phenomenon that obstructs the functioning of the network and may lead to the misinterpretation or loss of information which otherwise could have been obtained in the absence of such a redundant energy;

12. *harmful interference* – the interference which endangers or seriously degrades the functioning parameters of a radio navigation service or of other radiocommunication services, including safety services, or which seriously degrades, obstructs, or repeatedly interrupts a radiocommunication service operating in accordance with the international, Community or national legal provisions;

13. *admissible interference* – the noticed or calculated interference which corresponds to the criteria provided in the international, Community or national legal provisions;

14. *allocation of a frequency band* – designation of a given frequency band in the National Table for Frequency Band Allocation, hereinafter referred to as the *NTFA*, for use by one or several terrestrial or space radiocommunication services or by the radio astronomy service, under determined conditions;

15. *allotment of a radio frequency or channel* – the nomination of the user or of the category of users of a radio frequency or channel, in a specific geographic area and under determined conditions;

16. *assignment of a radio frequency or channel* – the authorisation of a radiocommunication station to use a radio frequency or channel under determined conditions;

17. *radio frequency spectrum/ radio spectrum* – the part of the electromagnetic spectrum consisting of radio waves whose frequencies range between 9 kHz and 3,000 GHz;

18. *radio frequencies with non-governmental use* – radio frequencies intended, according to the NTFA, exclusively to be used to provide electronic communications networks and services in the meaning of the provisions herein;

19. *radio frequencies with governmental use* – radio frequencies intended, according to the NTFA, exclusively to be used for governmental purposes by the competent institutions within the national defence, public order and national safety system;

20. *radio frequencies with shared non-governmental/governmental use* – radio frequencies intended, according to the NTFA, to be shared between the non-governmental and the governmental users;

21. *radiocommunications* – electronic communications achieved by means of the radio frequency spectrum;

22. *radiocommunication service* – an electronic communications service made available exclusively by means of radio frequencies;

23. *transnational market* – market identified by the European Commission covering the Community or a substantial part thereof, exceeding the territory of a Member State;

24. *associated facilities* – those services, physical infrastructures or other facilities or elements associated with an electronic communications network or an electronic communications service which enable and/or support the provision of services via that network or service, or which have the potential to do so, and include, among others, buildings and entries to buildings, building wiring, antennae, towers and other supporting constructions, ducts, conduits, masts, manholes and cabinets;

25. *associated services* – those services associated with an electronic communications network or an electronic communications service which enable or support the provision of services via that network or service or which have the potential to do so, and include, among others, number translation or systems offering equivalent functionality, conditional access systems, electronic programme guides and identity, location and presence services;

26. *conditional access systems* – any technical measure or arrangement whereby access to a protected radio or television broadcasting service in intelligible form is made conditional upon subscription or other form of prior individual authorisation;

27. *operator* – a person establishing, operating, controlling or making available to third parties a public electronic communications network or associated facilities or a person authorised therefor;

28. *access* – the making available of facilities or services to a third party, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services, including when they are used for the delivery of information society services or audiovisual programme retransmission services; the access covers, among others:

- a) access to network elements and associated facilities, which may involve the connection of equipment, by fixed or non-fixed means, including access to the local loop and to facilities and services necessary to provide services over the local loop;
- b) access to the physical infrastructure, including buildings, ducts and masts;
- c) access to relevant software systems, including operational support systems;
- d) access to information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests, as well as billing;



- e) access to number translation or systems offering equivalent functionality;
- f) access to fixed and mobile networks, in particular for roaming;
- g) access to conditional access systems for digital television services;
- h) access to virtual network services.

29. *interconnection* – the physical and logical linking between the public electronic communications networks achieved in order to allow the communication between the users of the networks or the access to services; services may be provided by the parties involved or by other parties that have access to the respective network; interconnection is a specific type of access implemented between the operators of public communications networks;

30. *wide-screen television service* – a television service which consists wholly or partially of programmes produced and edited to be displayed in a full height wide-screen format. The 16:9 format is the reference format for wide-screen television services;

31. *local loop* – the physical circuit connecting the network termination point to the main distribution frame or the equivalent facility in the fixed public network;

32. *local sub-loop* – the part of the local loop connecting the termination point of the electronic communications network to a concentration point or a specified intermediate access point in the fixed public electronic communications network;

33. *full access to the local loop or sub-loop* – the use by the beneficiary of the full capacity of a local loop or sub-loop, without changing the ownership of the local loop or sub-loop;

34. *shared access to the local loop or sub-loop* – the use by the beneficiary of a specified part from the capacity of the local loop or sub-loop, such as a part of the frequency or of an equivalent, without disturbing the service initially offered and without changing the ownership of the local loop or sub-loop;

35. *co-location* – the provision of the physical site and of the technical resources necessary for installation and connection, for the proper functioning of the relevant equipment belonging to the beneficiary of this type of access;

36. *publicly available telephone service* – service available to the public for originating or receiving, directly or indirectly, national calls or national and international calls through a number or numbers from a national or international numbering plan;

37. *call* – the connection established through a publicly available electronic communications service allowing bidirectional communication;

38. *public pay telephone* – the telephone made available to the public for the use of which the means of payment may include coins, credit or debit cards, prepaid cards, including cards for use with dialling codes;

39. *geographic number* – a number from the national numbering plan where part of its digit structure contains geographic significance used for routing calls to the physical location of the network termination point;

40. *network termination point* – the physical point at which a subscriber is provided with access to a public electronic communications network; in the case of networks involving switching or routing, the termination point is identified by means of a specific network address which may be linked to a subscriber number or name;

41. *non-geographic number* – a number from the national numbering plan which is not a geographic number; the non-geographic numbers are, inter alia, the numbers allotted to the electronic communications services provided at mobile locations, the freephone numbers and the Premium Rate numbers;

42. *number portability* – a subscriber's possibility to retain, upon request, his/her telephone number assigned from the national numbering plan when the respective subscriber changes the provider of electronic communications services;

43. *universal service* – the minimum set of services established herein, of specified quality, available to all end-users, at an affordable price, irrespective of their geographic position;

44. *universal service obligations* – specific obligations imposed on a provider of electronic communications networks or services which concern the provision of networks and services in a certain geographic area, including, where applicable, the charging of common tariffs by geographical averaging or the provision of specific tariff options for persons on low incomes or with special social needs;

45. *universal service provider* – the provider of electronic communications networks or services on which ANCOM imposed universal service obligations;

46. *distance contract* – a contract concerning the provision of publicly available electronic communications services or of access and connection to public electronic

communications networks, concluded with the end-users, which makes exclusive use of one or several means of distance communication up to and including the moment at which the contract is concluded;

47. *means of distance communication* – any means which, without the simultaneous physical presence of the two parties, may be used for the conclusion of a contract between those parties for the provision of publicly available electronic communications services or of access and connection to public electronic communications networks;

48. *abuse* – any practice involving the use of a public electronic communications network or of a publicly available electronic communications service which represents a breach of the legislation in the electronic communications field or of other legal provisions, or which generates a significant discomfort to the end-users;

49. *encoding* – an operation whereby the initial signal is transformed at the moment of transmission and can only be reset at reception if the encoding algorithm is known;

50. *decoding* – an operation whereby the initial signal is reset due to the awareness of the encoding algorithm;

51. *placing on the market* – the action of making available, for the first time, against payment or free of charge, an equipment intended for the consumers to receive digital television signals, in view of distribution and/or use;

52. *advanced digital television equipment* – device used to connect to the television receiver or to the receiver integrated in the digital television receiver, able to receive interactive digital television services;

53. *application program interface (API)* – a software interface between applications, made available by radio-broadcasters or service providers, and the resources from the advanced digital television equipment for services of television and radio programme broadcasting in digital format.

(2) Within the purpose of the present Emergency Ordinance, the relevant definitions under Article 3 of Government Emergency Ordinance no. 34/2008 on the organisation and functioning of the National Unique System for Emergency Calls, approved with the

subsequent amendments and completions by Law no. 160/2008, under Article 2 of Law no. 506/2004 on the processing of personal data and protection of privacy in the electronic communications sector, with the subsequent completions, under Article 1 of Law no. 365/2002, republished, and under Article 1 of the Audiovisual Law no. 504/2002, with the subsequent amendments and completions, shall also apply.

## **CHAPTER II**

### **Authorisation for providing electronic communications networks and services**

**Art. 5.** – The provision of electronic communications networks and services is free and is done under the terms of the general authorisation regime, in accordance with the provisions of this Chapter.

**Art. 6.** – (1) In order to keep an official record of the providers, any person who intends to provide electronic communications networks or services has the obligation to send a notification to ANCOM, under the form specified in paragraph (3), except for the cases described in Article 7.

(2) The foreign persons who provide publicly available cross-border electronic communications services to the end-users located on the national territory shall send ANCOM the notification provided for in paragraph (1).

(3) ANCOM shall establish and update the standard notification form, comprising the information which any person who intends to provide electronic communications networks or services has the obligation to communicate in order to benefit from the general authorisation. This information is grouped in the following categories:

- a) data necessary for identifying and efficiently communicating with the provider;
- b) description of the types of networks or services the person concerned intends to provide;
- c) estimated date for starting the provision.

(4) The person who made the notification according to paragraphs (1) and (3) shall be authorised to provide the types of networks or services the respective person indicated in the notification, with the corresponding rights and obligations deriving from the general authorisation.

(5) Any modification of the data provided for in paragraph (3) shall be notified to ANCOM within 10 days.

(6) The persons who were withdrawn the right to provide electronic communications networks or services shall be revoked the right to use radio frequencies, numbering resources or other categories of technical resources, where applicable, and may no longer benefit from the general authorisation for a 3-year period since the withdrawal of the right.

**Art. 7.** – (1) The persons who intend to provide electronic communications networks or services exclusively for their own needs shall not have the obligation to send the notification under Article 6.

(2) The persons under paragraph (1) shall be applied the rights and obligations provided for in the general authorisation, as well as the provisions relating to the withdrawal of the right to provide electronic communications networks or services or of the right to use radio frequencies.

(3) The persons who request access or interconnection from the providers of electronic communications networks and services from Romania shall not be subject to the general authorisation procedure referred to in Article 6, if they do not provide services or do not operate networks on the national territory.

(4) ANCOM may establish other types of electronic communications networks or services for which the persons intending to provide them shall not need to send the notification under Article 6.

**Art. 8.** – (1) ANCOM shall elaborate and update the general authorisation for the types of networks and services, establishing the conditions under which these may be provided and thus determining the rights and obligations incumbent on the providers of each type of network or service.

(2) The conditions set according to paragraph (1) shall be objectively justified in relation to the type of network or service concerned, non-discriminatory, proportionate and transparent. These may concern:

- a) financial contributions for supporting the universal service;
- b) payment of the annual monitoring tariff, in accordance with the provisions of Chapter X;
- c) service interoperability and network interconnection;
- d) accessibility for the end-users to the numbering resources from the National Numbering Plan, from the European Telephony Numbering Space, to the free international universal numbers and, where economically and technically feasible, to the numbering resources from the national numbering plans of other Member States of the European Union, as well as any other conditions imposed pursuant to the provisions herein;
- e) requirements related to the environment protection, urban planning and territory arrangement, as well as requirements and conditions related to the granting of the right of way, either public or private, co-location or shared use of the infrastructure, including, where applicable, the financial or technical guarantees necessary to ensure the proper execution of the infrastructure works;
- f) obligations referring to the transmission of programme services through electronic communications networks, in accordance with the provisions of the legislation in the audiovisual field;
- g) personal data processing and privacy protection in the electronic communications field, pursuant to the national relevant legislation;
- h) protection of the end-users in the electronic communications field and conditions for ensuring the accessibility of electronic communications services for the disabled end-users;
- i) restrictions as to the transmission of the illegal and harmful content, in accordance with the legal provisions applicable in the electronic commerce and audiovisual fields;
- j) information which must be provided pursuant to Article 6 paragraph (3) and Article 120;
- k) legal interception of communications by the authorities and institutions entitled therefor, including the bearing by the providers of electronic communications networks or

services of the due costs, and ensuring of confidentiality by own means, accredited under the terms of the normative acts in force;

l) provision of electronic communications networks and services in situations generated by natural calamities or an extremely serious sinister, in view of ensuring the communications between specialised intervention agencies and the other public authorities involved in handling the created situation, including the conditions of use of the electronic communications networks and services for the public authorities' communication of warnings concerning imminent threats and for the limitation of the consequences of major catastrophes;

m) measures for limiting the effects of the electromagnetic fields generated by the electronic communications networks, according to the law;

n) obligations on the granting of access, other than those provided for in Articles 100 to 105;

o) keeping the integrity of the public electronic communications networks, including by conditions that would prevent the occurrence of harmful interferences between electronic communications networks or services;

p) ensuring the security of the public electronic communications networks against unauthorised access;

q) conditions on the use of radio frequencies submitted exclusively to the general authorisation regime, in accordance with the provisions of Article 23 paragraph (3);

r) measures meant to ensure the compliance with the technical standards or specifications, according to Article 8 of Government Emergency Ordinance no. 22/2009, approved by Law no. 113/2010, with the subsequent amendments;

s) transparency obligations imposed on the providers of electronic communications services referring to ensuring end-to-end connectivity, in order to attain the objectives laid down in Articles 4 to 6<sup>1</sup> of Government Emergency Ordinance no. 22/2009, approved by Law no. 113/2010, with the subsequent amendments, including any conditions which restrict the access or use of certain services or applications, in circumstances where such conditions are allowed by the legal framework, and, where justified and proportionate, referring to ensuring the regulatory authority's access to the information required to verify the observance of these obligations.

**Art. 9.** – (1) ANCOM shall amend the general authorisation, in compliance with the principles of objectivity and proportionality, only upon undergoing the consultation procedure specified in Article 135 and only in the following situations:

a) this decision is necessary in order to observe the obligations deriving from an international agreement in which Romania is a party;

b) the circumstances in which the general authorisation was granted have changed.

(2) ANCOM shall revoke the general authorisation, in compliance with the principles of objectivity and proportionality, only in the following situations:

a) this decision is necessary in order to observe the obligations deriving from an international agreement in which Romania is a party;

b) in view of protecting the public interest, when the circumstances in which the general authorisation was granted have changed.

(3) The revoking of the general authorisation in the cases mentioned in paragraph (2) shall be done only upon undergoing the consultation procedure specified in Article 135.

**Art. 10.** – (1) The persons authorised according to Article 6 to provide electronic communications networks or services shall benefit from the right of way under the conditions stipulated by the legislation in force.

(2) The persons authorised according to Article 6 to provide public electronic communications networks or publicly available electronic communications services shall also benefit from the following rights:

a) the right to negotiate and conclude access or interconnection agreements with any other authorised providers of public electronic communications networks or of publicly available electronic communications services, in keeping with Articles 11 and 12;

b) the right to be designated as a universal service provider, under the conditions contained herein.

(3) Upon request or *ex officio*, ANCOM shall issue within 7 days a standard certificate stating that the respective person has sent a notification in accordance with Article 6 and laying down the conditions under which this person benefits from the right of way and the right to negotiate access and interconnection agreements.



**Art. 11.** – The access and interconnection agreements shall be concluded, under the law, in line with the principles of contractual freedom and negotiation in good faith of the technical and commercial conditions of these agreements, in compliance with the provisions of this Emergency Ordinance.

**Art. 12.** – (1) In order to ensure the provision and interoperability of the publicly available electronic communications services, any operator of a public electronic communications network shall have:

a) the right to negotiate an interconnection agreement with any other operator of a public electronic communications network, for the purpose of providing publicly available electronic communications services, including electronic communications services available to users through another public communications network interconnected with the network of either provider;

b) the obligation to negotiate an interconnection agreement with a third party authorised under the conditions of this Emergency Ordinance, upon the latter's request, for the purpose of providing publicly available electronic communications services, including electronic communications services available to users over another public communications network interconnected with the network of either provider.

(2) The operators shall offer access and interconnection in accordance with the obligations set by the regulatory authority pursuant to the provisions of Articles 100 or 105.

(3) The public electronic communications networks installed for providing digital television services shall fulfil the technical requirements in view of ensuring the provision of the television services or programmes on a wide-screen.

(4) The operators receiving and retransmitting wide-format television services or programmes shall keep the respective format.

(5) The information obtained before, during or after the completion of the negotiations for an access or interconnection agreement shall be used exclusively in the scope it was provided for and the confidentiality of the transmitted or stored information shall be observed in all cases. This information may not be disclosed to any third party, in particular to other departments, subsidiaries, secondary headquarters or partners of the

provider offering access or interconnection, who would thus obtain a competitive advantage, except for the information requested by the regulatory authority pursuant to the provisions under Chapter IX.

**Art. 13.** – (1) The granting of certain special or exclusive rights concerning the installation or the provision of electronic communications networks or the provision of publicly available electronic communications services, including as regards the use of radio frequencies, shall be forbidden, except for the cases when the provisions of Article 26 paragraph (5) apply.

(2) As for the projects of installation of public electronic communications networks achieved with the participation or support of the central or local public administration authorities or those totally or partly financed from public funds, for the purpose of providing publicly available electronic communications services, which prevent, restrict or distort the competition in the electronic communications sector or which may have such an effect, the providers of electronic communications networks or services shall benefit from open access to these networks for at least 7 years, in compliance with the principles of non-discrimination, proportionality and objectivity.

(3) The provisions of paragraph (2) shall not apply to the projects of installation of public electronic communications networks carried out by the public institutions or authorities within the national defence, public order and national safety system, according to the legal competences granted therefor.

(4) The technical and economic conditions under which the publicly available electronic communications services and the access to the electronic communications networks in the case under paragraph (2) are provided shall be decided with the assent of ANCOM.

(5) ANCOM shall supervise the observance of the technical and economic conditions set in accordance with the provisions of paragraph (4).

(6) Any interested person may challenge before the competent contentious administrative court the administrative act which established the implementation of certain projects of installation of electronic communications networks, under the conditions of paragraph (2), in the absence of the ANCOM assent provided for in paragraph (4).

(7) The providers of public electronic communications networks and the providers of publicly available electronic communications services which benefit from special or exclusive rights for providing services in other economy sectors, in Romania or in another Member State of the European Union, shall have the following obligations:

a) keep separate accounting for the activities associated to the provision of electronic communications networks or services, similarly as if these activities were carried out by distinct entities, so as to identify with the applied calculation basis and the assignment methodologies all those elements which contribute to composing the costs and revenues related to the activities associated with the provision of electronic communications networks or services, including a detailed description of the fixed assets and of the structural expenses;

b) make a structural separation for the activities associated with the provision of electronic communications networks or services.

(8) The provisions of paragraph (7) letter a) shall not apply to the providers whose annual revenues obtained from activities related to the provision of electronic communications networks or services in Romania and/or in other Member States of the European Union are smaller than the equivalent in RON of 50 million euros, according to an average exchange rate of the period when the revenues were registered, communicated by the National Bank of Romania.

(9) The providers of public electronic communications networks or the providers of publicly available electronic communications services that are not subject to the requirements of the commercial company law and do not fulfil the criteria applicable to the small and medium enterprises established by accounting rules harmonised with the requirements of the European Union legislation shall prepare financial statements, shall submit them for approval to an independent financial auditor, under the law, and shall publish them. This requirement shall also apply to the separate financial statements made pursuant to paragraph (7) letter a).

## **CHAPTER III**

### **Legal regime of the limited resources necessary for the provision of electronic communications networks and services**

#### ***Section 1***

#### ***Administration and management of limited resources***

**Art. 14.** – (1) ANCOM administrates at a national level the limited resources necessary for the provision of electronic communications networks and services, such as radio frequencies, numbering resources and other associated technical resources.

(2) ANCOM manages at a national level the numbering resources and other associated technical resources.

(3) The numbering resources provided in the National Numbering Plan and the radio frequencies are limited resources owned by the state.

(4) The administration and management of the limited resources shall be achieved based on the principles of objectivity, transparency, non-discrimination and proportionality.

**Art. 15.** – The signs susceptible of graphic representation depicting numbering resources provided in the National Numbering Plan and associated technical resources may not make the object of protection of the industrial ownership right for the publicly available electronic communications services.

#### ***Section 2***

#### ***Radio frequencies***

**Art. 16.** – (1) The radio frequencies shall be used in line with the provisions of the NTFA, with the regulations in force in the electronic communications field, with the international agreements in which Romania is a party, including the regulations adopted by

the International Telecommunication Union or by the European Conference of Postal and Telecommunications Administrations.

(2) The NTFA shall be adopted by Government decision, at the proposition of ANCOM, after receiving the assent of the Radiocommunication Interdepartmental Commission for the allocations involving radio frequency bands with governmental use or those with shared governmental/non-governmental use.

(3) ANCOM shall ensure, under the law, the administration and coordination at a national level of the activity of radio spectrum management in accordance with the NTFA and the international agreements in which Romania is a party, including with the regulations adopted by the International Telecommunication Union and by the European Conference of Postal and Telecommunications Administrations.

**Art. 17.** – (1) The authorities competent to manage the radio frequencies are:

a) ANCOM, for the radio frequencies in the bands allocated for non-governmental use and, under the conditions of Article 19, for the radio frequencies in the bands allocated for shared governmental/non-governmental use;

b) the competent institutions within the national defence, public order and national safety system, for the radio frequencies in the bands allocated for governmental use; in the case of the radio spectrum used for defence purposes, managed exclusively by, or shared with, the Ministry of National Defence, the governmental term “army” shall be used in the NTFA;

(2) The authorities under paragraph (1) have the obligation to ensure the mutual exchange of information concerning the allocation of frequencies in the radio frequency bands with shared non-governmental/governmental use, in accordance with the provisions of Law no. 182/2002 on the protection of classified information, with the subsequent amendments and completions. These authorities shall collaborate with a view to identify and trace the unauthorised emissions and the harmful interferences, for the purpose of ensuring the radio-electric protection of all authorised radiocommunication stations using radio frequencies according to the law.

(3) In view of efficiently using the frequency bands designated according to the NTFA for governmental use or for shared governmental/non-governmental use and of ensuring the

electromagnetic compatibility of the owned radio-electric equipment, the competent institutions within the national defence, public order and national safety system may elaborate internal orders and guidelines.

**Art. 18.** – (1) The competent institutions within the national defence, public order and national safety system have the right to use the frequency bands designated according to the NTFA for governmental use or for shared governmental/non-governmental use, to the extent this is necessary for fulfilling the attributions conferred by the law.

(2) The competent institutions within the national defence, public order and national safety system have the right to use for limited time periods the radio frequency bands, to the extent this is necessary for fulfilling the special attributions provided for by Law no. 51/1991 on Romania's national safety.

(3) The use of radio frequencies under the conditions of paragraphs (1) and (2) shall be free of charge, without the need to obtain a licence, in compliance with the following conditions:

a) the observance of the technical and operational requirements necessary to avoid the occurrence of harmful interferences and to limit the effects of the electromagnetic fields;

b) the observance of the obligations deriving from the international agreements in which Romania is a party, including of the regulations adopted by the International Telecommunication Union or by the European Conference of Postal and Telecommunications Administrations.

**Art. 19.** – The ANCOM activity of administration and coordination at a national level of the radio spectrum management shall be supported, for the allocations involving radio frequency bands with governmental use or with shared governmental/non-governmental use, by the Radiocommunication Interdepartmental Commission, set up by a Government decision which establishes the structure, the attributions and the functioning of the Commission.

**Art. 20.** – (1) The radio frequency spectrum may be used with any available technology for each type of application established by the NTFA and in compliance with the requirements under the European Union legislation.

(2) By way of exception from the provisions of paragraph (1), ANCOM may decide, thoroughly justified, proportionate and non-discriminatory restrictions regarding the use of certain technologies in certain radio frequency bands, in particular when this is necessary to:

- a) avoid harmful interferences;
- b) limit the effects of the electromagnetic fields;
- c) ensure the technical quality of the service;
- d) ensure the maximisation of the shared use of the radio frequencies;
- e) safeguard efficient use of the spectrum;
- f) ensure the fulfilment of a general interest objective.

(3) The radio frequency spectrum may be used to provide any electronic communications service, established by the NTFA and pursuant to the requirements of the European Union legislation.

(4) By way of exception from the provisions of paragraph (3), in specific radio frequency bands, ANCOM may establish, on a thoroughly justified basis, proportionate and non-discriminatory restrictions as to the provision of certain electronic communications services, including in view of observing the requirements under the Radio Regulations of the International Telecommunication Union.

(5) In order to ensure the fulfilment of the general interest objective, the measures adopted in accordance with the provisions of paragraph (4) shall be justified; these could concern without limitation:

- a) life safety;
- b) promotion of social, regional or territorial cohesion;
- c) prevention of inefficient use of the radio frequencies; or
- d) promotion of cultural and linguistic diversity and media pluralism, for instance by providing television or radio programme services.

(6) In view of ensuring the compliance with the principles stated in paragraphs (1) and (3), ANCOM shall periodically analyse the restrictions imposed in accordance with the

provisions of paragraphs (2) or (4), as the case may be, and shall publish the results of this analysis.

(7) The regulatory authority may adopt the measures provided for in paragraphs (2) and (4) after undergoing the consultation procedure described in Article 135.

**Art. 21.** – (1) ANCOM may forbid, upon the reasoned request of the competent institutions within the national defence, public order and national safety system, for a limited period, the partial or total use of a certain frequency band or of a certain frequency where national safety, public order or national defence imposes such a measure, as well as where certain commitments assumed through international agreements need to be observed.

(2) The procedure on the interdiction of partial or total use of a certain frequency band or of a certain frequency shall be elaborated by ANCOM, with the consent of the Radiocommunication Interdepartmental Commission, and shall be approved by decision of the ANCOM president.

(3) The competent institutions within the national defence, public order and national safety system may require the providers of electronic communications networks and services, in extraordinary cases and for a limited period, to modify certain technical parameters of the radio broadcasting, in view of fulfilling certain special attributions specified in Law no. 51/1991.

(4) The situations under paragraph (3) shall be communicated to ANCOM at once, in accordance with Law no. 182/2002, with the subsequent amendments and completions.

**Art. 22.** – (1) The placing on the market and the putting into operation on the Romanian territory of radio equipment and electronic communications terminal equipment shall be allowed under the terms set by Government decision.

(1<sup>1</sup>) The requirements and conditions on the electromagnetic compatibility of the electrical and electronic equipment shall be set by Government decision.

(2) The regulatory authority shall establish the technical rules for the radio interfaces defining the requirements that the equipment under paragraph (1) must meet in order to be used.



**Art. 23.** – (1) The radio frequencies may be used only upon obtaining a licence for the use of radio frequencies awarded under conditions that would ensure the efficient use of the limited resource, the prevention of the occurrence of harmful interferences on the networks operated by other persons using the radio spectrum under the law, the ensuring of the technical quality of the service provided or the fulfilment of other general interest objectives.

(2) The regulatory authority shall award for individual use, by allocation or assignment, radio frequencies in the bands provided in the NTFA, in accordance with the procedure established by decision of the ANCOM president, and shall permanently keep the record of their use.

(3) ANCOM may set, by president's decision, certain categories of frequencies whose use is allowed without needing to obtain a licence for the use of radio frequencies, if this is technically possible, as well as when the risk of occurrence of harmful interferences is low, imposing therewith the harmonised conditions for their use.

(4) In the situation presented in paragraph (3), in the case of certain radio frequency bands intended for the provision of electronic communications networks and services, the regulatory authority may decide to subject the use to the general authorisation regime in reference to the access and conditions of use.

**Art. 24.** – (1) The licence for the use of radio frequencies is the administrative act whereby ANCOM grants to a provider authorised pursuant to Chapter II the right to use one or several radio frequencies in order to provide electronic communications networks or services, with the observance of certain technical parameters and for a limited period of time.

(2) The licence for the use of radio frequencies shall set the conditions in which its holder may exercise the right specified in paragraph (1). These conditions must be objectively justified in relation to the type of network or service concerned, non-discriminatory, proportionate and transparent. They may envisage:

a) the designation of the type of network or service or of the technology for which the right to use the frequencies was granted, including, if applicable, the exclusive use of a

frequency for transmitting a certain audiovisual media service, pursuant to the legislation in the audiovisual field;

b) the effective, rational and efficient use of frequencies, including, if applicable, requirements of quality for the provided service and of territory coverage;

c) terms for the effective use of frequencies;

d) technical and operational requirements necessary to prevent the occurrence of harmful interferences and limit the effects of the electromagnetic fields, where these requirements differ from the ones included in the general authorisation;

e) the time of period for which the right of use is granted, under the reserve of the NTFA amendment; the licence validity term is adequate for the electronic communications service concerned, considering the pursued objective, and takes into account an adequate period necessary for amortizing the investment;

f) the possibility and conditions referring to the transfer of the right of use;

g) the tariff for the use of spectrum, set in accordance with the provisions of Article 30;

h) any obligations undertaken by the provider in question during a competitive or comparative selection procedure;

i) obligations deriving from international agreements on frequency use;

j) obligations deriving from the experimental or occasional use of radio frequencies.

(3) The licence for the use of radio frequencies may be amended at the ANCOM initiative, in keeping with the competences incumbent according to the legislation in force, in the situations imposed by:

a) the observance of the conditions on the effective, rational and efficient use of radio frequencies;

b) the prevention of harmful interferences;

c) the implementation of the objectives of European harmonisation and international cooperation concerning the use of radio frequencies;

d) the observance of the international agreements in which Romania is a party relating to the use of radio frequencies;

e) the resolution of the cases of limited radio frequency availability, in certain geographic areas and under specified technical conditions, in the radio frequency bands

designated for the type of application intended for the provision of the network covered by the licence;

f) the implementation of the strategy for the development of electronic communications and management of radio spectrum;

g) the amendment of the NTFA.

(4) In the situation described in paragraph (3), ANCOM shall notify the holder of the licence for the use of radio frequencies on the changes that need to be done and shall give the holder a reasonable term for implementing them, proportionate to the qualitative or quantitative nature of the respective changes.

**Art. 25.** – (1) The number of licences that are to be granted in a radio frequency band may be limited when needing to ensure the efficient use of the radio spectrum or prevent the occurrence of harmful interferences.

(2) The number of licences for the use of radio frequencies may be limited only in compliance with the following conditions:

a) ANCOM considers the need that the measure brings the users a maximum of benefits and facilitates the enhancement of competition;

b) ANCOM gives all interested parties, including users and consumers, the possibility to express their opinions concerning the measure;

c) any decision limiting the number of licences and the explanatory reasons shall be made public.

(3) In order to appreciate whether the limitation of the number of licences is still justified, ANCOM shall analyse the decision, adopted in accordance with the provisions of paragraph (1), when it deems opportune or upon receiving a reasoned request from a person directly affected by the limitation measure.

(4) If ANCOM deems that new rights for the use of radio frequencies meet the required awarding conditions, the regulatory authority has the obligation to bring this into the public attention and launch the invitation to submit applications.

**Art. 26.** – (1) The licences for the use of radio frequencies shall be awarded by means of an open, objective, transparent, non-discriminatory and proportionate procedure

within 6 weeks from the reception of a complete application, alongside all the documents necessary therefor, except for the licences awarded under the conditions of paragraphs (2) and (5).

(2) As for the licences for the use of radio frequencies which meet the conditions stated in Article 25, ANCOM shall award the usage right by competitive or comparative selection, based on an objective, transparent, non-discriminatory and proportionate procedure, which does not effect in the restriction, prevention or distortion of competition, within 8 months from receiving a request therefor. The competitive or comparative selection procedure may also be used as a means to grant the usage right in other cases established by ANCOM.

(3) The terms provided in paragraphs (1) and (2) may be amended by ANCOM if this is necessary for observing an international agreement in which Romania is a party referring to the use of radio frequency spectrum or of orbital positions.

(4) ANCOM may, within a procedure for awarding the licence for the use of radio frequencies, in compliance with the principles under paragraph (2), out of reasons related to the encouragement of competition in the electronic communications field, with the prior consultation of the Competition Council, decide to forbid the participation of certain persons in the selection procedure. The regulatory authority shall justify the measure and shall take the decision only after undergoing the consultation procedure described in Article 135.

(5) In thoroughly justified cases, by way of exception from the provisions of paragraph (2), the radio frequencies may be granted by direct award, with the assent of the National Audiovisual Council, to the radio-broadcasters providing public radio and television programmes only in the situation where the measure is necessary to attain certain general interest objectives. The awarding of radio frequencies in the conditions of this paragraph must be objectively justified, transparent and proportionate.

(6) Before the time limit set for the submission of offers, the regulatory authority has the right to cancel a selection procedure already begun. The decision to cancel the selection procedure must be objectively justified or represent the consequence of certain conditions which could not be known at the initiation of the selection procedure. ANCOM shall communicate, within 30 days, the reasons for cancelling the selection procedure and shall

return, upon request, the purchasing costs of the documentation elaborated for the selection procedure.

**Art. 27.** – (1) The right to use the radio frequencies may be withdrawn, totally or partially, in the following circumstances:

a) the rights conferred by the licence are not exercised for the purpose for which they were granted in the term set according to Article 24 paragraph (2) letter c);

b) the measure is necessary in view of implementing the objectives of European harmonisation and international cooperation concerning the use of radio frequencies;

c) the measure is necessary in view of observing the international agreements in which Romania is a party referring to the use of radio frequencies;

d) the measure is necessary in view of implementing the electronic communications development strategy and the radio spectrum management policy;

e) where the exercise of the usage right is interrupted for more than six months, out of reasons imputable to the holder, and the direct effect is the limitation of the ANCOM possibility to award other usage rights under certain conditions;

f) in order to avoid the radio spectrum hoarding by not using the limited resource at the level of allocation through licences, when this measure is necessary to ensure an effective market competition or to remove certain market entry barriers which result in the restriction, prevention or distortion of competition.

(2) The right to use radio frequencies in the cases provided for in paragraph (1) letters b) to d) may be withdrawn only after undergoing the consultation procedure described in Article 135.

(3) In the case mentioned in paragraph (1) letter f), previously to taking the measure of withdrawing the usage right, ANCOM may allow the transfer of the right to use radio frequencies, in a determined timeframe, under conditions ensuring that competition is safeguarded.

(4) If the timeframe under paragraph (3) is not observed, ANCOM may decide to withdraw the usage rights only after undergoing the consultation procedure described in Article 135.

**Art. 28.** – (1) The granting of the licences for the use radio frequencies by means of competitive or comparative selection procedures shall be bound by the payment to the state budget of a licence fee; the amount and the conditions concerning the payment shall be set, separately for each case, by Government decision, initiated by the General Secretariat of the Government at the proposition of ANCOM.

(2) The competitive selection is the procedure of awarding the licence for the use of radio frequencies whereby the usage right is granted to the winner of an auction, due to the bidding of a maximum value for the licence fee, having as a start point the minimal value set according to paragraph (1), while ensuring the fulfilment of certain pre-qualification criteria of a technical, administrative or financial nature, as the case may be.

(3) The comparative selection is the procedure of awarding the licence for the use of radio frequencies by which the radio frequency usage right is awarded to the first ranked, after an assessment of the submitted tenders, based on a set of pre-established criteria of a technical, administrative or financial nature, as the case may be.

(4) The detailed regulation for conducting the competitive or comparative selection procedures are adopted by decision of the president of ANCOM.

**Art. 29.** – (1) The costs determined by the change of destination or the refarming of the frequency bands due to the awarding of licences for the use of radio frequencies by means of selection procedures shall be borne from the amount of the licence fee mentioned in Article 28 paragraph (1), as well as from other financing sources which may be established by Government decision.

(2) The compensation of the costs under paragraph (1) shall be set, in each case, by Government decision, initiated by the General Secretariat of the Government upon the ANCOM proposal.

(3) The procedures and the methodologies for determining and assessing the costs under paragraph (1) shall be set by decision of the ANCOM president.

**Art. 30.** – (1) The holders of the licences for the use of radio frequencies shall owe to ANCOM an annual tariff for the use of spectrum. The individualization of the amount of this

tariff shall be done based on the allotments or assignments of radio frequencies performed by means of, or based on, the licence for the use of radio frequencies.

(2) The tariff for the use of spectrum under paragraph (1), fixed by decision of the ANCOM president, shall ensure the optimum use of the radio frequencies and shall be objectively justified, transparent, non-discriminatory and proportionate to the purpose for which it is intended.

**Art. 31.** – (1) The right to use radio frequencies conferred following comparative or competitive selection procedures shall be awarded for maximum 10 years.

(2) By way of exception from the provisions of paragraph (1), in view of observing the principles stated in Article 24 paragraph (2) letter e), the right to use radio frequencies may be granted for up to 15 years.

(3) The validity term of the licences for the use of radio frequencies, including those awarded based on special normative acts, may be renewed by ANCOM for periods at least equal to the initial one, if this measure does not restrict, prevent or distort competition.

(4) When extending the validity of the licence for the use of radio frequencies, the regulatory authority may revise the conditions considered at the initial award of the licence.

(5) In the case presented in paragraph (4), ANCOM shall inform the licence holder on the changes which must be done and shall give the respective holder sufficient time to implement them, proportionally to the qualitative or quantitative nature of the changes.

(6) The extension of the validity of the licence for the use of radio frequencies awarded by selection procedure shall be bound by the payment to the state budget of a licence fee; the amount and the conditions concerning the payment shall be established, individually, by Government Decision initiated by the General Secretariat of the Government, at the proposition of ANCOM.

(7) **repealed**

**Art. 32.** – (1) The radio frequencies shall be used in the amateur service without needing to obtain a licence for the use of radio frequencies.

(2) Only authorised persons, hereinafter referred to as radioamateurs, may operate in the amateur service, in frequency bands assigned through the NTFA to this

radiocommunication service, for non-commercial activities and for personal purposes, for individual training, technical studies and intercommunication.

(3) ANCOM shall ensure the certification and authorisation of radioamateurs, as well as the way in which they are to use the radio frequencies according to the terms and conditions established by decision of the ANCOM president.

**Art. 33.** – (1) The radiocommunication stations in the aeronautical mobile and aeronautical mobile-satellite services, maritime mobile and maritime mobile-satellite services and in the radiotelephone service on inland waterways may be operated only by the persons who hold the necessary knowledge level for operating such stations.

(2) The radiocommunication stations in the land mobile service, except for the radiocommunication stations composing the mobile public networks, may be operated only by the persons who hold the necessary knowledge level for operating such stations.

(3) ANCOM shall ensure the certification of the personnel referred to in paragraphs (1) and (2) under the terms and conditions established by decision of the ANCOM president.

**Art. 34.** – As for the radio frequencies necessary for the communication needs of the embassies and diplomatic missions of other states in Romania, the procedure on the obtainment of the usage right and the conditions associated to this right shall be set by decision of the ANCOM president, with the approval of the Ministry of Foreign Affairs, in compliance with the European harmonised procedures and the international agreements in which Romania is a party.

**Art. 35.** – (1) The holder of the licence for the use of radio frequencies awarded for the provision of a public electronic communications network may transfer the usage right conferred by the licence to another person authorised under the conditions of Article 6.

(2) The licence for the use of radio frequencies may be transferred in its integrality, only with the prior consent of ANCOM, with all the deriving obligations, as well as with the observance of the conditions provided in the licence regarding its transfer. Any agreement concerning the transfer of the licence, concluded without the prior consent, shall be null and void.



(3) ANCOM may establish certain radio frequency bands in the case of which the usage right may be partially transferred.

(4) Prior to the right transfer, ANCOM may request the transferee to fulfil certain conditions leading to the observance of the objectives considered at the initial granting of the right.

(5) The transfer of the radio frequency usage right under the conditions of paragraphs (2) to (4) shall not restrict, prevent or distort competition and, where the frequency use is harmonised at the European Union level, shall not lead to the change of the usage destination of the frequencies covered by the licence in a way which would contravene to the harmonised use.

(6) The transfer of the radio frequency usage right shall be made publicly available by ANCOM.

**Art. 36.** – ANCOM shall set the administrative procedure for the award, amendment, cessation, extension and transfer of the right to use radio frequencies, as well as of the corresponding rights and obligations regarding the use of radio frequencies.

### ***Section 3***

#### ***Numbering resources and associated technical resources***

**Art. 37.** – (1) ANCOM shall adopt the National Numbering Plan.

(2) The National Numbering Plan sets the rules on the administration and management at a national level of the numbering resources used for the provision of publicly available electronic communications services, in accordance with the international agreements in which Romania is a party.

(3) The National Numbering Plan may be amended in order to fulfil the obligations resulted from the international agreements in which Romania is a party, to ensure the sufficient availability of the numbering resources or to adjust to the evolution of services.

(4) The providers of public electronic communications networks or of publicly available electronic communications services have the obligation to implement, on their own expense, the amendments brought to the National Numbering Plan.

(5) The measures specified in paragraphs (1) and (3) shall be adopted with the observance of the public consultation procedure described in Article 135.

(6) The National Numbering Plan and any amendments thereto shall be published, subject only to limitations imposed on the grounds of national security, under the law.

**Art. 38.** – (1) ANCOM shall ensure that proper numbering resources are made available for all the categories of publicly available electronic communications services.

(2) The right to use numbering resources shall be granted to the providers of publicly available electronic communications services that meet the conditions established by ANCOM.

(3) ANCOM may establish certain categories of numbering resources for which the usage right shall be granted to the providers of public electronic communications networks as well.

(4) The single emergency call number 112 is allotted to the administrator of the National Unique System for Emergency Calls.

(5) The secondary regulations may designate certain numbers in view of ensuring other services necessary to satisfy the public interest which may be allotted to certain public authorities.

**Art. 39.** – (1) The administration and management of the numbering resources shall observe the principle of equal treatment applied to all the providers of publicly available electronic communications services or to the providers of public electronic communications networks, as the case may be.

(2) The providers of publicly available electronic communications services that were granted the usage right for certain numbers or number blocks shall apply the principle of non-discrimination and transparency to other providers of electronic communications services, as regards the number sequences used to give access to their services.

**Art. 40.** – (1) The use of the numbering resources shall only be allowed upon obtaining a licence granted, according to the law, under conditions that ensure their efficient use.

(2) ANCOM shall set the administrative procedure for the award, amendment, extension, cessation and transfer of the right to use numbering resources, as well as of the corresponding rights and obligations regarding the use of the numbering resources.

(3) The providers of public electronic communications networks and the providers of publicly available electronic communications services have the obligation to observe the National Numbering Plan and the conditions on the use of the numbering resources.

**Art. 41.** – (1) The licence for the use of numbering resources is the administrative act whereby ANCOM grants to a provider the right to use certain numbers under the National Numbering Plan for the latter to provide electronic communications services, for a limited period of time.

(2) The licence for the use of numbering resources sets the conditions in which its holder may exercise the right provided in paragraph (1). These conditions must be objectively justified in relation to the service in question, non-discriminatory, proportionate and transparent.

(3) The conditions on the use of numbering resources may envisage:

a) the designation of the service for which the right to use numbering resources was granted, including any requirements related to the provision of that service, as well as the charging principles or the maximum tariffs which may be applied for the calls to certain numbers or number blocks, in view of ensuring the protection of the end-users' interests;

b) the effective, rational and efficient use of the numbering resources;

c) number portability requirements;

d) obligations relating to the services of subscriber directories and directory enquiry;

e) the period of time for which the usage right is granted, under the reserve of the amendment of the National Numbering Plan;

f) the transfer or reassignment of the numbering resources;

g) the tariff for the use of numbering resources, fixed in accordance with the provisions of Article 43;

h) any obligations assumed by the provider in question during a competitive or comparative selection procedure;

i) obligations deriving from international agreements in which Romania is a party regarding the use of the numbering resources.

(4) The conditions on the use of numbering resources shall be amended in justified cases and in compliance with the public consultation procedure described in Article 135.

**Art. 42.** – (1) The licences for the use of numbering resources shall be granted by means of an open, objective, transparent, non-discriminatory and proportionate procedure, within 3 weeks from receiving a complete application, alongside all the necessary documents in this sense, in the case of the numbering resources whose destination was set by the National Numbering Plan, except for the licences that are granted by a competitive or comparative selection procedure, for which the term is maximum 6 weeks.

(2) ANCOM may decide, on a reasoned basis, that the allotment of certain numbering resources be made following alternative procedures, in compliance with the terms and principles stated in paragraph (1).

(3) ANCOM shall grant licences for the use of numbering resources whenever it receives a justified application therefor, taking into consideration the nature of the service concerned, the need to obtain the respective numbering resources, the observance of the conditions on the use of numbering resources and the ensuring of their efficient use, as well as the need to satisfy the requests of numbering resources on a long run.

(4) After consulting the interested parties, according to the law, ANCOM may decide to grant certain categories of numbers with special economic value by means of competitive or comparative selection procedures.

**Art. 43.** – (1) ANCOM may require the holders of licences for the use of numbering resources to pay a tariff for the use of these resources.

(2) The tariffs under paragraph (1) must ensure the optimum use of the numbering resources, must be objectively justified, transparent, non-discriminatory and proportionate to the purpose for which they are intended.

**Art. 44.** – (1) The numbering resources under the licence may be conceded, totally or partially, to a third party, only with the prior consent of ANCOM and only upon all the

obligations deriving from the right to use numbering resources are assumed, as well as with the observance of the conditions under the licence with regard to their transfer.

(2) Any agreement on the transfer of the right to use numbering resources concluded without the observance of the provisions under paragraph (1) shall be null and void.

(3) The transfer of the right to use numbering resources shall not restrict, prevent or distort competition.

(4) The transfer of the right to use numbering resources shall be made publicly available by ANCOM.

**Art. 45.** – (1) The right to use the technical resources necessary to provide publicly available electronic communications services or to operate public electronic communications networks shall be granted exclusively by ANCOM.

(2) The regulatory authority shall establish the procedure for the award, amendment, cessation and transfer of the right to use the identification, signalling and routing codes, without limitation to these, as well as the rights and obligations of the holders of the right to use these technical resources.

## **CHAPTER IV**

### **Security and integrity of electronic communications networks and services**

**Art. 46.** – (1) The providers of public electronic communications networks or of publicly available electronic communications services shall take all necessary technical and organisational measures to appropriately manage the risks posed to security of networks and services.

(2) Having regard to the state of the art, the measures referred to in paragraph (1) shall ensure a level of security appropriate to the risk presented and shall be taken to prevent or minimise the impact of security incidents on users and interconnected networks.

(3) The providers of public electronic communications shall take all appropriate steps to guarantee the integrity of their networks and to ensure the continuity of supply of services provided over these networks.

(4) Where applicable, the providers of public electronic communications networks or of publicly available electronic communications services shall collaborate in order to implement the measures mentioned under this Article.

**Art. 47.** – (1) The providers of public electronic communications networks or of publicly available electronic communications services shall notify ANCOM in the shortest time possible of any breach of security or loss of integrity which has had a significant impact on the provision of networks or services.

(2) ANCOM may inform the public on the existence of the case specified in paragraph (1) or may require the providers to do so, where it determines that disclosure of the breach is in the public interest.

(3) Where deeming it necessary, ANCOM shall inform the national regulatory authorities for communications in other Member States of the European Union and the European Network and Information Security Agency on the breach of security of networks and services or on the loss of network integrity.

(4) ANCOM shall annually submit a summary report to the European Commission and to the European Network and Information Security Agency on the notifications received according to paragraph (1) and the action taken in those cases.

**Art. 48.** – ANCOM may establish the modality of implementation of the provisions of Articles 46 and 47, in compliance with the public consultation procedure described in Article 135.

**Art. 49.** – (1) In view of applying the provisions of this Chapter, ANCOM may require the providers of public electronic communications networks or of publicly available electronic communications services to:

a) provide all the information necessary to assess the security and integrity of their networks and services, including the applicable internal security policies;

b) submit to a security audit carried out by an independent body or by another competent authority and to make the results thereof available to ANCOM. The cost of the audit shall be paid by the provider.

(2) ANCOM may verify and assess the measures established by providers to guarantee the security and integrity of their networks and services. It may also verify and assess the observance of these measures in the cases where the security of networks and services has been breached or where network integrity has been lost, and may impose measures in this regard.

## **CHAPTER V**

### **End-users' rights**

#### ***Section 1***

#### ***Contracts***

**Art. 50.** – (1) Contracts concluded by consumers to benefit from access and connection to public electronic communications networks or from publicly available electronic communications services may be concluded for an initial period of maximum 24 months.

(2) Consumers shall also be offered the possibility to conclude contracts in order to benefit from the services provided in paragraph (1) for maximum 12 months.

(3) Upon request, other end-users may conclude contracts under the terms of paragraphs (1) and (2) and of Article 51.

(4) The provisions of Government Ordinance no. 21/1992 on consumer protection, republished, with the subsequent amendments and completions, as well as the other normative acts in the consumer protection field shall correspondingly apply to the contracts regulated by this section.

## *Subparagraph 1*

### *General framework*

**Art. 51.** – (1) Contracts concluded by consumers to benefit from services of access and connection to public electronic communications networks or from publicly available electronic communications services shall specify in a clear, comprehensive and easily accessible form at least:

a) the provider's identification data;

b) the services provided;

c) in the case of the contracts concluded for the provision of publicly available telephone services, the subscriber's option as to whether or not to include his/her personal data in databases in view of the provision of directory enquiry services or subscriber directories, as well as, if the subscriber chooses to be included in the subscriber directory, the data concerned;

d) prices and tariffs for each service or package of services purchased, as well as, if applicable, the price of each product contracted together with the service, their application, the means by which up-to-date information on all applicable tariffs can be obtained, payment methods, as well as any differences in costs due to the various payment methods;

e) the duration of the contract, the conditions for renewal and termination of services and of the contract, as well as the conditions in which service provision is suspended;

f) the applicable compensations and their granting procedure if the contracted service quality levels and other contractual terms are not met;

g) the means of initiating the dispute resolution procedure established in Article 118;

h) the type of action the providers may take in reaction to security or integrity incidents, threats and vulnerabilities.

(2) The clause under paragraph (1) letter b) shall establish, among others:

a) whether or not access to the single emergency call number 112 is offered and caller location information is being provided in order to ensure emergency services, and any limitations on the access to the single emergency call number 112, according to the provisions of Article 70;



b) information on any other conditions limiting the access to, or use of, certain services and applications;

c) the minimum service quality levels offered, including at least the time for the initial connection to the network and/or services offered by the provider, the time in which faults are resolved, the time in which complaints are settled, as well as, if applicable, the minimum level of other quality parameters set by ANCOM;

d) information on the procedures put in place to measure and shape traffic so as to avoid filling or overfilling a network link, as well as information on how these procedures could impact on service quality;

e) the types of maintenance services offered and customer support services provided, as well as the means of contacting these services;

f) if such is the case, any restrictions imposed by the provider on the use of terminal equipment supplied.

(3) The clause under paragraph (1) letter e) shall include, when applicable:

a) any minimum usage or duration required to benefit from promotional terms or advantages;

b) any charges related to portability of numbers and other identifiers;

c) any charges due by subscribers on termination of the contract, including, if applicable, any cost recovery with respect to the purchased terminal equipment.

(4) The contracts under paragraph (1), except for those concerning the services provided by means of prepaid cards or other assimilated payment means, shall be concluded in writing, with a legible font, of at least 10p size, on paper or on another durable, visible and easy-to-read support or, if the end-user agrees, in electronic form or, as the case may be, by distance communication means, with the observance of the conditions under the law. With regard to the contracts concluded in writing, the background colour of the paper must contrast with the used font.

(5) At the time of purchasing the services for which the payment is made in advance, the end-users shall be made available the general provision conditions, which are to comprise the information corresponding to the minimum clauses specified in paragraphs (1) to (3) and are to be provided in writing, on paper or on another durable, visible and easy-to-read support, whereas the background colour of the paper must contrast with the used font.

(6) ANCOM may require that the contracts referred to in paragraph (1) include the information provided by the relevant public authorities for this purpose on the use of electronic communications networks and services to engage in unlawful activities or to disseminate harmful content, as well as information on the means of protection against risks to personal security, privacy and personal data, mentioned in Article 60 paragraph (11) and relevant to the services provided.

(7) In all cases where the concluded contract gives the provider the possibility to unilaterally modify the contract, subscribers shall be given adequate notice on this intention and on the changes to be done. As from the moment when the notification is received, the subscriber must benefit from a term of at least 30 days to exercise in good faith the right to withdraw from the contract, without penalty or reparations, when he/she does not accept the modifications imposed by the provider.

(8) The notification shall be done by means which would ensure its transmission to each subscriber.

(9) Within the content of the notification, the right of the subscriber to withdraw from the contract under the terms of paragraph (7) shall be expressly provided.

(10) Where the regulatory authority deems that the providers do not properly implement the provisions of paragraphs (7) to (9), ANCOM shall establish, by president's decision, the format and the means of transmission of the notification.

### *Subparagraph 2*

#### *Conclusion of distance contracts*

**Art. 52.** – (1) The provisions of Government Decision no. 130/2000 on consumer protection at the conclusion and execution of distance contracts, republished, with the subsequent amendments, shall not apply in respect of the contracts regulated by this Subparagraph.

(2) The provisions of this Subparagraph shall be completed by those of Law no. 365/2002, republished.

**Art. 53.** – (1) Prior to the conclusion of any distance contract, the end-user shall be provided, in due time and in a clear, correct and comprehensible manner, with at least the following information:

a) the provider's identification data and, for telephone communications, the commercial purpose of the call;

b) the main characteristics of the offered services, as well as the validity period of the offer or of the tariffs;

c) the countervalue of the tariff plan, specifying the number of minutes, the credit or data traffic included, if applicable, the available extra-options and their price, the tariffs charged for calls and for minutes or additional data traffic, as the case may be, the connection or installation tariff, with all taxes included;

d) the conditions of use of the included minutes, credit or traffic, as the case may be;

e) if applicable, the price of the offered terminal equipment, the payment means, as well as the delivery modality and costs;

f) date on which the contract is deemed concluded, under the terms of paragraph (2);

g) date of activation of the purchased service, as well as, in the case of delivery of terminal equipment, date of its delivery;

h) where appropriate, the minimum duration of the contract and the conditions for the early termination of the contract and the applicable penalties;

i) the right to withdraw from the contract and the term for exercising this right;

j) the means for obtaining detailed information on the provider's commercial offer.

(2) If the parties did not agree otherwise, the date of conclusion of the distance contract is the date when the end-user receives the confirmation message regarding his/her order.

**Art. 54.** – Within 5 working days from the conclusion of the contract, the end-user must be transmitted in writing, in printed form or on another durable support at his/her disposal and to which he/she has access or, if the end-user agrees, in electronic form, the following:

a) the information under Article 53 paragraph (1);

b) the information under Article 51 paragraphs (1) to (3), in addition to the information under letter a);

c) the conditions for exercising the right of withdrawal, within the meaning of Article 55;

d) the conditions for returning the equipment, where the end-user exercises his/her withdrawal right, according to Article 55;

e) the address, the telephone or fax number, as well as the e-mail address where the end-user may lodge a complaint;

f) the information on after-sales services;

g) the guarantees offered for the delivered terminal equipment.

**Art. 55.** – (1) The end-user has the right to withdraw from the distance contract within 14 working days, without penalty or reparations and without giving any reason.

(2) The term under paragraph (1) shall begin:

a) in the case of service provision, from the date of conclusion of the contract or from the date of transmitting the information under Article 54, if transmitted after the conclusion of the contract, provided that the information is supplied within the 90-day term specified in paragraph (3);

b) if the service provision includes the delivery of a terminal equipment, from the delivery date.

(3) By way of exception from the provisions of paragraph (1), where the information under Article 54 was not transmitted to the end-user, the term in which the end-user has the right to withdraw from the distance contract, without penalty or reparations and without giving any reason, is 90 days and shall begin from the conclusion of the contract or from the delivery of the terminal equipment, as the case may be.

(4) If, in the timeframe mentioned in paragraph (3), the information under Article 54 is supplied to the end-user, the term of 14 working days for withdrawing from the contract shall begin from that moment.

(5) Where the end-user decides to withdraw from the contract under the conditions of paragraph (1) and uses the service before exercising this right, the respective end-user shall pay for the services he/she benefited from in the period between the date when the service

was activated and the date when the contract was terminated, and the direct costs of returning the terminal equipment, if such is the case.

(6) Without prejudice to the provisions of paragraph (5), where the end-user exercises the withdrawal right according to the provisions of this Article and, as the case may be, returns the terminal equipment under the conditions fixed by the provider, the latter has the obligation to reimburse the sums paid by the end-user in advance, without requesting the end-user to cover the expenses corresponding to the reimbursement of the sums. The sums shall be reimbursed within 30 days from the end-user's withdrawing from the contract.

**Art. 56.** – The provider of public electronic communications networks or of publicly available electronic communications services shall verify the compliance with the obligations to inform the end-user and the existence of the end-user's agreement at the conclusion of the contract, and shall verify or determine the identity of the end-user that has concluded the distance contract.

**Art. 57.** – (1) Except for the case when the parties agreed otherwise, the provision of the service shall start and, as the case may be, the terminal equipment shall be delivered within 30 days from the conclusion of the contract.

(2) If the contract in question may not be executed because the respective service or equipment are unavailable, the provider must inform the end-user on this unavailability, as well as, if applicable, reimburse the amounts already paid by the end-user within 30 days from the date of the unavailability notification.

**Art. 58.** – (1) Where the services are provided or the terminal equipment is delivered without the end-user's consent, this is exonerated from making any counterperformance.

(2) The absence of the end-user's response may not be deemed a consent.

(3) In the case shown in paragraph (1), the expenses incurred by the return of the terminal equipment shall be borne by the provider.

**Art. 59.** – The following, among others, are deemed distance communications means:

- a) the unaddressed printed matter;
- b) the addressed printed matter;
- c) the standard letter;
- d) the press advertising with order form;
- e) the catalogue;
- f) the telephone with human intervention;
- g) the telephone without human intervention (automatic calling machine, audiotext);
- h) videophone (telephone with screen);
- i) videotext (microcomputer, television screen with keyboard or touch screen);
- j) the electronic means;
- k) the facsimile machine (fax).

## ***Section 2***

### ***Transparency***

**Art. 60.** – (1) The providers of public electronic communications networks and the providers of publicly available electronic communications services have the obligation to publish transparent, comparable, adequate and up-to-date information on applicable prices and tariffs, on any charges due on termination of the contract, if applicable, and on other conditions in respect of access to, and use of, the offered services, to enable the end-users to make well-informed decisions.

(2) The information under paragraph (1) shall concern:

- a) the provider's identification data;
- b) the services supplied;
- c) the dispute resolution mechanisms, including those made available by the providers;
- d) the ensuring of certain services within the scope of universal service, including, where applicable, the facilities and services specified in Article 84 paragraphs (3) to (12);

(3) The information under paragraph (2) letter b) shall be detailed as regards:

- a) the description of the services supplied;

b) the tariffs for connection, access and use, maintenance and repairs, the standard tariff facilities, the special charging systems customised for a certain type of user or of needs, as well as any other tariffs, including those related to the terminal equipment;

c) the cases, the granting procedure and the calculation of the reparations or of the amounts to be reimbursed to the end-users;

d) the types of technical support services offered;

e) the standard contractual terms and conditions, the minimum duration of the contract, if applicable, the conditions of cessation of the contract, as well as, where such is the case, the procedures and tariffs directly related to number portability and other identifiers.

(4) The information shall be made publicly available in a clear, accessible and comprehensible form.

(5) ANCOM may detail the categories of information referred to in paragraph (1) and may establish in relation to these additional information which must be made publicly available, as well as the means in which this information shall be published.

(6) ANCOM may offer directly or via third parties comparative information on the tariffs and conditions related to the provision of the publicly available electronic communications services.

(7) Other persons have the right to use free of charge the information published by the providers of public electronic communications networks and by the providers of publicly available electronic communications services with a view to offer comparative guides on the tariffs and conditions related to the provision of the publicly available electronic communications services or similar applications.

(8) ANCOM may impose on the providers of public electronic communications networks and of publicly available electronic communications services the following obligations:

a) to inform their subscribers on the applicable special tariffs for access to certain numbers or services; for certain categories of services, ANCOM may require that the tariff information be provided immediately prior to connecting the call;

b) to inform their subscribers of any change to access to the single emergency call number or caller location information in the service to which they have subscribed;

c) to inform their subscribers of any change to conditions limiting access to, or use of, certain services or applications, where such conditions are permitted under the legal framework;

d) to make available to the public information on any procedures put in place to measure and shape traffic so as to avoid filling or overfilling a network link, as well as information on how these procedures could impact on service quality;

e) to inform their subscribers on their right to choose whether they wish or not to include their personal data in databases in view of the provision of directory enquiry services or subscriber directories, as well as, where the subscribers opt for inclusion, to establish the personal data to be included, in accordance with the provisions of the legislation in the field of personal data processing;

f) to regularly inform in a comprehensible and accessible manner their disabled subscribers with regard to the services or equipment intended for them.

(9) Upon its own initiative or at the request of the relevant public authorities, ANCOM may require the providers of public electronic communications networks and the providers of publicly available electronic communications services to distribute public interest information by the same means ordinarily used in their communications with subscribers.

(10) The providers of public electronic communications networks and the providers of publicly available electronic communications services have the obligation to make available to the public the information under paragraph (9) free of charge, in the conditions set by ANCOM.

(11) The requests of the relevant public authorities, specified in paragraph (9), shall be submitted to ANCOM in a standardised format and shall cover in particular:

a) the most common uses of electronic communications services to engage in unlawful activities or to disseminate harmful content, particularly where such activities may prejudice respect for the citizens' rights and freedoms, including infringements of copyright and related rights, and their legal consequences;

b) the means of protection against risks to personal security, privacy and personal data when using electronic communications services.



**Art. 61.** – (1) ANCOM may require the providers of public electronic communications networks and on the providers of publicly available electronic communications services, after undergoing the consultation procedure described in Article 135, to publish comparable, adequate and up-to-date information on the quality of their services and on the measures taken to ensure equivalence in access for disabled end-users. At the ANCOM request, this information shall be supplied to the regulatory authority in advance of its publication.

(2) ANCOM may establish the content, form and manner in which the information under paragraph (1) shall be published, in order to ensure that the end-users, including the disabled ones, have access to comprehensive, reliable, comparable and user-friendly information.

(3) ANCOM may specify the quality parameters to be measured and any other elements necessary to assess the quality of the offered services, including possible quality certification mechanisms, taking into account the quality parameters, definitions and measurement methods provided for in Annex no. 1, where appropriate.

(4) In order to prevent the degradation of service and the hindering or slowing down of traffic over networks, ANCOM may set minimum quality of service requirements on the providers of public electronic communications networks and on the providers of publicly available electronic communications services.

(5) Before adopting the measures mentioned in paragraph (4), ANCOM shall provide the European Commission and the Body of European Regulators for Electronic Communications, hereinafter referred to as *BEREC*, with a summary of the grounds for action, the envisaged requirements and the proposed course of action.

(6) ANCOM may adopt the measure provided in paragraph (4), taking account of the comments and suggestions of the European Commission.

### ***Section 3***

#### ***Availability of services and equipment***

**Art. 62.** – (1) The providers of publicly available telephone services provided over fixed and mobile public electronic communications networks shall take all necessary

measures in order to ensure fullest possible availability of these services, in the event of catastrophic network breakdown or in cases of force majeure.

(2) The providers of publicly available telephone services and the providers of public electronic communications networks shall take all necessary measures in order to ensure uninterrupted access to emergency calls.

(3) ANCOM may impose certain minimum measures to be taken by the providers of public electronic communications networks and by the providers of publicly available telephone services in view of properly fulfilling the obligations incumbent according to paragraphs (1) and (2).

**Art. 63.** – (1) ANCOM shall take specific measures, where necessary, in order to ensure that the disabled end-users have access to publicly available electronic communications services adjusted to their needs and that they benefit from these services under conditions equivalent to those enjoyed by the majority of end-users.

(2) ANCOM may take specific measures in order to ensure that disabled end-users benefit from the choice of providers of publicly available electronic communications services and services available to the majority of end-users.

(3) In view of adopting and implementing specific measures for the disabled end-users, ANCOM may encourage the provision to these users of terminal equipment offering services and functions adjusted to their needs.

**Art. 64.** – In order to promote the free circulation of information, media pluralism and cultural diversity, ANCOM may adopt measures to encourage:

a) the providers of publicly available interactive digital television services provided through interactive digital television platforms, irrespective of the transmission way, to use open application program interfaces;

b) the providers of advanced digital television equipment installed in view of receiving interactive digital television services through interactive digital television platforms to ensure the conformity with an open application program interface, in compliance with the minimum requirements included in the relevant technical specifications or standards.

**Art. 65.** – Without prejudice to the measures which ANCOM may take pursuant to the provisions of Article 100 paragraph (2) letter c), the owners of the application program interfaces shall cooperate with the providers of interactive digital television services, making available to them, on fair, reasonable and non-discriminatory terms and against a corresponding remuneration, the information necessary for the providers to offer all the services based on the application program interfaces in a completely functional form.

**Art. 66.** – All consumer equipment intended for the reception of conventional digital television signals, for sale, rent or otherwise made available, capable of descrambling digital television signals, must possess the capability to:

- a) allow the descrambling of these signals according to a common European scrambling algorithm as administered by a recognised European standards organisation;
- b) display signals that have been transmitted in the clear, provided that, where such equipment is rented, the renter is in compliance with the relevant rental agreement.

**Art. 67.** – Any analogue television set with an integral screen of visible diagonal greater than 42 cm which is put on the market for sale or rent shall be fitted with at least one open interface socket, as standardised by a recognised European standards organisation, permitting simple connection of peripherals, especially additional decoders and digital receivers.

**Art. 68.** – (1) Any digital television set with an integral screen of visible diagonal greater than 30 cm which is put on the market for sale or rent shall be fitted with at least one open interface socket, permitting simple connection of peripherals, and able to pass all the elements of a digital television signal, including information relating to interactive and conditionally accessed services.

(2) The open interface socket specified in paragraph (1) shall be standardised by a recognised European standards organisation or conforming to a standard adopted by such a body, or conforming to an industry-wide specification.

**Art. 69.** – (1) All subscribers to publicly available telephone services have the right to be included in databases in view of the provision of directory enquiry services or subscriber directories mentioned in Article 80 and to have their information made available to the providers of directory enquiry services or of subscriber directories, in accordance with the provisions of paragraph (2).

(2) The providers of publicly available electronic communications services that assign telephone numbers to subscribers have the obligation to make available all the relevant information to the providers of directory enquiry services or of subscriber directories, at their reasonable request, in a form agreed with the requester, on fair, objective, cost-oriented and non-discriminatory terms.

(3) All end-users benefiting from publicly available telephone services have the right to access the directory enquiry services.

(4) In compliance with the principles of objectivity, equitability, non-discrimination and transparency, ANCOM may impose obligations and conditions on the providers that control access of end-users for the provision of directory enquiry services in accordance with the provisions of Article 100.

(5) The end-users have the right to access directly the directory enquiry services provided in other Member States of the European Union, by voice call or SMS, under the conditions of Article 73.

(6) The provisions of this Article do not bring prejudice to the legal provisions in the field of personal data processing and privacy protection.

**Art. 70.** – (1) All end-users of the services specified in paragraph (2), including users of public pay telephones, have the right to initiate calls to the single emergency call number 112, free of charge and without having to use any means of payment.

(2) ANCOM shall take the necessary measures to ensure that the providers of publicly available electronic communications services ensuring call origination to a number or numbers in the National Numbering Plan provide the end-users with access to the single emergency call number 112.

(3) The calls to the single emergency call number 112 shall be appropriately answered and handled, according to the national legal framework on the organisation and functioning of the National Unique System for Emergency Calls.

(4) The providers of public electronic communications networks have the obligation to ensure call routing to the single emergency call number 112, according to the national legal framework on the organisation and functioning of the National Unique System for Emergency Calls, regardless of whether these calls are initiated on their own networks or on other public electronic communications networks. Call routing to the single emergency call number 112 shall be ensured with priority and at a level of service accepted according to the provisions of Article 21 of Government Emergency Ordinance no. 34/2008, approved with amendments and completions by Law no. 160/2008.

(5) The emergency calls initiated from the terminal equipment of users found in an area outside the coverage area of their network shall be taken over by the providers of electronic communication services at mobile locations ensuring the provision of the service in that area, provided that the terminal equipment is technically compatible with the network from the respective area.

(6) The providers of publicly available electronic communications services shall take measures to ensure that access for the disabled end-users to the single emergency call number 112 is equivalent to that enjoyed by other end-users.

(7) ANCOM may establish the measures which the providers of publicly available electronic communications services must take in order to ensure the compliance with the provisions of paragraph (6).

(8) ANCOM shall take measures in view of facilitating the access of the foreign disabled end-users to emergency services whilst travelling in Romania, particularly taking into consideration the relevant standards and specifications under Article 8 of Government Emergency Ordinance no. 22/2009, approved by Law no. 113/2010, with the subsequent amendments.

(9) The providers under paragraph (2) shall make caller location information available free of charge to the administrator of the National Unique System for Emergency Calls, as soon as the call reaches the single emergency call number 112.

(10) ANCOM shall lay down conditions on the provision of the caller location information according to paragraph (9) so as to ensure the accuracy and reliability of this information.

(11) ANCOM shall take the necessary measures in order to ensure that citizens are adequately informed about the existence and use of the single emergency call number 112, including through initiatives specifically targeting the persons who travel in the Member States of the European Union.

**Art. 71.** – (1) The international access code is “00”.

(2) Calls between geographic points located close one to another, on the one side and another of Romania’s border, may be achieved based on special arrangements.

(3) The providers of publicly available electronic communications services shall promptly and completely inform the end-users from the respective locations on the existence and content of the arrangements referred to in paragraph (2).

(4) The providers of publicly available telephone services allowing international calls have the obligation to convey to destination all calls made to and from the European Telephony Numbering Space, at retail rates similar to those applied for calls to and from other Member States of the European Union.

**Art. 72.** – (1) The national short numbers in the 116(xyz) numbering range are reserved for the provision of harmonised services of social value at European level.

(2) ANCOM shall take the necessary measures to ensure the allocation and use of all the national short numbers for harmonised services of social value, in particular to ensure the use and accessibility of the 116000 number as a hotline for missing children.

(3) ANCOM shall adopt specific measures to ensure that disabled end-users are able to access the harmonised services of social value to the greatest extent possible.

(4) The measures taken pursuant to paragraph (3), in particular to facilitate the disabled end-users’ access to the numbers referred to in paragraph (1) whilst travelling in other Member States of the European Union, shall be based on compliance with the relevant standards or specifications referred to in Article 8 of Government Emergency Ordinance no. 22/2009, approved by Law no. 113/2010, with the subsequent amendments.

(5) ANCOM shall take the necessary measures to ensure that citizens are properly informed about the existence and use of the national short numbers in the 116(xyz) numbering range, including through initiatives specifically targeting the persons who travel between the Member States of the European Union.

**Art. 73.** – (1) The providers of public electronic communications networks and the providers of publicly available electronic communications services have the obligation to offer their subscribers the possibility to restrict, out of commercial reasons, the access of callers from certain geographic areas outside Romania's territory to the numbers which were assigned to them.

(2) To the extent this is technically and economically feasible and except for the situation under paragraph (1), ANCOM may take all necessary measures in order to ensure that the end-users:

a) are able to access and use services provided by means of non-geographic numbers within the European Union; and

b) are able to access all numbers used across the European Union, irrespective of the technology and equipment used by the operator, including the numbers from the National Numbering Plans of other Member States of the European Union, the numbers from the European Telephony Numbering Space and the universal international freephone numbers.

(3) Upon its own initiative or, as the case may be, upon the request of the relevant authorities, ANCOM may require the providers of public electronic communications networks and the providers of publicly available electronic communications services to block, on a case-by-case basis, the access to certain numbering resources or to certain services, in case of fraud or misuse.

(4) In the case under paragraph (3), ANCOM may require the providers to withhold the relevant interconnection or other service revenues.

## ***Section 4***

### ***Ensuring of additional facilities***

**Art. 74.** – (1) Without prejudice to the universal service obligations which may be imposed according to Article 84 paragraphs (3) to (12), ANCOM may require the providers of publicly available telephone services and the providers offering services of access and connection to the public electronic communications networks to ensure the facilities referred to in paragraphs (2) and (4).

(2) The obligations imposed according to paragraph (1) may concern, where technically feasible and economically viable:

a) services of dual-tone multi-frequency signalling (DTMF), according to the European standards or to the national standards which implement this standard in the Member States of the European Union;

b) services of calling-line identification, under the conditions of Article 7 of Law no. 506/2004, with the subsequent amendments.

(3) To the extent this is technically feasible, the providers of public electronic communications networks shall provide data and signals to facilitate the provision of the services under paragraph (1) among the Member States of the European Union.

(4) ANCOM may impose on the providers referred to in paragraph (1) the obligation to offer one or several of the facilities under Article 84 paragraphs (3) to (12).

(5) ANCOM may withdraw the obligations imposed according to paragraphs (1) to (4), on the entire national territory or on a share of its territory, if, upon the consultation described in Article 135, it deems that these facilities are widely accessible.

**Art. 75.** – (1) The providers of publicly available electronic communications services shall ensure their subscribers, who were assigned numbers from the National Numbering Plan, the possibility to keep upon request these numbers, independently of the service provider, as follows:

a) at a certain geographic point, in the case of the geographic numbers;

b) at any geographic point, in the case of the non-geographic numbers.



(2) The provisions of paragraph (1) shall not apply in the case of the transfer of numbers between the electronic communications services at fixed locations and the electronic communications services at mobile locations.

(3) ANCOM may establish the conditions related to the porting of numbers, taking into account the legal provisions referring to contracts, technical feasibility, need to maintain the continuity of the service for the subscriber and celerity of the porting process.

(4) ANCOM shall impose specific obligations to ensure that the pricing between the providers of electronic communications networks or between the providers of electronic communications services related to the provision of number portability are cost-oriented and that the charges the subscribers owe for this service, if any, do not act as a disincentive against changing the service provider.

(5) ANCOM may not impose retail tariffs for the porting of numbers in a manner that would distort competition, such as by setting specific or common retail tariffs.

(6) The subscribers who concluded an agreement to port a telephone number shall have that number activated within one working day, and the electronic communications service shall not be interrupted during the porting process for more than one working day.

(7) ANCOM shall, where necessary, take suitable measures to ensure that subscribers are protected throughout the porting process and that they are not switched to another provider against their will. The regulatory authority may inclusively establish compensations in case of delay of porting or abuse of porting.

(8) Without prejudice to the minimum contractual period, the procedure and the conditions for contract termination provided for in Article 50 may not act as a disincentive against the ensuring of the number portability service.

## **CHAPTER VI**

### **Universal service**

#### ***Section 1***

#### ***Services within the scope of universal service***

**Art. 76.** – (1) The right of access to the universal service is the right of all end-users on the Romanian territory to benefit from the services set out in this Section, at the quality specified and at an affordable price, independently of the geographical location.

(2) Any person has the right to access the services within the scope of universal service.

**Art. 77.** – (1) The Ministry of Communications and Information Society, hereinafter referred to as *MCSI*, adopts the policy and strategy on the implementation of universal service, in compliance with the principles of transparency, objectivity, proportionality and non-discrimination.

(2) Based on the policy and strategy referred to in paragraph (1), ANCOM shall establish the conditions and the procedure applicable to designate one or several providers of electronic communications networks or services as universal service providers, so as to ensure the right of access to the universal service throughout Romania. To this end, ANCOM may designate one or several universal service providers to provide one or several services within the scope of universal service, in certain areas or on the entire territory of Romania.

(3) When establishing the conditions and the procedure referred to in paragraph (2), the regulatory authority shall seek to minimise the possible negative effects on competition, in particular in relation to the provision of services within the scope of universal service at prices or subject to terms and conditions which depart from the normal commercial conditions, whilst safeguarding the public interest.

(4) The conditions and the procedure on the designation of universal service providers shall be set up by ANCOM, in compliance with the principles of efficiency, objectivity, transparency and non-discrimination, and no provider of electronic communications networks or services shall be *a priori* excluded from being designated.

(5) The designation procedure shall ensure that the services within the scope of universal service are provided in a cost-effective manner and may be used as a means for determining the net cost of the universal service obligations in accordance with Article 86.

(6) The universal service providers may be designated for a period of up to 10 years.

(7) ANCOM shall notify in the shortest time possible to the European Commission the universal service providers and the universal service obligations imposed, as well as any other related changes.

**Art. 78.** – (1) Without prejudice to the obligations incumbent as regards the economic concentration operations, when a universal service provider, designated in accordance with Article 77, intends to transfer, under any title, a substantial part or the totality of the assets corresponding to the access network to a distinct legal person directly or indirectly controlled by a different owner, the respective provider shall prior inform ANCOM, under the conditions established by the regulatory authority.

(2) ANCOM shall assess the effects of the transfer on the provision of the services within the scope of universal service for which the respective universal service provider was designated and may impose, amend or withdraw certain obligations so as to ensure that the universal service obligations are observed.

**Art. 79.** – (1) ANCOM shall take all necessary measures and shall set out the conditions to ensure that the reasonable requests of the end-users for access and connection, at a fixed location, to the public electronic communications networks are met by at least one provider of electronic communications networks or services.

(2) The connection provided shall enable the end-users to make voice communications, facsimile communications and data communications, at transfer speeds that are sufficient to permit functional Internet access, taking into account prevailing technologies used by the majority of subscribers and technological feasibility.

(3) ANCOM shall take all necessary measures and shall set out the conditions to ensure that the reasonable requests of the end-users for the provision of publicly available telephone service supplied by means of the connection referred to in paragraph (1), allowing

for making and receiving national and international calls, are covered by at least one provider of electronic communications networks or services.

(4) The universal service providers designated to provide the services mentioned in paragraphs (1) and (3) shall handle the requests of all the end-users, in a specified term, under the conditions imposed by ANCOM.

**Art. 80.** – (1) ANCOM shall designate the universal service providers that have the obligation to make available to the end-users at least one comprehensive subscriber directory, in a whether printed or electronic form or in both forms. The directory shall be updated on a regular basis, at least once a year, and its form shall be previously approved by ANCOM.

(2) ANCOM shall designate the universal service providers that have the obligation to make available to the end-users, including users of public pay telephones or of other public points of access to telephone services, at least one comprehensive directory enquiry service.

(3) The subscriber directory referred to in paragraph (1) and the directory enquiry service under paragraph (2) shall comprise information concerning the telephone numbers and the personal data of all subscribers of publicly available telephone services, in compliance with Article 11 of Law no. 506/2004, with the subsequent completions.

(4) The universal service providers making available the subscriber directories or the directory enquiry service, in conformity with paragraphs (1) to (3), shall apply the principle of non-discrimination to the treatment of information that has been provided to them.

**Art. 81.** – (1) ANCOM may designate the universal service providers that have the obligation to ensure access to public pay telephones or other public points of access to telephone services, to meet the reasonable needs of end-users.

(2) ANCOM may impose on the universal service providers the obligation to ensure a certain number of public pay telephones or of other public points of access to telephone services, a proper geographical coverage with these facilities, a certain level of the quality of service, as well as to ensure the accessibility of these devices to disabled users, in keeping with their deficiencies.

(3) ANCOM may decide not to impose the obligations laid down in paragraphs (1) and (2) in all or part of the national territory, if it deems that the services under paragraph (1) or other comparable services are widely available. In taking such measure, ANCOM shall observe the public consultation procedure under Article 135.

(4) The universal service providers designated to provide the services specified in paragraphs (1) and (2) shall ensure that end-users are able to make emergency calls from public pay telephones or from other public points of access to telephone services using the single European emergency call number 112, all free of charge and without having to use any means of payment.

**Art. 82.** – (1) Except for the cases where equivalent measures have been taken to protect the disabled end-users' rights on grounds of Article 63, ANCOM shall, where appropriate, take specific measures in order to ensure the access and possibility of disabled end-users to benefit from the services specified in Articles 79 to 81, under equivalent conditions available to other end-users, including measures concerning the accessibility of certain terminal equipment.

(2) ANCOM may take the measures under paragraph (1) only upon assessing the general needs and the specific requirements, including the scope of application and the concrete form of these measures intended for disabled end-users.

(3) ANCOM may take measures to ensure that disabled end-users are able to benefit from the same service offer available to the majority of end-users.

(4) When adopting the measures referred to in paragraphs (1) and (3), ANCOM shall encourage the compliance with the relevant technical standards or specifications published in accordance with Article 8 of Government Emergency Ordinance no. 22/2009, approved by Law no. 113/2010, with the subsequent amendments.

**Art. 83.** – (1) ANCOM shall monitor the evolution and level of tariffs of the services offered according to Articles 79 to 82, provided by the universal service providers or available on the market, if no universal service provider was designated for the respective services, in particular in relation to the general consumer prices and income.

(2) ANCOM may, in the light of national conditions, require that designated universal service providers provide tariff options or packages to consumers which depart from those provided under normal commercial conditions, in particular to ensure that those on low incomes or with special social needs can access or use the services referred to in Articles 79 to 82. MCSI may set out in the strategy mentioned in Article 77 paragraph (1) the categories of persons benefiting from the tariff options or packages offered.

(3) ANCOM may require the universal service providers to apply common tariffs, including geographical averaging, throughout the national territory, in the light of specific conditions, or to comply with tariff ceilings or price caps.

(4) Besides the measures set out in paragraphs (2) and (3), ANCOM may establish additional measures to support the persons on low incomes or with special social needs.

(5) The conditions under which the end-users benefit from the tariffs provided for in paragraphs (2) and (3) shall be transparent, published and applied in accordance with the principle of non-discrimination by the universal service providers which were imposed the obligation to charge such tariffs.

(6) ANCOM may require that specific tariffs or tariff schemes be modified or withdrawn, in compliance with the consultation procedure under Article 135.

**Art. 84.** – (1) The provision by the universal service providers of services under the conditions of Articles 79 to 82 may not be bound by the offering of additional facilities or services which are not necessary for the provision of the service requested.

(2) The provisions of paragraph (1) shall not apply to the cases where the additional services or facilities have been explicitly requested by subscribers.

(3) The providers with universal service obligations imposed according to Articles 79 to 82 and Article 83 paragraph (2) shall ensure the following facilities, to enable the subscribers to monitor and control expenditure and avoid unwarranted disconnection of service:

a) itemised billing, upon request, free of charge;

b) selective call barring for outgoing calls, short text messages or premium rate video messages, or, where technically possible, of other similar applications of specific categories or to certain categories of numbers, upon request, free of charge;

c) pre-payment systems;

d) phased payment of the fees for connection to the public electronic communications network;

e) specific measures applicable in case of non-payment of bills;

f) tariff advice;

g) cost control means.

(4) ANCOM may set out, in compliance with Article 6 of Law no. 506/2004, with the subsequent amendments, the minimum information which needs to be found in the itemised bill to be issued free of charge by the universal service providers according to paragraph (3) letter a), to enable the subscribers:

a) to verify and control the charges incurred for access to the public electronic communications network or for the publicly available telephone services provided;

b) to adequately monitor their usage and expenditure, and thereby exercise a reasonable degree of control over their bills.

(5) Where appropriate, additional levels of detail to those established in paragraph (4) may be offered to subscribers at reasonable tariffs or at no charge, with the prior approval of ANCOM. Calls which are free of charge to the calling subscriber, including emergency calls, are not to be identified in the calling subscriber's itemised bill.

(6) ANCOM may require the universal service providers to provide means for end-users to pay for access to the public electronic communications network or use of the publicly available telephone services on pre-paid terms.

(7) ANCOM may require the universal service providers to provide means to allow the end-users to pay for connection to the public electronic communications network on the basis of payments phased over time.

(8) ANCOM shall authorise the specific measures which the universal service providers may take in case of non-payment of telephone bills. These measures shall be published, proportionate and non-discriminatory.

(9) Except in cases of fraud, persistent late payment or non-payment of telephone bills, the measures under paragraph (8) are to ensure, as far as it is technically feasible, that any service interruption is confined to the service concerned.

(10) In all cases, the interruption of the provision, at a fixed location, of the publicly available telephone service or the disconnection from the public electronic communications network for non-payment of the telephone bill shall take place only after due warning is given to the subscriber by the provider. The disconnection from the public electronic communications network may not take place earlier than 60 days from interruption, timeframe in which only the initiation or reception of calls that do not incur a charge to the subscriber are permitted.

(11) ANCOM may impose on universal service providers the obligation to make available to subscribers, at their request, information on alternative tariff plans, with lower prices, if these exist within certain public offers.

(12) ANCOM may impose on universal service providers the obligation to offer other cost control facilities, including the sending, free of charge, of messages to alert the end-users when an abnormal or excessive consumption pattern occurs.

(13) ANCOM may decide not to impose or to withdraw the obligations laid down in paragraphs (3) to (12) in all or part of the national territory, if these facilities are widely available.

**Art. 85.** – (1) The universal service providers shall publish and update periodically, at least once a year, information concerning the quality of the services within the scope of universal service they provide, based on the quality of service parameters, definitions and measurement methods under Annex no. 1.

(2) ANCOM may specify additional quality of service parameters for the provision of services within the scope of universal service, among others, for the provision of certain services to disabled end-users.

(3) The universal service providers shall publish and update the information concerning their performance in relation to the parameters set out by ANCOM in accordance with paragraph (2).

(4) The universal service providers shall supply to ANCOM the information published pursuant to paragraphs (1) and (3), under the conditions established by the regulatory authority.



(5) ANCOM shall specify the content, form, terms and manner of information under paragraphs (1) and (3) to be published, in order to ensure that end-users have access to comprehensive, comparable and user-friendly information.

(6) ANCOM may set performance targets for universal service providers concerning the quality of the services within the scope of universal service they have the obligation to provide, complying with the consultation procedure under Article 135.

(7) ANCOM may verify the data on the quality of service levels or performance targets, published or set on grounds of this Article, by ordering an independent audit, paid for by the universal service provider concerned, in order to ensure the accuracy and comparability of the data made available by that provider.

## ***Section 2***

### ***Mechanisms of financing universal service obligations***

**Art. 86.** – (1) Where the regulatory authority considers that the provision of universal service as set out in Articles 79 to 85 may represent an unfair burden to the universal service providers, ANCOM shall determine the net cost of its provision.

(2) To this end, ANCOM may resort to one of the following methods:

a) calculate the net cost incurred by the fulfilment of the obligations to provide services within the scope of universal service, pursuant to the methodology set out by ANCOM, taking into account all the commercial benefits which may be accrued by the universal service provider;

b) make use of the net cost resulted from implementing the procedure of designation of the universal service provider, established according to Article 77 paragraphs (4) and (5).

**Art. 87.** – (1) The net cost of the universal service obligations shall be calculated as the difference between the net cost borne by a universal service provider as a result of the universal service obligations and the net cost of the same provider, in the case when it would have operated without the universal service obligations.

(2) In calculating the net cost, all relevant elements shall be taken into consideration, such as the benefits to the universal service provider, including the intangible benefits, the level of national network development and the principle of cost efficiency.

(3) The net cost calculation shall be based upon the costs attributable to:

a) elements of the universal service obligations which can only be provided at a loss or provided under cost conditions falling outside normal commercial standards;

b) specific end-users or groups of end-users who, taking into account the cost of providing a certain category of networks and services, the revenue generated and any common tariffs imposed based upon a geographical averaging of prices, can only be served at a loss or under cost conditions falling outside normal commercial standards.

(4) The net cost of specific elements of universal service obligations shall be calculated separately and so as to avoid the double counting of any direct or indirect benefits or costs.

(5) The overall net cost of universal service obligations to any universal service provider shall be calculated as the sum of the net costs arising from the individual components of universal service obligations, taking account of any intangible benefits.

(6) The accounting information and any other information used for calculating the net cost of the universal service obligations, pursuant to this Article, shall be verified either by ANCOM or by an independent auditor, while the audit will be approved by ANCOM. The results of the cost calculation and the conclusions of the audit shall be made publicly available by ANCOM.

**Art. 88.** – (1) Where, on the basis of the net cost calculation referred to in Articles 86 and 87, the regulatory authority finds that the provision of services within the scope of universal service is an unfair burden to the universal service provider, upon request from the universal service provider, ANCOM shall decide to compensate the net cost thus determined.

(2) ANCOM shall determine the mechanism to compensate the net cost of the universal service obligations in compliance with the principles of transparency, least distortion to competition, non-discrimination and proportionality, based upon contributions from the providers of electronic communications networks and services. For that purpose, ANCOM shall establish:

a) the providers of electronic communications networks and the providers of electronic communications services that have the obligation to contribute to compensation;

b) the amount of the owed contributions and the calculation basis for these contributions so as to avoid double imposition of certain categories of revenues;

c) payment means and term;

d) any other elements necessary for the functioning of this mechanism.

(3) ANCOM may decide not to require contributions for the compensation of the net cost of the provision of services within the scope of universal service from the providers whose turnover is below a set limit.

(4) Any contribution to the compensation of the net cost of the provision of services within the scope of universal service shall be identified separately for each provider.

(5) Only the services provided according to the provisions of Articles 79 to 85 may be financed via the compensation mechanism referred to in paragraph (2).

**Art. 89.** – The contributions meant to compensate the net cost of the universal service obligations shall be administered by ANCOM and distinctly highlighted in the income and expenditure budget.

**Art. 90.** – (1) ANCOM shall make public and shall notify to the European Commission the mechanism to compensate the net cost set out pursuant to Article 88.

(2) Where the net cost of the provision of services within the scope of universal services was compensated, ANCOM shall publish an annual report on this cost, the contributions of each provider of electronic communications networks and services determined according to Article 88 paragraph (2), as well as the commercial benefits which could have been accrued to the universal service provider in relation to the services within the scope of universal service it is obliged to provide.

**Art. 91.** – (1) The contributions owed by the providers of electronic communications networks and services to compensate the net cost of the provision of services within the scope of universal service stand for budgetary debts administered by ANCOM, and the provisions of Government Ordinance no.92/2003 on the fiscal procedure code, republished,

with the subsequent amendments and completions, shall correspondingly apply, except for the cases where a specific law provides otherwise.

(2) If, within 60 days from the due date of payment, the provider does not pay the contributions and its accessories, ANCOM may suspend or withdraw from that provider the right to provide electronic communications networks or services based on the general authorisation.

## **CHAPTER VII**

### **Fostering market competition**

#### ***Section 1***

#### ***Market analysis***

**Art. 92.** – (1) ANCOM shall, taking account of the European Commission recommendation on the markets of products and services within the electronic communications sector, the characteristics of which may be such as to justify the imposition of specific obligations on the providers of electronic communications networks or services with significant market power, referred to in Article 15 paragraph (1) of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, with the subsequent amendments, hereinafter referred to as the *Framework Directive*, and of the guidelines of the European Commission for market analysis and the assessment of significant market power, specified in Article 15 paragraph (2) of the Framework Directive, identify the relevant markets in the electronic communications sector appropriate to national circumstances, in particular relevant geographic markets within the national territory.

(2) ANCOM may identify relevant markets in the electronic communications sector which are different from those enlisted in the recommendation under paragraph (1).

(3) In accordance with the guidelines under paragraph (1), ANCOM shall carry out market analyses on the relevant markets identified pursuant to paragraphs (1) or (2), to determine the competitive environment on these markets and to decide whether the specific

obligations under Subparagraph 3 of Section 2 within the present Chapter or under Section 3 within the same Chapter need to be imposed, maintained, amended or withdrawn.

(4) The relevant markets in the electronic communications sector shall be identified and the market analyses on the identified markets shall be carried out in compliance with the principles of the competition law. As for market analyses, where required, ANCOM shall request the collaboration of the Competition Council.

(5) The measures on the identification of the relevant markets in the electronic communications sector pursuant to paragraphs (1) and (2) or the market analyses under paragraph (3) shall be subject to the procedures referred to in Articles 97, 98 and 135.

**Art. 93.** – (1) Where ANCOM must decide whether certain specific obligations referred to in Subparagraph 3 of Section 2 within the present Chapter or in Section 3 within the same Chapter need to be imposed, maintained, amended or withdrawn, it shall determine on the basis of its market analysis carried out in accordance with Article 92 paragraph (3) whether a relevant market is effectively competitive.

(2) Where, following its market analysis, ANCOM concludes that a relevant market in the electronic communications sector is not effectively competitive, it shall identify the providers of electronic communications networks or services with significant market power in accordance with Article 94 or 95 and shall appropriately impose on them one or several of the obligations provided for in Article 92 paragraph (3), or it shall maintain or amend such obligations, where they already exist.

(3) Where, following its market analysis, ANCOM concludes that a relevant market in the electronic communications sector no longer presents characteristics which may justify the imposition of specific obligations on the providers of electronic communications networks or services with significant market power or that a relevant market is effectively competitive, it shall not impose any of the specific obligations referred to in Article 92 paragraph (3) or shall withdraw them, where they exist. The ANCOM President's decision withdrawing obligations imposed on a provider of electronic communications networks or services shall set an appropriate term from which the respective obligations cease, to enable the persons affected by such measure to adjust to the new conditions.

(4) In the case of transnational markets identified by the European Commission, in accordance with Article 15 paragraph (4) of the Framework Directive, which cover partially or totally the Romanian territory, ANCOM shall, jointly with the other national regulatory authorities in communications concerned, conduct the market analyses, identify the providers with significant market power and decide on any imposition, maintenance, amendment or withdrawal of the specific obligations referred to in Article 92 paragraph (3) in a concerted manner.

(5) The measures under paragraphs (1) to (4) shall be subject to the procedures referred to in Articles 97, 98 and 135.

**Art. 94.** – (1) A provider of electronic communications networks or services shall be deemed to have significant market power on a certain market if, either individually or jointly with others, it enjoys a position equivalent to dominance in the respective market.

(2) A *dominant position on a certain market* means the situation where a provider of electronic communications networks or services has the power to behave to an appreciable extent independently of competitors, customers and consumers.

(3) Two or several providers of electronic communications networks or services may be found to be in a joint dominant position in a relevant market if, in the absence of structural or other links between them, they operate in a relevant market which is characterised by a lack of effective competition and in which no single provider has significant market power.

(4) In order to determine if two or several providers of electronic communications networks or services have a joint significant power on a relevant market within the meaning of paragraph (3), ANCOM shall take account of the guidelines specified in Article 92 paragraph (1) and of the specific characteristics of the relevant market subjected to analysis. Out of these characteristics, ANCOM may take into consideration *inter alia*:

- a) market concentration;
- b) low elasticity of demand;
- c) similar market shares;
- d) high legal or economic barriers to entry;

- e) vertical integration with collective refusal to supply;
- f) lack of countervailing buyer power;
- g) lack of potential competition.

**Art. 95.** – (1) Where a provider of electronic communications networks or services has significant market power on a specific market, it may also be deemed to have significant market power on a closely related market, where the links between the two markets are such as to allow the market power held in one market to be leveraged into the other market, thereby strengthening the market power of the respective provider.

(2) In the case exposed in paragraph (1), ANCOM may impose on the provider with significant power on the second market one or several of the specific obligations laid down in Articles 106, 107, 108 or 110 and, where these obligations are not sufficient, one or several of the obligations laid down in Section 3 of this Chapter.

**Art. 96.** – (1) ANCOM shall conduct market analyses pursuant to Article 93 and shall apply the notification procedure specified in Article 97 on these draft measures, as follows:

a) within 3 years from the adoption of the measures on the basis of the previous analysis conducted on the market concerned. Exceptionally, this term may be extended with up to 3 years, if ANCOM notifies to the European Commission a reasoned proposal of extension and the Commission does not transmit any objection within one month from notification;

b) within 2 years from the adoption of a new recommendation by the European Commission, in line with the provisions of Article 15 paragraph (1) of the Framework Directive, for the markets which have not been previously notified to the Commission.

(2) If ANCOM does not conduct the market analyses provided for in the recommendation adopted according to Article 15 paragraph (1) of the Framework Directive in the timelines specified in paragraph (1), it may request assistance from BEREC in order to complete the analysis of the relevant markets and impose the appropriate specific obligations.

(3) In the case under paragraph (2), ANCOM shall notify to the European Commission the appropriate draft measures within 6 months, pursuant to Article 97.

**Art. 97.** – (1) Upon completion of the procedure referred to in Article 135, except for the cases depicted in the recommendation or guidelines adopted pursuant to Article 7b of the Framework Directive, where ANCOM intends to take a measure from those mentioned in Articles 92, 93, 100 or 105, which would affect the trade between the Member States of the European Union, it shall make the draft measure accessible to the European Commission, BEREC and the national regulatory authorities in communications from the other Member States of the European Union, at the same time, alongside the reasoning on which the measure is based. The provisions of Article 121 paragraph (6) shall appropriately apply.

(2) After receiving the comments and suggestions transmitted by the European Commission, BEREC and the other national regulatory authorities in communications from the other Member States of the European Union or, otherwise, after the expiration of a one-month term from notification, ANCOM may adopt the measure under paragraph (1).

(3) Where the measure covered by paragraph (1) aims at identifying a relevant market which differs from those identified in the European Commission recommendation referred to in Article 15 paragraph (1) of the Framework Directive, or determining the competitive environment in a relevant market, in view of finding whether there are providers of electronic communications networks or services with significant market power, and where this measure would affect the trade between Member States of the European Union, and the European Commission indicated in the comments and suggestions sent to ANCOM according to paragraph (2) that it considers that the measure would create a barrier to the single market or if it has serious doubts as to its compatibility with Community law and in particular with the objectives referred to in Articles 4–6<sup>1</sup> of Government Emergency Ordinance no. 22/2009, approved by Law no. 113/2010, with the subsequent amendments, ANCOM may not adopt the proposed measure for further two months.

(4) Where, in the two-month period referred to in paragraph (3), the European Commission adopts a decision requiring ANCOM to withdraw the draft measure, the regulatory authority shall amend or withdraw the draft measure within six months from the Commission's decision. When ANCOM decides to amend the draft measure, it shall undertake



a new public consultation in accordance with Article 135 and shall re-notify the amended draft measure.

(5) Except for the cases covered by paragraphs (3) and (4), ANCOM may adopt the draft measure, taking the utmost account of comments of the European Commission, other national regulatory authorities in communications from other Member States of the European Union and BEREC, within the timeframe specified in paragraph (2). ANCOM shall communicate the adopted measure to the European Commission and BEREC.

(6) By way of exception from the provisions of paragraphs (1) to (5), when there is an urgent need to act, in order to safeguard competition and the end-users' interests, ANCOM may take provisional measures, in compliance with the principle of proportionality. ANCOM shall, without delay, communicate those measures, with full reasons, to the European Commission, national regulatory authorities in communications from the other Member States of the European Union and BEREC.

(7) A decision to extend the timeframe for which the measures under paragraph (6) are applicable or to render them definitive shall be subject to the procedure referred to in paragraphs (1) to (5).

**Art. 98.** – (1) Where the measure that ANCOM intends to adopt aims at imposing, amending or withdrawing a specific obligation in application of Article 93 in conjunction with Articles 100, 106 to 110 or Section 3 hereunder, the regulatory authority may not adopt the respective measure for a 3-month period if the European Commission, within the period of one month provided for by Article 97 paragraph (2), notifies the regulatory authority of its reasons for considering that the draft measure would create a barrier to the single market or its serious doubts as to its compatibility with European Union law.

(2) In the absence of such notification referred to in paragraph (1), ANCOM may adopt the draft measure, taking account of any comments made by the European Commission, other national regulatory authorities in communications from the other Member States of the European Union and BEREC.

(3) Within the period of time referred to in paragraph (1), ANCOM shall cooperate with the European Commission and BEREC to identify the most effective and appropriate measure in the light of the objectives laid down in Articles 4 to 6<sup>1</sup> of Government Emergency

Ordinance no. 22/2009, approved by Law no. 113/2010, with the subsequent amendments, whilst taking due account of the views of interested persons and the need to ensure the development of consistent regulatory practice.

(4) If BEREC shares the view of the European Commission expressed in the notification referred to in paragraph (1), ANCOM shall cooperate closely with BEREC to identify the most effective and appropriate measure. Before the end of the 3-month period, ANCOM may:

a) amend or withdraw its draft measure taking account of the European Commission's notification and of BEREC's opinion;

b) maintain its draft measure.

(5) Within one month of the European Commission issuing a recommendation requiring the national regulatory authority to amend or withdraw the draft measure or a decision to lift its reservations indicated in accordance with paragraph (1), adopted within the one-month period from the end of the 3-month period, ANCOM shall communicate to the European Commission and BEREC the adopted final measure. This period may be extended to allow the regulatory authority to undertake the public consultation provided for by Article 135.

(6) Where ANCOM decides not to amend or withdraw the draft measure in accordance with the European Commission's recommendation under paragraph (5), it shall provide a reasoned justification therefor.

(7) ANCOM may withdraw the proposed draft measure at any stage of the procedure set out under this Article.

## ***Section 2***

### ***Promoting wholesale competition***

**Art. 99.** – The provisions of this Section shall not apply to the access to electronic communications networks and services achieved by end-users.

## *Subparagraph 1*

### *Ensuring access and interconnection*

**Art. 100.** – (1) The regulatory authority shall encourage and, where appropriate, ensure, in accordance with the provisions of this Emergency Ordinance, adequate access and interconnection, and interoperability of services, exercising its responsibility in a way that promotes economic efficiency, sustainable competition, efficient investments and innovation, and gives the maximum benefit to end-users.

(2) The measures adopted according to paragraph (1) may concern in particular the imposition of the following obligations, without prejudice to the measures that may be taken pursuant to Article 105 regarding operators with significant market power:

a) to the extent that is necessary to ensure end-to-end connectivity, obligations on operators that control access to end-users, including in justified cases the obligation to interconnect their networks;

b) in justified cases and to the extent that is necessary, obligations on operators that control access to end-users to make their services interoperable;

c) to the extent that is necessary to ensure accessibility for end-users to digital radio or television broadcasting services, obligations on operators to provide access to application program interfaces or to electronic programme guides on fair, reasonable and non-discriminatory terms.

(3) Obligations and conditions imposed in accordance with paragraphs (1) and (2) shall be objective, transparent, proportionate and non-discriminatory, and shall be implemented in accordance with the procedures referred to in Articles 97, 98 and 135.

(4) When taking a decision in accordance with this Article, the regulatory authority shall aim at ensuring equivalent access and interconnection conditions for equivalent services, as well as the impossibility to condition the conclusion of the access or interconnection agreement by the acceptance of certain terms which are not related to the object of the agreement.

## *Subparagraph 2*

### *Conditional access systems and other facilities*

**Art. 101.** – Conditional access systems operated on the market shall have the necessary technical capability for cost-effective transcontrol allowing the possibility for full control by electronic communications network operators at local or regional level of the services using such conditional access systems.

**Art. 102.** – The providers of conditional access services, irrespective of the means of transmission, that provide access to digital television and radio services and on whose access services broadcasters depend to reach any group of potential viewers or listeners are to:

a) offer to all broadcasters, on a fair, reasonable and non-discriminatory basis, compatible with the competition law principles, technical services enabling the broadcasters' digitally-transmitted services to be received by viewers or listeners authorised by means of decoders administered by the service operators;

b) keep separate financial accounts within their internal accounting system regarding their activity as conditional access providers.

**Art. 103.** – (1) When granting licences to consumer equipment manufacturers, holders of industrial property rights to conditional access products and systems shall ensure that this is done on fair, reasonable and non-discriminatory terms.

(2) Taking into account technical and commercial factors, holders of rights referred to in paragraph (1) shall not subject the granting of licences to conditions prohibiting, deterring or discouraging the inclusion in the same product of:

a) a common interface allowing connection with several other access systems, or

b) means specific to another access system, provided that the licensee complies with the relevant and reasonable conditions ensuring, as far as it is concerned, the security of transactions of conditional access system operators.

**Art. 104.** – (1) The regulatory authority may undertake market analyses, in accordance with Section 1 of this Chapter, in order to determine whether to maintain, amend

or withdraw the conditions imposed on the conditional access providers, in line with the provisions of this Subparagraph.

(2) Where, as a result of the market analysis referred to in paragraph (1), ANCOM finds that one or several conditional access providers do not have significant power on the relevant market, it may amend or withdraw the conditions imposed on those providers, only to the extent that:

a) accessibility for end-users to radio and television broadcasts and broadcasting services specified in Article 82 of Law no. 504/2002, with the subsequent amendments and completions, would not be adversely affected by such amendment or withdrawal, and

b) the prospects for effective competition in the markets for retail digital television and radio broadcasting services, and conditional access systems and other associated facilities, would not be adversely affected by such amendment or withdrawal.

(3) The measures under paragraph (2) shall be subject to the procedures provided for by Articles 97 and 135.

### *Subparagraph 3*

#### *Obligations imposed on providers with significant power on wholesale markets*

**Art. 105.** – (1) Where an operator is designated as having significant market power on a relevant wholesale market in the electronic communications sector as a result of a market analysis carried out in accordance with Section 1 of this Chapter, the regulatory authority shall impose one or several of the obligations set out in Articles 106 to 110, as appropriate.

(2) To the extent the law does not provide otherwise and without prejudice to Article 13, Article 24 paragraph (2) letter h), Articles 71, 73, 75, 100 and 101 to 104, to the legal framework concerning the right of way, to the relevant provisions of Law no. 506/2004, with the subsequent completions, or to the obligations deriving from international agreements in which Romania is a party, the regulatory authority may not impose the obligations set out in Articles 106 to 110 on operators that have not been designated as having significant market power pursuant to paragraph (1).

(3) In exceptional circumstances, when the regulatory authority intends to impose on an operator designated with significant market power according to paragraph (1) other obligations for access or interconnection than those set out in Articles 106 to 110, it shall submit to the European Commission a request in this regard. The European Commission decision authorising or rejecting the proposed measure shall be published on the ANCOM website.

(4) Obligations imposed in accordance with paragraphs (1) and (3) shall be based on the nature of the problem identified, proportionate and justified in the light of the objectives of the regulatory authority laid down in Articles 4 to 6<sup>1</sup> of Government Emergency Ordinance no. 22/2009, approved by Law no. 113/2010, with the subsequent amendments. Such obligations shall only be subject to the procedures referred to in Articles 97, 98 and 135.

(5) When certain obligations need to be imposed in order to comply with international agreements, the measures imposing, amending or withdrawing such obligations for access or interconnection shall be notified to the European Commission, in line with the procedure referred to in Article 97.

**Art. 106.** – (1) ANCOM may, in accordance with Article 105, impose on operators obligations for transparency in relation to interconnection of the public electronic communications networks or access to these networks or associated facilities, requiring operators to make public specified information, such as technical specifications, network characteristics, accounting information and prices, terms and conditions for supply and use of services, including any conditions limiting access to, or use of, services and applications, in compliance with the legal framework in force.

(2) Where an operator has obligations of non-discrimination, the regulatory authority may require that operator to publish a reference offer, which shall be sufficiently unbundled to ensure that requesters are not required to pay for facilities which are not necessary for the service requested.

(3) The reference offer shall give a sufficiently unbundled description of the services offered, according to market needs, and the associated technical and commercial conditions, including prices, corresponding to each of these services.

(4) The regulatory authority shall be able to impose changes to reference offers to give effect to obligations imposed under this Emergency Ordinance.

(5) The regulatory authority may specify the precise information to be made publicly available, the level of detail required and the manner of publication.

(6) Where an operator has obligations under Article 109 concerning network infrastructure access, the regulatory authority shall impose the obligation to publish a reference offer containing at least the elements set out in Annex no.2.

**Art. 107.** – The regulatory authority may, in accordance with Article 105, impose on operators obligations of non-discrimination with regard to the interconnection of networks or access to these networks or to associated facilities whereby to ensure in particular that the operators:

a) apply equivalent conditions in equivalent circumstances to other persons providing equivalent services;

b) provide services and information to third parties under the same conditions and of the same quality as they provide for their own services, or those of their subsidiaries, secondary headquarters or partners.

**Art. 108.** – (1) ANCOM may, in accordance with Article 105, impose on operators obligations for accounting separation, within their internal accounting system, in relation to specified activities related to the interconnection of networks or access to these networks or to associated facilities.

(2) In particular, the regulatory authority may require a vertically integrated operator to present distinctly its wholesale prices and its internal transfer prices *inter alia* to ensure compliance where there is a requirement for non-discrimination under Article 107 or to prevent cross-subsidy. The regulatory authority may specify the format and accounting methodology to be used in view of observing this obligation, pursuant to the legal provisions in force.

(3) In order to facilitate the verification of compliance with obligations of transparency and non-discrimination, the regulatory authority may impose on operators the

obligation to provide on request accounting records, including data on revenues received from third parties, in compliance with the legal framework in force.

(4) The regulatory authority may publish the accounting information received, according to the law, with a view to promote an open and competitive market.

**Art. 109.** – (1) The regulatory authority may, in accordance with Article 105, require the operators to allow access to, and use of, specified network elements or associated facilities, in particular in situations where it considers that denial of access or unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level, or would not be in the end-user's interest.

(2) The obligations under paragraph (1) may require the operators, *inter alia*:

a) to give a third party access to specified network elements or associated facilities, including access to network elements which are not active and unbundled access to the local loop, to provide, among others, carrier selection or pre-selection services and subscriber line resale offer;

b) to negotiate in good faith with any third party requesting access;

c) not to withdraw access to facilities already granted;

d) to provide specified services on a wholesale basis for resale by third parties;

e) to grant open access to technical interfaces, protocols or other key technologies which are indispensable for the interoperability of services, including virtual network services;

f) to provide co-location or other forms of associated facilities sharing;

g) to provide specified services needed to ensure interoperability of end-to-end services to users, including facilities for intelligent network services or roaming on mobile networks;

h) to grant access to operational support systems or similar software systems necessary to ensure fair competition in the provision of services;

i) to interconnect networks or network facilities;

j) to provide access to associated services such as identity, location and presence services.



(3) ANCOM may attach to the obligations laid down in paragraph (1) conditions covering fairness, reasonableness and timeliness of their observance.

(4) When imposing the obligations laid down in paragraph (1), the regulatory authority shall take account in particular of the following:

a) the technical and economic viability of using or installing competing facilities, in the light of the rate of market development, taking into account the nature and type of interconnection and access involved, including the viability of other upstream access products such as access to ducts;

b) the feasibility of providing the access requested, in relation to the capacity available;

c) the initial investment by the facility owner, taking account of any public investment made and the risks involved in making the investment;

d) the need to safeguard competition in the long term, with particular attention to economically efficient infrastructure-based competition;

e) where appropriate, any relevant intellectual property rights;

f) the provision of pan-European services.

(5) When imposing obligations on an operator in accordance with the provisions of this Article, ANCOM may lay down technical or operational conditions to be met by the provider or the beneficiaries of such access to ensure normal operation of the network. Obligations to follow specific technical standards or specifications shall be established in compliance with the provisions laid down in Article 8 of Government Emergency Ordinance no. 22/2009, approved by Law no. 113/2010, with the subsequent amendments.

**Art. 110.** – (1) The regulatory authority may, in accordance with the provisions of Article 105, impose obligations relating to cost recovery and price controls, including obligations for cost orientation of prices and obligations concerning cost accounting systems, for the provision of specific types of access or interconnection, in situations where a market analysis carried out according to the law indicates a lack of effective competition, which means that the operator concerned may sustain prices at an excessively high level or that the difference between the retail prices and the wholesale prices charged to the providers offering similar retail services leads to anti-competitive effects, to the detriment of end-users.

To encourage investments, in particular in next generation networks, the regulatory authority shall take into account the efficient investment made by the operator concerned and allow it a reasonable rate of return on adequate capital employed, taking into account any risks specific to a particular new network investment project.

(2) Any cost recovery mechanism or pricing methodology, imposed according to paragraph (1), shall serve to promote economic efficiency and competition and maximise consumer benefits. In this regard, the regulatory authority may take account of prices charged in comparable competitive markets.

(3) Where an operator has an obligation regarding the cost orientation of its prices, the burden of proof that the respective charges are derived from costs, including a reasonable rate of return on investment, shall lie with the operator concerned. For the purpose of calculating the cost of efficient provision of services, the regulatory authority may use cost accounting methods independent of those used by the operator. The regulatory authority may require an operator to provide full justification for its prices, and may, where appropriate, require prices to be adjusted.

(4) Where implementation of a cost accounting system is mandated in order to support price controls, a description of the cost accounting system shall be made publicly available, showing at least the main categories under which costs are grouped and the rules used for the allocation of costs. Compliance with the cost accounting system shall be annually verified by a qualified independent body. The results of this verification shall be published under the conditions set out by the regulatory authority.

**Art. 111.** – (1) In exceptional circumstances, where the regulatory authority concludes that the obligations imposed according to Articles 106 to 110 have failed to achieve effective competition and that there are important and persisting competition problems in relation to the provision of certain access services on the wholesale markets, it may, in accordance with the provisions of Article 105 paragraph (3), impose an obligation on vertically integrated operators to place activities related to the wholesale provision of relevant access services in an independently operating business entity.

(2) The business entity referred to in paragraph (1) shall supply access services to all requesters, including to other business entities within the parent company, by means of the

same systems and processes and on the same timescales, terms and conditions, including those relating to price and service levels.

(3) When the regulatory authority intends to impose an obligation for functional separation, it shall submit a proposal to the European Commission that includes:

a) evidence justifying the conclusions of the regulatory authority as referred to in paragraph (1);

b) a reasoned assessment that there is no or little prospect of effective and sustainable infrastructure-based competition within a reasonable timeframe;

c) an analysis of the expected impact on the regulatory authority, on the operator, in particular on the workforce of the separated operator, on the electronic communications sector as a whole, and on incentives to invest in a sector as a whole, particularly with regard to the need to ensure social and territorial cohesion, and on other stakeholders including, in particular, the expected impact on competition and any potential entailing effects on consumers;

d) an analysis of the reasons justifying that this obligation would be the most efficient means to enforce remedies aimed at addressing the competition problems identified.

(4) The draft measure on the functional separation obligation shall include the following elements:

a) the precise nature and level of separation, specifying in particular the legal status of the separate business entity;

b) an identification of the assets of the separate business entity, and the services to be supplied by that entity;

c) the governance arrangements to ensure the independence of the staff employed by the separate business entity, and the corresponding incentive and remuneration structure;

d) rules for ensuring compliance with the obligations;

e) rules for ensuring transparency of operational procedures, in particular towards other stakeholders;

f) a monitoring programme to ensure compliance, including the publication of an annual report.

(5) Following the European Commission's decision authorising the draft measure proposed in accordance with Article 105 paragraph (3), ANCOM shall conduct a coordinated

analysis of the different markets related to the access network in accordance with the provisions of Section 1 under this Chapter. On the basis of its assessment, the regulatory authority shall impose, maintain, amend or withdraw the specific obligations, in accordance with Articles 97, 98 and 135.

(6) The operator on which functional separation has been imposed may be subject to any of the obligations identified in Articles 106 to 110 in the relevant markets where it has been designated as having significant market power, or any other obligations authorised by the European Commission, pursuant to Article 105 paragraph (3).

**Art. 112.** – (1) Without prejudice to the obligations incumbent with regard to the economic concentration operations, vertically integrated operators which have been designated as having significant market power in one or several relevant markets in the electronic communications sector, in accordance with Section 1 of this Chapter, shall inform the regulatory authority in advance and in a timely manner, in order to allow the regulatory authority to assess, according to paragraph (4), the effect of the intended transaction, when they intend to transfer their access network assets or a substantial part thereof to a separate legal entity under direct or indirect different ownership, or to establish a separate business entity in order to provide to all retail providers, including its own retail divisions, equivalent access services.

(2) Operators shall also inform as soon as possible the regulatory authority of any change of the intents communicated pursuant to paragraph (1), as well as the final outcome of the process of separation.

(3) The operator referred to in paragraph (1) shall submit to the regulatory authority all the information necessary for it to assess the impact of the intended transaction.

(4) Within 12 months from receiving the notification under paragraph (1) or the changes communicated pursuant to paragraph (2), the regulatory authority shall assess the effect of the intended transaction on the specific obligations imposed in accordance with the provisions of this Chapter. For that purpose, the regulatory authority shall conduct a coordinated analysis of the different markets related to the access network, being able to impose, maintain, amend or withdraw one or several of the obligations provided for in this Chapter, in accordance with the procedures set out in Articles 97, 98 and 135.

(5) ANCOM may require the amendment of the intended transaction, in pursuit of the objectives laid down in Articles 4 to 6<sup>1</sup> of Government Emergency Ordinance no. 22/2009, approved by Law no. 113/2010, with the subsequent amendments.

(6) The legally or operationally separate business entity resulted upon enforcing the measures under paragraph (1), irrespective of the legal status, may be subject to any of the obligations identified in Articles 106 to 110 in the relevant markets where it has been designated as having significant power, or any other obligations authorised by the European Commission pursuant to Article 105 paragraph (3).

(7) The measures adopted by ANCOM in accordance with this Article shall take account, where appropriate, of the obligations imposed by the Competition Council within the procedure of authorisation of economic concentrations.

### ***Section 3***

#### ***Fostering retail competition***

**Art. 113.** – (1) Where, following a market analysis conducted pursuant to Section 1 under this Chapter, ANCOM concludes that on a certain retail market there is no effective competition and that the obligations imposed in accordance with Articles 106 to 110 have failed to attain the objectives laid down in Articles 4 to 6<sup>1</sup> of Government Emergency Ordinance no. 22/2009, approved by Law no. 113/2010, with the subsequent amendments, it may impose on the providers with significant power in the respective market the appropriate obligations necessary to safeguard the end-users' interests and foster effective competition.

(2) The obligations imposed by ANCOM according to paragraph (1) may include:

a) forbiddance to apply excessive pricing in relation to costs involved by the provision of services;

b) forbiddance to apply predatory pricing and thus prevent market entry or hinder competition;

c) forbiddance to unreasonably favour certain end-users as opposed to others;

d) forbiddance to condition the provision of the service by the end-user's acceptance of additional services which are not related to the service requested.

(3) ANCOM may also impose on a provider with significant power on a retail market:

a) price ceilings or price caps for the provision of retail services;

b) individual price control measures;

c) orientation of tariffs based on costs or prices or tariffs charged on comparable markets.

(4) The obligations imposed pursuant to this Article shall be appropriate to the nature of the problem identified, proportionate and necessary for attaining the objectives laid down in Articles 4 to 6<sup>1</sup> of Government Emergency Ordinance no. 22/2009, approved by Law no. 113/2010, with the subsequent amendments.

**Art. 114.** – (1) When appropriate and necessary, ANCOM shall require the providers with obligations imposed pursuant to Article 113 to implement a cost accounting system. ANCOM may establish the format and accounting methodology to be used.

(2) Compliance with the cost accounting system shall be annually verified by a qualified independent body. The results of this verification shall be published under the conditions set out by the regulatory authority.

**Art. 115.** – ANCOM shall not impose the obligations laid down in this Section on certain geographic markets or for certain categories of users, if it concludes that there is effective competition.

## **CHAPTER VIII**

### **Dispute resolution**

Art. 116. – (1) In the event of a dispute arising in connection with obligations imposed by the provisions of this Emergency Ordinance, of the European Union's regulations in the electronic communications field or imposed by ANCOM pursuant to these provisions between providers of electronic communications networks or services, or between such providers and persons having the capacity as providers in other Member States of the European Union requesting or benefiting from access or interconnection on grounds of this Emergency

Ordinance, the interested party may address ANCOM in view of settling the dispute in question.

(2) The interested party shall submit a written request to ANCOM, in two original copies. In view of debating the main issue of the dispute, ANCOM shall invite the parties to a meeting, communicating the date of that meeting in a reasonable term. In close connection to the complexity of the cause, the parties may be invited to subsequent meetings. The discussions held during these meetings shall be written down and communicated to the parties.

(3) The parties may exercise their rights personally, or they may be assisted or represented. The parties' representatives shall present the documents ascertaining their quality as a representative.

(4) Where ANCOM, after analysing all the information and after hearing all the views in the respective cause, deems that the main issue of the dispute may be solved, it shall communicate to the parties a preliminary solution. Any of the parties may submit a reasoned request with a view to reconsidering the preliminary solution.

(5) When addressed in accordance with paragraph (1), ANCOM may also establish in justified situations that the patrimony prejudice effectively suffered needs to be repaired.

(6) Under exceptional circumstances, when a party may suffer serious prejudice which, in the absence of certain provisional measures, could not be properly repaired in the hypothesis of resolving the main issue in favour of the party requesting the establishment of such measures, the respective party may request ANCOM to establish certain provisional measures, in view of preventing the occurrence of prejudices or of limiting their extension. The provisional measures shall be established by the president of ANCOM, by reasoned decision. The decision solving the request for the establishment of provisional measures shall be issued within 30 days from the submission date.

(7) In resolving the disputes referred to in paragraph (1), ANCOM shall take account of the objectives laid down in Articles 4 to 6<sup>1</sup> of Government Emergency Ordinance no. 22/2009, approved by Law no. 113/2010, with the subsequent amendments.

(8) The dispute shall be resolved by decision issued by the president of ANCOM within 4 months from the submission of the complaint, except for the exceptional circumstances where, depending on the complexity of the dispute or its impact on the electronic

communications market, a longer time frame is required for the proper resolution of the cause.

(9) The decision resolving the dispute shall comprise at least the following elements: name and address, respectively company name and headquarters of the parties, object of the dispute, steps of the proceedings, *de facto* and *de jure* motivation of the dispute, measures taken and methods of implementation, and means of appeal.

(10) The decision resolving the dispute shall be communicated to the parties and published on the ANCOM website, having regard to the confidentiality principle.

(11) The decisions issued by the ANCOM president according to this Article are jurisdiction-administrative acts and may be appealed in contentious administrative, in accordance with Article 12 paragraph (5) of Government Emergency Ordinance no. 22/2009, approved by Law no. 113/2010, with the subsequent amendments.

(12) The provisions of this Article shall not prejudice the persons' right to bring an action before the competent courts, according to the law.

**Art. 117.** – (1) In the event of a cross-border dispute between providers of electronic communications networks or services from Romania and such providers from another Member State of the European Union, in connection with obligations arising under the national legislations, where the dispute lies within the competence of ANCOM and of one or more national regulatory authorities in communications from other Member States of the European Union, the interested party may refer the dispute to ANCOM or to any of the competent national regulatory authorities in communications, in view of its resolution.

(2) Where addressed according to paragraph (1), ANCOM shall, in order to bring about a resolution of the dispute, collaborate with the authority or, as appropriate, the national regulatory authorities in communications from other Member States of the European Union and shall take account of the opinions expressed by these authorities, to ensure a consistent resolution of the dispute.

(3) Where deeming it necessary for the resolution of the dispute, ANCOM may request BEREC to adopt an opinion. Where such a request has been made to BEREC, the dispute shall be resolved with the taking into consideration of the opinion expressed by BEREC, without prejudice to the ANCOM competence to take provisional measures.



(4) The provisions of Article 116 paragraphs (2) to (12) shall apply as appropriate.

**Art. 118.** – (1) End-users may address ANCOM in view of solving the disputes with the providers of public electronic communications networks or of publicly available electronic communications services, arising in the application of the present Emergency Ordinance and in connection to the provisions herein referring to the exercise of the rights conferred by this Emergency Ordinance, comprised in the contracts regulated under Chapter V Section 1, or in connection to the execution of these provisions, and which have not been solved amicably.

(2) ANCOM shall set out an optional procedure for the fair and timely resolution of the disputes referred to in paragraph (1). The procedure shall be transparent, non-discriminatory, impartial, simple and inexpensive.

(3) The dispute resolution procedure under this Article has a written character. When deeming necessary, ANCOM may convene the parties to meetings, separately or together, and the debates of these meetings shall be written down and communicated to the parties.

(4) Where, within 60 days from the lodging of a complaint according to paragraph (1), the dispute was not resolved amicably, ANCOM shall send the parties its reasonably motivated proposition for resolving the respective dispute. This proposition shall be based on the arguments and documents submitted by the parties and shall be regarded as a recommendation.

(5) ANCOM may establish a system for the reimbursement of the end-users' expenses or for their compensation for the suffered prejudice in their reports with the providers of public electronic communications networks or of publicly available electronic communications services, applicable in grounded cases.

(6) Where the parties involved come from several Member States of the European Union, ANCOM shall coordinate its efforts with the relevant national regulatory authorities in communications in order to bring about a resolution of the dispute.

(7) The provisions of this Article do not prejudice the persons' right to bring the dispute before the competent courts, according to the law.

**Art. 119.** – (1) The optional dispute resolution procedures under this Chapter shall be established by decision of the ANCOM President.

(2) The access to the dispute resolution procedures established in this Chapter is free of charge.

## **CHAPTER IX**

### **Provision of information**

**Art. 120.** – (1) ANCOM has the right to require the persons who provide or provided electronic communications networks or services or associated facilities the information, including financial information, necessary for the regulatory authority to exercise its powers conferred by this Emergency Ordinance or by the special legislation in the electronic communications field.

(2) ANCOM may request the information under paragraph (1) in particular for the following purposes:

a) to verify the compliance with the obligations provided for in the present Emergency Ordinance or in the special legislation in the electronic communications field or imposed by ANCOM pursuant to these provisions, as well as to implement and enforce the regulations of the European Union in the electronic communications field, in particular with regard to market monitoring and verification of the compliance by the providers of electronic communications networks or services with their obligations deriving from these regulations, in the cases where the competence of monitoring and verification of these obligations belongs to the national regulatory authority;

b) to fix the annual monitoring tariff, in accordance with the provisions of Chapter X;

c) to determine the contributions for funding the services within the scope of universal service;

d) to designate the universal service providers and impose on them the obligations laid down in the present Emergency Ordinance;

e) to identify the relevant markets in the electronic communications sector, make market analyses and identify the providers with significant market power, in accordance with the provisions of Chapter VII;

- f) to impose on the providers of electronic communications networks or services with significant market power the obligations set out by the present Emergency Ordinance;
- g) to grant the limited resources of radio spectrum and numbering or the technical resources and impose obligations with regard to their use;
- h) to resolve the disputes referred to in Chapter VIII;
- i) to make statistics necessary for ANCOM to carry out its tasks;
- j) to elaborate reports, studies and analyses in the electronic communications field;
- k) to assess the need and opportunity to issue new regulations, in accordance with the ANCOM duties;
- l) to assess the implementation of the regulations in force;
- m) to publish comparative situations on the quality and tariffs of services, in view of bringing maximum benefit to end-users;
- n) to ensure the efficient and effective use of the radio frequencies.

(3) Without prejudice to the provisions of paragraphs (1) and (2), ANCOM may particularly request:

- a) from the providers of public electronic communications networks and from the providers of publicly available electronic communications services, information concerning future network and service developments which could have an impact on the wholesale services they make available to competitors;
- b) from the providers designated as having significant power on the wholesale markets in the electronic communications sector, accounting data and information concerning the services provided on the retail markets that are associated with the wholesale markets on which they were identified by ANCOM as having significant power.

(4) ANCOM may impose on the providers of public electronic communications networks and on the providers of publicly available electronic communications services the obligation to send on a regular basis certain categories of information, in view of drawing up statistical reports on the electronic communications market.

(5) Without prejudice to the informing obligations imposed by the normative or individual acts issued by ANCOM in accordance with the provisions herein or with the provisions of the special legislation in the electronic communications field, the information

under paragraph (1) shall be requested in writing and on a reasoned basis, and its amount and nature must be proportionate to the purpose for which it was requested.

(6) The persons referred to in paragraph (1) shall make the information available in the timescales and under the conditions indicated by ANCOM as appropriate.

(7) ANCOM shall publish the information which would contribute to an open and competitive market, including up-to-date information referring to the application of the rules of the European Union, in accordance with the principle of confidentiality and with the legal provisions on the free access to public interest information, specifying the conditions and procedure for accessing this information.

(8) As for the persons who provided electronic communications networks or services, ANCOM may request the information under paragraph (1) within a 3-year period from the cessation of the capacity as a provider of electronic communications networks or services.

**Art. 121.** – (1) ANCOM shall cooperate with the regulatory authorities in the electronic communications field from abroad, including based on certain collaboration and exchange of information agreements, in view of fulfilling the attributions laid down in the present ordinance and in the special legislation in the field, as well as in view of facilitating the performance by these authorities of their tasks under the applicable national legislation.

(2) ANCOM shall provide the national regulatory authorities in communications from other Member States of the European Union, at their reasoned request, with the information necessary for them to carry out their tasks according to the legislation of the European Union.

(3) ANCOM shall provide to the European Commission, upon its reasoned request, all the information necessary for it to carry out its tasks. The nature and the amount of the information shall be proportionate to the purpose for which it was requested.

(4) Where the information requested by the European Commission was previously transmitted by the providers of electronic communications networks or services in accordance with the provisions of Article 120, ANCOM shall inform the respective providers on the transmission of the information.

(5) ANCOM may address an explicit and reasoned request to the European Commission to not make the information provided in accordance with paragraph (3)

available to the national regulatory authorities in communications from other Member States of the European Union.

(6) Where the information provided pursuant to paragraphs (2), (3) or (5) is considered confidential, in accordance with the provisions of the national legislation and of the European Union, ANCOM shall request the European Commission and the national regulatory authorities in communications from other Member States of the European Union to observe the confidential character.

(7) ANCOM may request the national regulatory authorities in communications from other Member States of the European Union the information necessary for it to perform its tasks specified herein or in the special legislation in the electronic communications field, observing, where required, the confidential character of the information received.

(8) In order to periodically review the legislation of the European Union in the electronic communications field and to monitor the national systems of general authorisation and award of the right to use certain limited resources, ANCOM shall provide to the European Commission all the information requested.

## **Chapter X**

### **Monitoring tariff**

**Art. 122.** – Any person having the capacity as a provider of public electronic communications networks, a provider of publicly available electronic communications services or a provider of postal services shall pay to ANCOM an annual monitoring tariff, under the conditions stated in this Chapter, since the moment of gaining the capacity as a provider and until such capacity ends.

**Art. 123.** – (1) The monitoring traffic referred to in Article 122 shall cover only the administrative expenses of ANCOM.

(2) The administrative expenses of ANCOM cover activities related to the management, control and application of the general authorisation regime, of the rights to use the limited resources or of the obligations laid down in this Emergency Ordinance or in the special legislation in the electronic communications or postal service fields or that may be

imposed by ANCOM pursuant to these provisions, including those referring to the carrying out by ANCOM of its attributions in the field of management of limited resources, and may include, among others:

- a) costs for international cooperation, harmonisation and standardization;
- b) costs determined by the carrying out of market analyses or by the imposition of obligations on the providers with significant market power;
- c) costs generated by the universal service implementation, without reference to the compensation of the net cost determined by the provision of services within the scope of universal service;
- d) costs incurred by the monitoring of the compliance with the obligations laid down in the legal framework or imposed pursuant to this framework;
- e) costs determined by the elaboration and application of the secondary legislation in the electronic communications and postal service fields which fall within the competence of ANCOM.

**Art. 124.** – (1) The monitoring tariff referred to in Article 122 shall be calculated as a percentage from the turnover achieved in the year preceding the year for which the tariff is owed, in the case of the persons who had the capacity as providers during the entire previous calendar year.

(2) In the case of the persons who did not have the capacity as providers during the entire previous calendar year, the monitoring tariff referred to in paragraph (1) shall be calculated as a percentage from the turnover registered in the months of the year preceding the year for which the tariff is owed, when the person in question had the capacity as a provider.

(3) The percentage referred to in paragraphs (1) and (2) shall be determined annually, without exceeding 0.4%, as a ratio between:

- a) the administrative expenses enlisted in Article 123 paragraph (2), from which the incomes from other sources shall be deducted; and
- b) the cumulated turnover of the persons mentioned under paragraphs (1) and (2).

(4) In view of determining the difference mentioned under paragraph (3) letter a), the amounts of the annual surplus resulted from the execution of the previous years' budgets shall be also taken into consideration.

(5) In the case of the persons under paragraph (1), the amount considered for determining the monitoring tariff shall be the whole turnover presented in the annual financial statements prepared for the year preceding the year for which the monitoring tariff is owed.

(6) The turnover of the persons under paragraph (2) shall be determined by cumulating the revenues obtained in the months of the year preceding the year for which the tariff is owed, when they had the capacity as providers, taking into consideration including the month when they gained such capacity.

(7) As for the authorised natural persons, individual enterprises and family associations, the turnover shall be composed of the total gross revenues obtained in the year preceding the year for which the monitoring tariff is owed, respectively the total gross revenues obtained in the months of the year preceding the year for which the tariff is owed, when they had the capacity as providers.

**Art. 125.** – (1) The amount of the annual monitoring tariff owed by each provider shall be determined upon applying the percentage mentioned in Article 124 paragraph (3) to the turnover referred to in Article 124 paragraphs (5), (6) or (7), as appropriate.

(2) The amount of the monitoring tariff under paragraph (1) shall be set on the date of determining the cumulated turnover under Article 124 paragraph (3) letter b), but no later than 15 September of the respective year, by decision of the ANCOM president, which is to be communicated to each provider.

**Art. 126.** – (1) At the cessation of the capacity as a provider, regardless of its form, any provider shall pay the set monitoring tariff as follows:

a) if the capacity as a provider ceased before determining the annual monitoring tariff pursuant to Article 125 paragraph (2), the provider shall owe a monitoring tariff which stands for the multiplication result between the percentage set by ANCOM under the terms of Article 124 paragraph (3) for the previous year and the turnover achieved in the previous year or in

the months of the previous year when the respective provider had such capacity, cumulated with the turnover obtained in the months when it had such capacity of the year during which the cessation takes place;

b) if the capacity as a provider ceases after determining the annual monitoring tariff pursuant to Article 125 paragraph (2), besides this tariff, the provider shall owe an additional tariff, calculated as the multiplication result between the percentage set by ANCOM under the terms of Article 124 paragraph (3) for the ongoing year and the turnover obtained in the months when it had such capacity of the year during which the cessation takes place.

(2) Within 15 days from the cessation of the capacity as a provider, the persons owing the monitoring tariff referred to in paragraph (1) shall submit to ANCOM a statement on the turnover achieved in the previous year or in the months of the previous year when they had such capacity, cumulated with the turnover achieved in the months they had the capacity as providers of the year during which the cessation takes place or, respectively, on the turnover achieved in the months in which they had this capacity of the year during which the cessation takes place, under the conditions set out by ANCOM.

(3) Where the persons under paragraph (1), including those whose capacity as a provider ceased before the entry into force of this Emergency Ordinance, do not communicate to ANCOM, in the timeframe specified in paragraph (2), the documents referred to in paragraph (2), ANCOM shall require these persons to pay the monitoring tariff owed at the cessation of the capacity as a provider, by taking into consideration the last turnover available to ANCOM, multiplied by 1/12 and by the number of months of the year when they had this capacity, without being established the monitoring tariff, excluding the month when the capacity ended, and the last percentage of the turnover set by ANCOM in view of calculating the monitoring tariff prior to the cessation.

(4) The monitoring tariff owed pursuant to paragraph (1) letter a) shall be set out by decision of the ANCOM president, and the remaining amount resulted from the difference between this tariff and the prepayments established according to Article 127 paragraph (1) shall be paid in the timeframe provided for in Article 128 or, as appropriate, shall be returned by ANCOM in line with the Fiscal Procedure Code.

(5) The monitoring tariff owed pursuant to paragraph (1) letter b) shall be set out by decision of the ANCOM president and shall be paid in the timeframe specified in Article 128.



(6) The persons whose capacity as a provider of electronic communications networks or services or as a postal service provider ceased in the same year they gained this capacity shall owe a monitoring tariff standing for the multiplication result between the percentage under paragraph (1) letter a) or, as appropriate, under paragraph (1) letter b) and the turnover obtained in the months in which they had such capacity, including the month when they gained the capacity and excluding the month it ceased.

(7) The persons under paragraph (6) shall be appropriately applied the provisions of paragraphs (2) to (5).

(8) As for the providers whose capacity ceased as a result of a merger, the monitoring tariff under paragraph (1) shall be set for the absorbing or newly established companies, as the case may be.

**Art. 127.** – (1) ANCOM may require the persons referred to in Article 122 to phase the payment of the annual monitoring tariff, as follows:

a) a share of 30% of the last monitoring tariff owed, until the 15<sup>th</sup> of March, but not less than 15 days from the communication of the ANCOM president's decision;

b) a new share of 30% of the last monitoring tariff owed, until the 15<sup>th</sup> of June, but not less than 15 days from the communication of the ANCOM president's decision.

(2) The amount of the prepayments referred to in paragraph (1) shall be set out until the 15<sup>th</sup> of February by decision of the ANCOM president.

(3) The last monitoring tariff owed, based on which the prepayments are determined, is the monitoring tariff set out pursuant to Article 125 paragraph (2), without considering the prepayments made in the respective year.

(4) The difference between the annual monitoring tariff determined pursuant to Article 125 paragraph (2) and the possible prepayments determined according to paragraph (1) shall be paid in the timeframe specified in Article 128 or, as appropriate, shall be returned by ANCOM in accordance with the Fiscal Procedure Code.

**Art. 128.** – The target date set for the payment of the tariffs referred to in Article 126 paragraphs (4) or (5) and in Article 127 paragraph (4) shall be the 25<sup>th</sup> of the month

following the month when the decision was issued, but not less than 15 days from its communication date.

**Art. 129.** – (1) The persons referred to in Article 124 and in Article 126 paragraphs (1) and (6) may require, in view of determining the tariff, to take into consideration the revenues resulted exclusively from the provision of electronic communications networks or services or from the provision of postal services instead of the turnover, whereas the provisions of Articles 124 to 126 shall appropriately apply.

(2) In view of applying the provisions of paragraph (1), the providers shall keep separate accounts with regard to the revenues obtained from the provision of electronic communications networks or services or from the provision of postal services, as the case may be. These revenues shall be certified by an independent auditor or by an accounting expert authorised under the law, under the conditions established by ANCOM.

(3) Where the documents including the revenues certified according to paragraph (2) are not submitted in view of determining the monitoring tariff, the respective tariff shall be determined based on the turnover referred to in Article 124 paragraph (5).

**Art. 130.** – (1) The persons mentioned in Article 124 paragraphs (1) and (2), except for the persons under paragraph (2), shall send ANCOM the annual financial statements containing the turnovers under the profit and loss account, necessary for determining the monitoring tariff, within 7 days from the expiration of the legal term provided for their submission to the competent bodies they are registered with, according to the legislation in force.

(2) The authorised natural persons, family associations and individual enterprises owing the monitoring tariff referred to in Article 124 shall send ANCOM the annual financial statements on the gross revenues achieved, necessary to determine the monitoring tariff, within 7 days from the expiration of the legal term provided for their submission to the competent bodies they are registered with, according to the legislation in force.

(3) The persons under Article 124 paragraph (2) shall send ANCOM, in the timeframe established in paragraph (2), the statement on the turnover achieved in the months of the

previous year when they had the capacity as providers of electronic communications networks or services or of postal services.

(4) The non-submission within the terms and under the conditions set by the legal provisions of the documents referred to in paragraph (3), necessary to determine the monitoring tariff, shall trigger its determination based on the turnover provided for in Article 124 paragraph (5).

(5) The non-submission of the documents referred to in paragraphs (1) and (2) shall trigger the determination of the monitoring tariff by considering the last turnover made available to ANCOM.

**Art. 131.** – By way of exception from the provisions of Article 122 and Article 126 paragraphs (1) and (6), the providers registering a turnover which does not exceed the equivalent in RON of 100,000 euros, at the average exchange rate registered in the period when the turnover was achieved, calculated based on the monthly average exchange rate communicated by the National Bank of Romania, shall not pay the monitoring tariff, while the provisions of Articles 122 to 130 shall apply as appropriate.

**Art. 132.** – The procedure of implementation of the provisions of Articles 122 to 131 shall be established by decision of the ANCOM president, in compliance with the principles of objectivity, transparency and proportionality.

## **Chapter XI**

### **Consultation, transparency and informing**

**Art. 133.** – (1) In applying this Emergency Ordinance, ANCOM shall create, maintain, develop, and permanently update its own website, in order to ensure that the public is informed in an accessible manner with respect to:

a) the public authorities competent to exercise duties pursuant to this Emergency Ordinance and to the special legislation in the electronic communications field;

b) the ANCOM organisation, functioning, objectives and attributions, as well as the attributions of each internal structure of ANCOM;

c) the data necessary to ensure an efficient communication with the internal structures of ANCOM;

d) the national and international legislation applicable in the electronic communications field;

e) the decisions issued by the president of ANCOM applicable in the electronic communications field;

f) the legal ways of appeal against the decisions of the president of ANCOM;

g) the documents of which publication is mandatory during the consultations launched in accordance with Article 135;

h) the income and expenditure budget of ANCOM;

i) the procedure of general authorisation and granting of the right to use radio frequencies, numbering resources and technical resources;

j) the rights and obligations of the providers of electronic communications networks or services, in accordance with the general authorisation regime;

k) the rights and obligations of the holders of licences for the use of radio frequencies and of licences for the use of numbering resources;

l) the obligations imposed by ANCOM in line with the provisions of Chapter VII;

m) any other information useful for public informing, related to ANCOM activity.

(2) ANCOM shall deploy all necessary efforts in order to ensure that information published on its website is also available in at least one international language.

**Art. 134.** – (1) ANCOM shall communicate to the European Commission the measures adopted in the national legislation in the regulatory field covered by the Framework Directive, Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services, with the subsequent amendments, Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities, with the subsequent amendments, and Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal

service and users' rights relating to the electronic communications networks and services, with the subsequent amendments, as well as any amendments or completions to these measures.

(2) In particular, the regulatory authority shall notify to the European Commission the measures adopted on grounds of Chapter VII, as well as, in the shortest time possible, any amendment of these measures.

**Art. 135.** – (1) Except for the measures adopted pursuant to Article 97 paragraph (6), Article 116 or 117, ANCOM shall observe the consultation procedure set out by this Article whenever it intends to adopt measures in the implementation of the provisions under this Emergency Ordinance that may have a significant impact on the relevant market.

(2) ANCOM shall publish on its website the text subjected to consultation, specifying: the date when the document was published, the deadline for the submission of comments, and the estimated date when ANCOM intends to adopt the measure subject to consultation. All interested persons who required for their e-mail address to be entered on the special ANCOM correspondence list shall be informed on the launch of the consultation at the latest on the date when the document is published.

(3) As soon as the text subjected to consultation is published on its website, ANCOM shall establish a period of at least 30 days during which any interested person may submit their written comments. In cases where the measures must be adopted as a matter of emergency, this period may be shorter than 30 days, but it cannot be shorter than 10 days.

(4) ANCOM shall, while observing the principle of confidentiality, publish a synthetic material on the received comments also embedding its position with respect to these comments, at the latest on the date when the adopted measure is published on its website.

**Art. 136.** – (1) Within the consultation procedure described in Article 135, in particular when it intends to adopt measures on grounds of Chapter V, ANCOM shall analyse the points of view submitted by end-users, including disabled users, by their associations, by the National Authority for Consumer Protection, by equipment manufacturers and by providers of electronic communications networks and services in relation to the end-users' rights concerning the publicly available electronic communications services.

(2) When adopting the measures under paragraph (1), ANCOM shall appropriately envisage safeguarding the interests of the consumers of publicly available electronic communications services.

(3) Where applicable, the interested persons may develop, under the guidance of ANCOM, collaboration mechanisms which may involve consumers, users' and providers' associations, in order to improve the general quality of the services, by elaborating conduct codes and operation standards, as well as by monitoring their enforcement.

(4) ANCOM may promote, within the limits of the attributions conferred by the law, the cooperation between the providers of public electronic communications networks and of publicly available electronic communications services and the bodies ensuring the protection of the intellectual property rights and related rights as regards the use of the electronic communications services.

## **CHAPTER XII**

### **Surveillance, control and sanctions**

**Art. 137.** – (1) The verification of the compliance with the provisions of this Emergency Ordinance, of the specific legislation in the electronic communications field and of the normative or individual acts issued by ANCOM in accordance with this Emergency Ordinance or the specific legislation in the electronic communications field, as well as the control of the compliance by the providers of electronic communications networks or services with their obligations deriving from the regulations of the European Union, where the competence of monitoring or verification of the compliance with these obligations by the national regulatory authority is established, shall lie with ANCOM, which acts through its specialised personnel empowered for this purpose, hereinafter referred to as *control personnel*.

(2) The control personnel and their attributions shall be established by decision of the ANCOM president.

**Art. 138.** – (1) The control personnel may undertake control actions, including unexpected ones, during which they may request, specifying the legal ground and the purpose therefor, any documents necessary to carry out the control, may take copies of any registers, financial-accounting and commercial documents or any other documents, in accordance with the legal provisions in force.

(2) During the control actions, the control personnel may request and receive, immediately or in a specified timeframe, any information necessary to carry out the control and may set out timescales for the provision of this information subject to the sanction laid down in Article 151 paragraph (1) letter c), in accordance with the legal provisions in force.

(3) The result of the control actions shall be written down in a control statement, except for the cases provided for in Article 144.

**Art. 139.** – (1) Where discovering the contravention referred to in Article 142 point 10, the control personnel may order the immediate cessation of the infringement and may take any measures they deem necessary in order to ensure the observance of the legal provisions. The measures shall be appropriate and proportionate to the assessed infringement, and shall provide for a timeline within which the law offender must comply with these measures.

(2) The measures under paragraph (1) shall be written down in a statement-of-facts on the contravention and enforcement of the sanction.

**Art. 140.** – In view of assessing the contraventions referred to in Article 142 points 1, 7, 10, 11 and 14, if the person in question refuses to submit to the control specified in Articles 137 and 138, the control personnel shall have access, under the law, to the electronic communications networks, respectively to the equipment and facilities of the electronic communications network.

**Art. 141.** – (1) Where discovering the non-compliance by a provider of electronic communications networks or services with an obligation laid down herein or in the special legislation in the electronic communications field, in the normative or individual acts issued by ANCOM pursuant to the provisions of this Emergency Ordinance or to the special

legislation in the electronic communications field or with an obligation deriving from the regulations of the European Union, when the competence of monitoring and verification of this obligation belongs to the national regulatory authority, before applying the sanction, ANCOM shall notify the provider in question on the assessed infringement and applicable sanction, giving that provider a time period to submit a point of view.

(2) The procedure of the notification referred to in paragraph (1) shall not apply:

a) in the case of non-observance of the ANCOM president's decisions issued pursuant to Article 116 or 117;

b) in the case of non-observance of the obligation to properly and completely send the information requested by ANCOM pursuant to Article 120 paragraph (2) letter a) or the information set out by the normative or individual acts issued by ANCOM;

c) in the case of non-observance of the measures established by ANCOM, in accordance with Article 73 paragraphs (3) and (4), Article 139 and Article 149;

d) in the case of the contraventions referred to in Article 142 points 1, 7, 9, 10, 11, 16 and 41;

e) in the case of non-observance of the transparency obligations imposed by ANCOM in accordance with Article 106;

f) in the case of non-observance of the obligation to submit to the control provided for in Articles 137 and 138.

**Art. 142.** – The following deeds shall be deemed contraventions:

1. provision of electronic communications networks or services by a person who has not been authorised pursuant to Article 6 for that type of activity, or during the period when the right to provide electronic communications networks or services has been suspended or withdrawn;

2. failure to comply with the conditions set out in the general authorisation pursuant to Article 8;

3. breach of the obligation to negotiate laid down in Article 12 paragraph (1) letter b);

4. breach of the obligations laid down in Article 12 paragraphs (3) and (4);

5. breach of the non-disclosure obligation laid down in Article 12 paragraph (5);

6. breach of the obligations laid down in Article 13 paragraph (7);



7. use of the radio frequencies without obtaining the necessary licence, in accordance with the provisions of Article 23;

8. failure to comply with the conditions and obligations set out in the licences for the use of radio frequencies, granted according to Chapter III;

9. failure to comply with the conditions imposed by ANCOM pursuant to Article 23 paragraph (3);

10. causing by any person and in any way of a harmful interference;

11. use of the numbering resources without obtaining the necessary licence pursuant to the provisions of Chapter III;

12. failure to comply with the conditions and obligations on the use of numbering resources or technical resources set out or imposed by ANCOM;

13. non-observance of the provisions under Article 37 paragraph (4);

14. use of the technical resources without obtaining the right of use pursuant to Article 45 paragraph (1);

15. breach of the obligations laid down in Article 46 paragraphs (1) and (3);

16. breach of the notification obligation laid down in Article 47 paragraph (1);

17. breach of the obligations laid down in Article 50 paragraphs (1) to (3);

18. breach of the obligations laid down in Article 51 paragraphs (1) to (5) and (7) to (9);

19. non-inclusion in the contracts of the information provided by ANCOM according to Article 51 paragraph (6);

20. non-observance of the provisions under Article 53 paragraph (1);

21. breach of the obligations laid down in Article 54;

22. non-observance of the provisions under Article 55;

23. breach of the obligations laid down in Article 57;

24. non-observance of the provisions under Article 58;

25. breach of the obligation to make available to the public the information mentioned in Article 60 paragraphs (1) to (3) and (5), under the conditions set out according to Article 60 paragraph (5);

26. non-observance of the provisions under Article 60 paragraph (4);

27. non-observance of the provisions under Article 60 paragraph (7);

- 28 breach of the obligation laid down in Article 60 paragraph (10);
29. breach of the obligations laid down in Article 62 paragraphs (1) and (2);
30. non-observance of the provisions under Article 66;
31. non-observance of the provisions under Article 67;
32. non-observance of the provisions under Article 68;
33. non-observance of the provisions under Article 69 paragraph (1);
34. non-observance of the provisions under Article 69 paragraph (2);
35. non-observance of the provisions under Article 69 paragraph (3);
36. non-observance of the provisions under Article 69 paragraph (5);
37. non-observance of the provisions under Article 70 paragraphs (1), (4) to (6) and (9);
38. non-observance of the provisions under Article 71 paragraphs (3) and (4);
39. breach of the obligation laid down in Article 73 paragraph (1);
40. breach of the obligation laid down in Article 75 paragraphs (1), (6) and (8);
41. breach of the obligation laid down in Article 78 paragraph (1);
42. non-observance of the provisions under Article 79 paragraph (4);
43. non-observance of the provisions under Article 80 paragraphs (3) and (4);
44. non-observance of the provisions under Article 81 paragraph (4);
45. non-observance of the provisions under Article 83 paragraph (5);
46. breach of the obligations laid down in Article 84 paragraphs (1), (3), (5) and (10);
47. breach of the obligations laid down in Article 85 paragraphs (1) and (3);
48. non-observance of the provisions under Article 101;
49. breach of the obligations laid down in Article 102;
50. non-observance of the provisions under Article 103;
51. non-observance of the provisions under Article 112 paragraphs (1) to (3);
52. non-observance of the measures and obligations imposed pursuant to Article 48, Article 49 paragraph (2), Article 60 paragraph (8), Article 61 paragraphs (1) to (4), Article 62 paragraph (3), Articles 63, 64, Article 70 paragraphs (2), (7), (8) and (10), Article 72 paragraph (3), Article 73 paragraph (2), Article 74 paragraph (1) and (4), Article 75 paragraphs (3) and (7), Article 79 paragraphs (1) and (3), Article 80 paragraphs (1) and (2), Article 81 paragraphs (1) and (2), Article 82 paragraphs (1) and (3), Article 83 paragraphs

(2) to (4) and (6), Article 84 paragraphs (4), (6) to (8), (11) and (12), Article 85 paragraphs (2) and (4) to (7);

53. non-observance of the measures and obligations imposed pursuant to Article 69 paragraph (4), Article 75 paragraph (4), Article 78 paragraph (2), Article 100, Article 104 paragraphs (1) and (2), Article 107, Article 108 paragraphs (1) and (2), Article 109 paragraphs (1) to (3) and (5), Article 110 paragraphs (1), (3) and (4), Article 111 paragraphs (1) and (2), Article 112 paragraphs (4) to (6), Article 113 paragraphs (1) to (3), Article 114;

54. non-submission of the annual financial statements according to Article 130;

55. non-observance of the obligations deriving from the regulations of the European Union in the field of electronic communications and terminal equipment, where the competence of monitoring and verification of the compliance with these obligations belongs to the national regulatory authority.

**Art. 143.** – (1) The contraventions enlisted under Article 142 shall be sanctioned as follows:

a) with fine ranging from RON 5,000 to RON 60,000, and, in case of repeated breaches, with fine amounting up to RON 100,000;

b) by derogation from the provisions of Article 8 paragraph (2) letter a) of Government Ordinance no. 2/2001 on the legal regime of contraventions, approved with amendments and completions by Law no. 180/2002, with the subsequent amendments and completions, for the persons with a turnover exceeding RON 3,000,000, with fine amounting to up to 2% of the turnover, and, in case of repeated breaches, with fine amounting to up to 5% of the turnover.

(2) In view of individualising the sanction, ANCOM shall take into consideration the degree of concrete social danger of the deed, the period of time in which the legal obligation was infringed, as well as the consequences of this breach on the competition, where applicable.

(3) The turnover shall be the one presented in the last annual financial statement reported by the economic operator.

(4) For the authorised natural persons, individual enterprises and family associations, the totality of gross revenues achieved by the respective economic operators shall stand for the turnover under paragraph (1) letter b).

(5) To the extent this Emergency Ordinance does not provide otherwise, the contraventions under Article 142 shall be subject to the provisions of Government Ordinance no. 2/2001, approved with amendments and completions by Law no. 180/2002, with the subsequent amendments and completions.

**Art. 144.** – (1) The contraventions under Article 142 points 1, 2, 4, 5, 7 to 33, 35 to 40, 42 to 50 and 52 shall be assessed by the control personnel of ANCOM in the statement-of-facts on the contravention and enforcement of the sanction.

(2) The sanction for the contraventions referred to in paragraph (1) shall be applied, by written resolution, by the ANCOM president.

**Art. 145.** – (1) The contraventions under Article 142 points 3, 6, 34, 41, 51 and 53 to 55 shall be assessed and the due sanctions shall be enforced by decision issued by the ANCOM president.

(2) The decision mentioned in paragraph (1) must comprise the following elements: the law offender's identification data, the date when the deed was committed, the description of the contravention deed and of the circumstances which can be considered when individualizing the sanction, the indication of the legal ground for establishing and sanctioning the contravention, the main sanction and the possible complementary sanctions applied, the term for payment and payment of the fine, the term for exercising the challenging rights and the competent court of law.

(3) By derogation from the provisions of Article 13 of Government Ordinance no. 2/2001, approved with amendments and completions by Law no. 180/2002, with the subsequent amendments and completions, the application of the sanction according to paragraph (1) shall be written off within 1 year from the commission of the deed. As for the breaches which last in time or those consisting of the commission, based on the same resolution, at different time intervals, of several actions or non-actions which, each in part, feature the content of the same contravention, the prescription shall start from the

assessment or from the cessation of the last committed act or deed, if this moment precedes the assessment.

(4) The decision under paragraph (1) shall be communicated to the law offender and may be challenged in contentious administrative at the Court of Appeal of Bucharest, within 30 days from communication, under the conditions of the Contentious Administrative Law no. 554/2004, with the subsequent amendments and completions, without undergoing the prior procedure provided for in Article 7 herein.

(5) Alongside the decision under paragraph (1), the law offender shall also receive the payment notification, which contains the mention on the obligation to pay the fine within 30 days from the communication of the decision.

(6) The decision under paragraph (1) shall be executory, without any other formality. The action in contentious administrative according to paragraph (4) shall suspend the execution only with regard to the payment of the fine, until the court of law reaches a definitive and irrevocable decision.

(7) The amounts resulted from the fines enforced pursuant to this Article shall be deemed an integral income to the state budget. The execution shall be made in conformity with the legal provisions on the forced execution of fiscal debts. In order to execute the sanction, ANCOM shall communicate ex officio to the specialised bodies of the National Agency of Fiscal Administration the decision referred to in paragraph (1), after the expiration of the term provided for in the payment notification or after the decision of the court resolving the action in contentious administrative remains definitive and irrevocable.

**Art. 146.** – ANCOM may decide to enforce the contravention sanction under Article 143 paragraph (1) notwithstanding that the assessed breach has been rectified, in compliance with the period of time granted to the provider pursuant to Article 141 paragraph (1).

**Art. 147.** – In case of serious or repeated breaches of the obligations laid down in Article 141 paragraph (1), ANCOM may suspend or withdraw from the provider in question:

a) the right to provide electronic communications networks or services according to the general authorisation regime;

b) the right to use the numbering resources, the technical resources or the radio frequencies.

**Art. 148.** – (1) Where, within 45 days from the due date, the provider does not pay the monitoring tariff, the tariff for the use of spectrum or the tariff for the use of numbering resources, ANCOM may suspend or withdraw that provider's right to provide electronic communications networks or services based on the general authorisation regime or the licence for the use of the radio-electric frequencies or of the numbering resources.

(2) Where the provider does not send the documents specified in Article 130 paragraph (1) until the 10<sup>th</sup> of September of the year for which the monitoring tariff is owed, ANCOM may suspend or withdraw that provider's right to provide electronic communications networks or services based on the general authorisation regime.

**Art. 149.** – (1) Where discovering a contravention in accordance with Articles 144 or 145, ANCOM may require:

a) the cessation of the infringement either immediately or in a reasonable timeframe, as well as any other measures necessary to ensure the cessation of the infringement and the remediation of the occurred situation. The measures shall be proper and proportionate to the committed breach and shall provide a term within which the provider must comply with them;

b) the suspension or postponement of the provision of a service or of a package of services, if the provision would significantly prejudice competition, until the cessation of the infringement of the access or interconnection obligations imposed pursuant to the provisions of Chapter VII.

(2) Where the providers' non-compliance with the obligations laid down in Article 141 paragraph (1) may create serious problems of economic or operational nature to other providers of electronic communications networks or services or to the users, ANCOM may take urgent provisional measures to remedy the situation.

(3) Where the providers' non-compliance with the obligations laid down in Article 141 paragraph (1) presents a serious and imminent danger to national defence, public order, national safety or public health, ANCOM shall notify and, if necessary, shall cooperate with

the judicial bodies, as well as with the competent institutions in the field of national defence and safety, public order or public health, to ensure the observance of the legal provisions. ANCOM may take urgent, proportionate and provisional measures to remedy the situation, with the consultation or at the reasoned request of these institutions, as the case may be.

(4) When deeming necessary, ANCOM may maintain the measures decided according to paragraphs (2) and (3) for a period of maximum 90 days. Where their enforcement requires a longer period of time, ANCOM may decide to extend the applicability for an additional maximum period of 90 days. The provider in question shall be granted the possibility to present its opinion and propose solutions for the definitive remediation of the situation created.

(5) The measures referred to in paragraphs (2) and (3) shall be established by decision of the ANCOM president.

**Art. 150.** – The enforcement of the fines provided for in Article 143 paragraph (1) shall trigger the confiscation of the goods intended for, resulted from or used for committing the contraventions referred to in Article 142. The confiscated goods shall be capitalized on according to the law.

**Art. 151.** – (1) ANCOM may enforce administrative fines amounting to RON 30,000 for each day of delay, establishing also the date from when these are calculated, to determine:

a) the correct and complete provision of the information requested by ANCOM pursuant to the provisions herein or under the special legislation in the electronic communications field, as well as of the information established in the normative or individual acts issued by ANCOM in accordance with the provisions herein or under the special legislation in the electronic communications field;

b) the level of public awareness under the terms of Article 47 paragraph (2), the submission to the security audit referred to in Article 49 paragraph (1) letter b) or the transmission of the results of the audit mentioned in Article 49 paragraph (1) letter b);

c) the submission to the control provided for in Articles 137 and 138;

d) the compliance with the transparency obligation laid down in Article 106;

e) the compliance with the measures set out in accordance with Article 73 paragraphs (3) and (4), Articles 116, 117, 139 and 149.

(2) The decision of the ANCOM president enforcing the sanctions referred to in paragraph (1) shall have executory title, without any other formality.

(3) The amounts resulted from the administrative fines set out in paragraph (1) shall be integrally deemed own revenues, with a permanent title, at the ANCOM disposal, and shall be used in accordance with the provisions of the income and expenditure budget approved according to the law.

**Art. 152.** – In exercising the duties incumbent according to the normative acts in force, ANCOM shall be actively supported, where required, by the authorities of the local public administration, by the law enforcement bodies or by other public authorities, in view of identifying and tracing the natural or legal persons committing contravention deeds.

**Art. 153.** – Any decision of ANCOM prejudicing the rights of a natural or legal person, acknowledged by this Emergency Ordinance, or the unjustified denial of ANCOM to resolve the request referring to a right acknowledged by this Emergency Ordinance may be challenged in contentious administrative, in accordance with the provisions of Article 12 paragraph (5) of Government Emergency Ordinance no. 22/2009, approved by Law no. 113/2010, with the subsequent amendment and completions.

## **CHAPTER XIII**

### **Transitory and final provisions**

**Art. 154.** – Pursuant to the law, where appropriate, in the shortest time possible, but no later than 7 months from the entry into force of this Emergency Ordinance, ANCOM shall revise the general authorisation regime or the individual rights of use of the limited resources, in accordance with the provisions herein.



**Art. 155.** – (1) By exception from the provisions of Article 154, the rights of use of the radio frequencies awarded before the entry into force of this Emergency Ordinance which are valid more than five years, starting from the entry into force date, may be revised, at the holder's express request, in view of observing the principles under Article 20.

(2) The request referred to in paragraph (1) may be submitted by the interested person from the date of entry into force of this Emergency Ordinance and until 25 May 2016.

(3) Based on the request referred to in paragraph (2), ANCOM shall communicate to the licence holder the extension of the new rights and shall grant the respective holder the possibility to withdraw the request within 30 days from the communication date.

(4) Where the holder withdraws the request submitted according to paragraph (3), the right to use the radio frequencies shall be exercised under the same conditions until 25 May 2016.

(5) After the date specified in paragraph (2), in view of ensuring the observance of Article 20, ANCOM shall take all necessary steps, according to the law, including those related to the amendment at its initiative of the individual rights in force, if required.

(6) ANCOM shall revise the individual rights according to this Article, to promote competition between the right holders, only for preserving the existing rights and shall not consider the granting of new usage rights.

**Art. 156.** – Having regard to Romania's status as Member State of the European Union, the provisions of this Emergency Ordinance shall not bring prejudice to the provisions of the Competition Law no. 21/1996, republished, with the subsequent amendments and completions, nor to the competences of the Competition Council in enforcing this law, respectively in enforcing Articles 101 and 102 of the Treaty on the functioning of the European Union.

**Art. 157.** – Annexes no. 1 and 2 are an integrant part of this Emergency Ordinance.

**Art. 158.** – The Government Emergency Ordinance no. 22/2009 on the establishment of the National Authority for Management and Regulation in Communications, published in

the Romanian Official Journal, Part One, no. 174 of 19 March 2009, approved by Law no. 113/2010, with the subsequent amendments, shall be amended and completed as follows:

**1. Under Article 4, a new paragraph shall be inserted after paragraph (1), paragraph (1<sup>1</sup>), reading as follows:**

“(1<sup>1</sup>) In its activity, ANCOM shall support the objectives of the Body of European Regulators for Electronic Communications, hereinafter referred to as *BEREC*, with a view to create a harmonised and consistent European regulatory framework. For this purpose, in exercising its attributions, ANCOM shall take account of the opinions and common positions adopted by BEREC.”

**2. Under Article 4, paragraph (2) shall be amended and shall read as follows:**

“(2) ANCOM promotes competition in the sector of electronic communications and of postal services, among others by:

a) taking measures in order to prevent and remove actions that restrict, prevent or distort competition or which may have such an effect in the field of electronic communications, including as regards the transmission of the information content, and of postal services;

b) taking all necessary steps to enable the users, including the disabled or elder users or the users with special needs, to obtain maximum benefits in terms of offer diversity, tariffs and quality of service;

c) encouraging the effective use and ensuring the efficient administration of the limited resources it manages.”

**3. Paragraph (1), letter c) under Article 6 shall be repealed.**

**4. Paragraph (1), letter d) under Article 6 shall be amended and shall read as follows:**

“d) cooperation with the foreign national regulatory authorities with similar attributions, as well as with the European Commission and BEREC, with a view to developing

a coherent regulatory practice and to enforcing the European Union's legislation in an even and concerted manner."

**5. Paragraph (2), letters d) and e) under Article 6 shall be amended and shall read as follows:**

"d) ensuring the conditions for exercising the right of access to services within the scope of universal service in the field of electronic communications and postal services;

e) promoting the specific interests of disabled users, elder users and users with special social needs;".

**6. A new letter, letter g), shall be introduced under Article 6 paragraph (2), after letter f), reading as follows:**

"g) promoting the end-users' possibility to access and disseminate information or to use applications or services according to their own decisions."

**7. After Article 6, a new Article shall be introduced, Article 6<sup>1</sup>, reading as follows:**

"Art.6<sup>1</sup>. – In view of attaining the objectives laid down in Articles 4 to 6, ANCOM shall apply the principles of objectivity, transparency, non-discrimination and proportionality in the regulatory activity, among others, by:

a) promoting predictable regulations by ensuring a consistent approach, revised at appropriate time intervals;

b) ensuring the compliance with the non-discrimination principle in the treatment applied to the providers of electronic communications networks and services or to the postal service providers found in similar situations;

c) safeguarding competition to the end-users' benefit and promoting, where appropriate, the infrastructure-based competition;

d) promoting efficient investments and innovation in new and improved infrastructures, including by ensuring that any access obligations imposed take account of the specific risks associated to investment and allow the conclusion of cooperation agreements between investors and the persons requiring the access, in order to share the

risks of the investment, while ensuring the competition on the market and the observance of the non-discrimination principle;

e) taking into consideration the different competition conditions and the different needs of the users from various geographic areas;

f) imposing regulatory *ex ante* obligations only where there is no effective or sustainable competition and loosening up or withdrawing these obligations where these conditions are met.”

**8. Under Article 10 paragraph (1), indents 2 and 7 shall be amended and shall read as follows:**

“2. ensures representation in international institutions and bodies in the field of regulation of electronic communications, audiovisual communications, radio equipment and telecommunications terminal equipment, including as regards electromagnetic compatibility, and of postal services, upholding, within these, the national policy and strategy in the field, and may conclude international agreements of technical nature in these fields;

.....

7. endorses the draft normative acts that regulate the activities in the field of electronic communications, audiovisual communications, radio equipment and telecommunications terminal equipment, including as regards electromagnetic compatibility, and of postal services, observing the applicable legal provisions;”.

**8<sup>1</sup>. Under Article 10 paragraph (2), a new indent shall be introduced after indent 20, indent 20<sup>1</sup>, reading as follows:**

“20<sup>1</sup>. elaborates and adopts technical rules including as regards the control of the compliance with certain obligations in the field of electronic communications, audiovisual communications, radio equipment and telecommunications terminal equipment, electromagnetic compatibility and postal services, as well as for the use of the limited resources in the electronic communications field;”.

**9. Under Article 10 paragraph (2), indent 24 shall be amended and shall read as follows:**

"24. imposes specific obligations on the operators and providers of electronic communications services with significant market power, in accordance with the legal provisions in force;"

**9<sup>1</sup>. Under Article 10 paragraph (2), indent 32 shall be amended and shall read as follows:**

"32. elaborates the regulations necessary for the establishment of communications to the National Unique System for Emergency Calls, including as regards the transmission of emergency calls by means of the eCall service;"

**10. Under Article 12, a new paragraph shall be introduced after paragraph (5), paragraph (6), reading as follows:**

"(6) ANCOM shall send the European Commission or BEREC, at their reasoned request, statistical information on the number of actions in Court referring to the decisions issued by ANCOM, the Court decisions, including as regards the possible temporary measures set out by the Courts and the length of the legal proceedings."

**11. Under Article 14, a new paragraph shall be introduced after paragraph (2), paragraph (2<sup>1</sup>), reading as follows:**

"(2<sup>1</sup>) From the financing sources mentioned in paragraph (1), ANCOM may decide to contribute to the BEREC budget, in accordance with the provisions of Regulation (EC) no. 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office."

**Art. 159. – Under Article 6 of Government Ordinance no. 130/2000 on consumer protection at the conclusion and execution of distance contracts, republished in the Romanian Official Journal, Part One, no. 177 of 7 March 2008, with the subsequent amendments, letter c) shall be amended and shall read as follows:**

“c) the contracts concluded by end-users for services of access and connection to the public electronic communications networks or for publicly available electronic communications services.”

**Art. 160.** – (1) Article 50 paragraphs (1) to (3), Article 51 paragraphs (1) to (5), Articles 53 to 58 and Article 60 paragraphs (1) to (4) shall come into force within 60 days from the publication of this Emergency Ordinance.

(2) On the date this Emergency Ordinance comes into force, the following shall be repealed:

a) Government Ordinance no. 34/2002 on the access to the public electronic communications networks and to the associated infrastructure, as well as their interconnection, published in the Romanian Official Journal, Part One, no. 88 of 2 February 2002, approved with amendments and completions by Law no. 527/2002, with the subsequent amendments and completions;

b) Government Emergency Ordinance no. 79/2002 on the general regulatory framework for communications, published in the Romanian Official Journal, Part One, no. 457 of 27 June 2002, approved with amendments and completions by Law no. 591/2002, with the subsequent amendments and completions, except for the provisions of Chapter IV “Rights of way”, and of the provisions of Article 55 paragraph (1) letter g) and paragraph (2);

c) Law no. 304/2003 on universal service and users’ rights relating to the electronic communications networks and services, republished in the Romanian Official Journal, Part One, no. 343 of 5 May 2008;

d) Government Decision no.1208/2007 on the general conditions relating to the interoperability of the interactive digital television services, as well as of the consumers’ digital television equipment, published in the Romanian Official Journal, Part One, no. 692 of 11 October 2007;

e) Government Decision no.810/2009 on the conditions referring to the systems of conditional access to the services of digital broadcasting of radio and television programmes, published in the Romanian Official Journal, Part One, no. 541 of 4 August 2009;

f) Law no. 510/2004 on the reorganisation of the Inspectorate General for Communications and Information Technology, published in the Romanian Official Journal, Part One, no. 1082 of 22 November 2004, with the subsequent amendments and completions.

(3) The measures adopted or imposed by the regulatory authority on grounds of the normative acts referred to in paragraph (2) shall remain in force until their revision pursuant to the provisions herein.

\*

This Emergency Ordinance transposes:

- Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive), published in the Official Journal of the European Communities, Series L, no. 108 of 24 April 2002;

- the provisions of Articles 1 to 10, 13 to 16, 18, 20, 21 and 24 and of Annex II under Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive), published in the Official Journal of the European Communities, Series L, no. 108 of 24 April 2002;

- Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive), published in the Official Journal of the European Communities, Series L, no. 108 of 24 April 2002;

- the provisions of Articles 1 to 14, 17, 20 to 30, 33, 34, 36 and 38 and of Annexes I, II, III, IV and VI under Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications

networks and services (Universal Service Directive), published in the Official Journal of the European Communities, Series L, no. 108 of 24 April 2002;

- the provisions of Article 1 points 1 to 21, 23, 24 and 26 and of Annexes I and II under Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) no.2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws, published in the Official Journal of the European Communities, Series L, no. 337 of 18 December 2009;

- the provisions of Article 1 points 1 to 12, 15 to 18, 20, 22 to 24 and 28, Articles 2 and 3 and of the Annex under Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services, published in the Official Journal of the European Communities, Series L, no. 337 of 18 December 2009.

- the provisions of Articles 2, 4, 5, 6, 7, 9, 10 and 11 of Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts, published in the Official Journal of the European Communities, Series L, no. 144 of 4 June 1997.

PRIME-MINISTER

**EMIL BOC**

Countersign:

Minister of communications and information society,  
**Valerian Vreme**

President of the National Authority for  
Management and Regulation in Communications,  
**Marius Cătălin Marinescu**



Minister of labour, family and social protection,  
**Sulfina Barbu**

Minister of administration and internal affairs,  
**Constantin Traian Igaş**

Minister of health,  
**Ritli Ladislau**

Minister of national defence,  
**Gabriel Oprea**

Minister of foreign affairs,  
**Teodor Baconschi**

Minister of European affairs,  
**Leonard Orban**

Minister of public finances,  
**Gheorghe Ialomiţianu**

Bucharest, 14 December 2011.  
No. 111.

### Quality-of-service parameters, definitions and measurement methods

a) For providers ensuring access to a public electronic communications network:

PARAMETER (Note 1)	DEFINITION	MEASUREMENT METHOD
Supply time for initial connection	ETSI EG 202 057	ETSI EG 202 057
Frequency of customer complaints in respect of faults	ETSI EG 202 057	ETSI EG 202 057
Fault repair time	ETSI EG 202 057	ETSI EG 202 057

b) For providers of publicly available telephone services:

PARAMETER	DEFINITION	MEASUREMENT METHOD
Call set up time (Note 2)	ETSI EG 202 057	ETSI EG 202 057
Response times for directory enquiry services	ETSI EG 202 057	ETSI EG 202 057
Proportion of coin or card operated public pay telephones	ETSI EG 202 057	ETSI EG 202 057
Bill correctness complaints	ETSI EG 202 057	ETSI EG 202 057
Unsuccessful call ratio (Note 2)	ETSI EG 202 057	ETSI EG 202 057
Version number of ETSI EG 202 057-1 is 1.3.1 (July 2008)		

NOTE 1:

Parameters should allow for performance to be analysed at a regional level, i.e. no less than level 2 in the Nomenclature of Territorial Units for Statistics (NUTS) established by Eurostat.

NOTE 2:

The National Authority for Management and Regulation in Communications may decide not to require up-to-date information concerning the performance for these two parameters to be kept if evidence is available to show that performance in these two areas is satisfactory.

**Minimum items to be included in a reference offer for access to infrastructure facilities, including full or shared unbundled access to the local loop, at a fixed location**

**A. Conditions for unbundled access to the local loop**

1. Network elements to which access is offered, covering in particular the following elements, alongside the associated facilities:

- a) full or shared unbundled access to the local loop;
- b) full or shared unbundled access to the local sub-loop, including, where necessary, access to the network elements which are not active in view of installing the backhaul network segment;
- c) where applicable, access to ducts in view of developing the access networks.

2. Information in respect of:

- a) the location of the physical access sites, including the street cabinets and the main and intermediate distribution frames;
- b) the availability of the local loop, local sub-loop and backhaul segment, in specific parts of the access network;
- c) where necessary, information concerning the location of the ducts and their availability.

3. Technical conditions referring to the access to, and use of, the local loop and sub-loop, including the technical characteristics of the twisted metallic pair, of the fiber optic or of other equivalent technologies, of the cable distributors and associated facilities and, where necessary, the technical conditions concerning the access to the ducts.

4. Ordering and provisioning procedures, possible usage restrictions.

**B. Co-location services**

1. Information on the sites where co-location can be achieved or on the location of the equipment belonging to the operator with significant power, as well as their

modernisation plans. The availability of this information may be restricted to interested parties only, in order to avoid public security concerns.

2. Co-location options at the sites indicated under point 1, including physical co-location and, as appropriate, distant co-location and virtual co-location.

3. Equipment characteristics and restrictions, if any, on equipment that can be co-located.

4. Measures put in place by the operator to ensure the security of its locations.

5. Conditions of access in the co-location sites for the beneficiary's staff.

6. Safety standards.

7. Rules for the allocation of space where co-location space is limited.

8. Conditions for beneficiaries to inspect the locations at which physical co-location is available, or sites where co-location has been refused on grounds of lack of capacity.

### **C. Information systems**

Conditions for access to certain systems of the operator: operational support systems, information systems or databases for pre-ordering, provisioning, ordering, maintenance, repair requests and billing.

### **D. Supply conditions**

1. Lead time for responding to requests for supply of services and associated facilities; service minimum guaranteed levels, fault resolution, procedures to return to a normal level of service and quality-of-service parameters.

2. Standard contract terms, including, where appropriate, the compensations provided for failure to meet the lead times established in accordance with the provisions of point 1.

3. Prices or pricing formulae for each service, function and associated facility listed in this Annex.