

**Government Emergency Ordinance no.22/2009 on the establishment of the
National Authority for Management and Regulation in Communications, approved
by Law no.113/2010, with the subsequent amendments and completions**
(unofficially consolidated text comprising the provisions in force as of 21 November
2013)

Taking into account that, in the letter of formal notice of 29 January 2009 (Case no. 2008/2366), the European Commission points out the fact that the provisions of Directive 2002/21/EC regarding a common regulatory framework for electronic communications networks and services (Framework-directive) have been breached,

considering that the Government of Romania has been invited to answer the letter of formal notice within the infringement procedure by 2 April 2009 and - under these circumstances - the elaboration of a normative act laying down the establishment, organisation and functioning of the regulatory authority in the field of electronic communications under the control of the Romanian Parliament is a solution that will ensure the institutional stability of the national regulatory authority for electronic communications, while the adoption of the draft normative act sets the premises for closing the procedure of infringement against the community rules before the initiation of the next procedural step,

taking into account the steps initiated by the European Commission, in view of ensuring the stability and independence of the national regulatory authority in the electronic communications field (principles also required by the need to ensure the regulatory authority's impartiality in regulatory decision-making), the only solution for ending the infringement procedure is the adoption, under emergency, of a normative act that sets new principles at the foundation of the statute, organisation and functioning of the regulatory authority in the field. The emergency of adopting the normative act is fully justified also in view of the provisions of Article 115(4) of the Romanian Constitution, republished.

Taking into account the need to develop a unitary and open concept of information technology at the national level, so that the benefits of Information Society could be materialized,

taking into account the possibility of reducing expenses by coordinated action for the purpose of developing the Information Society services and, therefor, the necessity of achieving the conditions for the efficient implementation of the policies in the field, an activity which can be conducted only by means of a unique coordinator,

given the lack of national coordination as regards the computerization of public administration, which caused project overlapping, developments in discrepancy with the users' requirements or with the technological evolution,

considering the specific impact of the new technologies on the public administration, including a decrease in the governmental expenditure by using more effective programmes, increasing effectiveness and improving productivity by using information and communications technologies (ITC), which fosters the simplification of the administrative process and inter-institutional information exchanges,

taking into account the impossibility of the National Authority for Communications to exercise the function of administrating at a national level the top level domain (TLD) ".ro" and the SLD (second level domain) ".eu" for the names of domains reserved by Romania, which, in order to ensure the continuity of granting domain names, remains in the responsibility of the National Institute for Research and Development in Information

Technology - I.C.I. Bucharest, an impossibility that breaches the existing legal framework,

provided that, in the absence of immediate regulation, there is a risk of increasing the budget expenditure, which influences the budget deficit,

taking into account that these matters involve the public interest and are extraordinary and emergency situations, whose regulation cannot be delayed, on grounds of Article 115(4) of the Romanian Constitution, republished,

The Government of Romania adopts this emergency ordinance.

Art. 1 – (1) The National Authority for Management and Regulation in Communications, hereinafter referred to as ANCOM, is hereby established as an autonomous public authority with legal personality, under parliamentary control, financed exclusively from own resources, upon the reorganisation of the National Authority for Communications, which is dissolved.

(2) ANCOM is based in Bucharest and has territorial structures required for conducting its specific activity.

Art. 2 – (1) ANCOM's role is to put into practice the national policy in the field of electronic communications, audiovisual communications and postal services, including through market regulation and technical regulation in these fields.

(2) ANCOM administrates and manages the limited resources in the field of electronic communications, including, among others, the radio frequency spectrum, the numbering resources and other associated technical resources, and monitors the radio frequency bands with non-governmental use.

(3) ANCOM controls the fulfilment of the essential requirements regarding electromagnetic compatibility, of the obligations regarding the efficient use of the radio frequency spectrum with non-governmental use, controls the fulfilment of the obligations regarding the use of the numbering resources and of the associated technical resources, monitors the market of radio and telecommunications terminal equipment.

(4) In view of elaborating the national policy in the field, ANCOM will make available to the Ministry of Communications and Information Society, hereinafter referred to as MCSI, reports, studies and analyses elaborated by ANCOM. With a view to the good coordination of Romania's representation in the international bodies, ANCOM must inform MCSI on a monthly basis on the results of the international meetings where it was represented.

Art. 3 – With a view to achieving its roles, ANCOM fulfils the following functions:

a) enforce the sectoral policy and strategy elaborated by the Ministry for Information Society (MSI) in the field of electronic communications, audiovisual communications and postal services;

b) administrate and manage the limited resources, planning, allotting, monitoring and evaluating their use with a view to enforcing the policies in the field, by:

1. administration of the radio spectrum by planning, allocating, allotting the frequency bands, assigning and monitoring the radio frequencies in the frequency bands with non-governmental use, as well as by coordinating, at the national level, the radio frequency management in accordance with the National Table for Frequency

Band Allocation, hereinafter referred to as the NTFA, and with the international agreements in which Romania is a party;

2. effective management of the radio frequency bands with non-governmental use in accordance with the NTFA, by allocation and/or assignment of radio frequencies, for the purpose of ensuring their rational and efficient use;

3. administration and allocation of the numbering resources and of the associated technical resources for electronic communications networks and services, including by elaborating the National Numbering Plan, hereinafter referred to as the NNP, as well as other similar plans;

4. management of the numbering resources at the national level, with a view to their rational and efficient use;

5. administration and management of other limited resources in the field of electronic communications;

c) regulate the activities in the field of electronic communications, audiovisual communications and postal services, by adopting and implementing normative and individual decisions, as well as functional, operational and financial procedures by which the compliance control and monitoring policies in the field are enforced;

d) elaborate specific secondary rules in the field of electronic communications and postal services;

e) ensure representation in the national, regional and international bodies and organisations, in its capacity of regulatory authority in the field of electronic communications and postal services and authority which manages the limited resources in the electronic communications field;

f) collaborate and communicate with the other structures of the public administration, with the civil society and with the citizens, as well as with the providers of networks and services in the field of electronic communications, audiovisual communications and postal services;

g) act as decision-making body, under the law, in the resolution of disputes between the providers of electronic communications networks and/or services, for the purpose of ensuring free competition and protecting the end-user's interest in the markets of these services;

h) survey and control compliance of the limited resource users' with the obligations incurred under the legal provisions and under the administrative acts which granted them the right of use;

i) elaborate technical procedures and rules specific to the ANCOM activity;

j) survey the market of radio and telecommunications terminal equipment;

k) control in view of fulfilling the essential requirements of electromagnetic compatibility and of the efficient use of the radio spectrum.

Art. 4 – (1) In view of fulfilling its role and legal duties, ANCOM consults and collaborates with the Competition Council and with the National Authority for Consumer Protection, including by the mutual provision of information required in view of enforcing the provisions of the competition legislation, as well as of the provisions of the legislation in the field of electronic communications and of postal services.

(1¹) ANCOM supports in its activity the objectives of the Body of European Regulators for Electronic Communications, hereafter BEREC, with a view to create a harmonised and coherent European regulatory framework. In this sense, while

exercising its duties, ANCOM takes into consideration the opinions and common positions adopted by BEREC.

(2) ANCOM promotes competition in the sector of electronic communications and of postal services, acting, among others, so as to:

a) prevent and remove the actions that restrict, hinder or distort competition or that may have such effect, in the field of electronic communications, including as regards the transmission of the information content, and of postal services;

b) enable the users, including the disabled, elders or with special social needs, to obtain maximum benefits in terms of offer diversity, tariffs and quality of services;

c) encourage the effective use and ensure the efficient management of the limited resources within its area of competence.

Art. 5 – ANCOM ensures the efficient use of the limited resources in the field of electronic communications and of postal services, acting especially in order to:

a) avoid the hoarding of the limited resources, due to them not being used pursuant to the allocation level set in the held licences;

b) encourage efficient investment in infrastructure and promote innovation.

Art. 6 – (1) ANCOM contributes to the development of the internal market of the European Community, especially by:

a) removing the barriers to the provision – at European level – of the electronic communications networks and services, of the associated infrastructure and of the postal services, including by harmonising the NTFAs, the NNPs and the prospective plans with the European Common Table for Frequency Band Allocation (ECTFBA), European Telephony Numbering Space (ETNS) and with other pan-European application rules;

b) encouraging the establishment and development of trans-European networks, the interoperability of pan-European services and end-to-end connectivity;

c) repealed;

d) cooperating 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 legislation in an even and concerted manner.

(2) ANCOM promotes the interests of the end-users from the European Union, in particular by:

a) ensuring a high level of protection to the end-users in their relationship with the providers;

b) getting involved in ensuring a high level of protection of personal rights, mainly of the right to privacy, especially as regards the processing of personal data;

c) promoting the provision of clear information, particularly as regards the transparency of tariffs and of the usage terms for publicly available electronic communications services;

d) ensuring the conditions for exercising the right of access to the services within the scope of universal service in the field of electronic communications and postal services;

e) promoting the specific interests of the disabled and elderly users or of the users with special social needs;

f) ensuring the protection of the integrity and security of the public electronic communications networks;

g) promoting the end-users' possibility of accessing and distributing information or using applications or services in line with their decisions.

Art. 6¹ – In view of attaining the objectives set in Articles 4 to 6, ANCOM shall enforce in its regulatory work the principles of objectivity, transparency, non-discrimination and proportionality, inter alia, by:

a) promoting predictable regulations by ensuring a consistent approach, revised at suitable time intervals;

b) ensuring the compliance with the principle of non-discrimination in the treatment of the providers of electronic communications networks and services or of the postal service providers found in similar circumstances;

c) safeguarding competition to the end-users' benefit and promoting, where applicable, the infrastructure-based competition;

d) promoting efficient investments and innovation in new and improved infrastructures, including by ensuring that any imposed access obligations take into account the investment associated specific risks and allow for cooperation agreements between investors and the persons requiring the access, in order to share the investment risks, while ensuring competition in the market and compliance with the non-discrimination principle;

e) taking into consideration the various competition environment and users' needs from various geographic areas;

f) imposing ex ante regulatory obligations only where there is no effective or sustainable competition and loosening up or withdrawing these obligations where these requirements are met.

Art. 7 – (1) In its activity, ANCOM shall aim at observing the principle of technological neutrality, by virtue of the phenomenon of technological convergence, and shall contribute, within the limits of its competences, to ensuring the implementation of the policies that aim to promote cultural and linguistic diversity, as well as media pluralism.

(2) In order to fulfil its attributions, ANCOM shall pursue achieving the objectives provided in Articles 4 to 6, taking reasonable steps therefor, observing the principles of proportionality, non-discrimination, transparency and full objectivity.

Art. 8 – (1) ANCOM shall encourage the use of standards and/or of the technical specifications for the provision of services, of technical interfaces and/or of the network functions, published in the Official Journal of the European Union, to the strict extent required for ensuring service interoperability and for improving the users' choice, excepting the case when the use of certain standards and specifications has been declared obligatory by the European Commission.

(2) Until the publication of the standards and specifications provided in paragraph (1), ANCOM shall encourage the implementation of the standards and specifications adopted by the European standardization bodies or, should these be missing, of the standards and recommendations adopted by the International Telecommunication Union, by the International Standardization Organisation or by the International Electrotechnical Commission.

(3) This article shall not apply to the essential requirements, interface specifications and harmonised standards provided in Government Decision no. 88/2003

on radio and telecommunications terminal equipment and the mutual recognition of their conformity, republished.

Art. 9 – (1) In case the European Commission adopts recommendations with a view to ensuring the harmonised enforcement of the Community rules in the field of electronic communications, ANCOM shall take utmost account of these recommendations in exercising its attributions.

(2) If ANCOM chooses not to enforce a recommendation, it shall send a reasoned notice to the European Commission.

Art. 10 – (1) ANCOM shall exercise the following general attributions in the fields of electronic communications, audiovisual communications, radio and telecommunications terminal equipment, including as regards electromagnetic compatibility, and of postal services:

1. elaborates and adopts technical rules in the field of electronic communications, audiovisual communications, radio and telecommunications terminal equipment, including as regards electromagnetic compatibility, and of postal services, as well as for the use of the numbering resources;

2. ensures, as regulatory authority, representation in international bodies and institutions in the field of regulation of electronic communications, audiovisual communications, radio and electronic communications terminal equipment, electromagnetic compatibility and - postal services, upholding, within these, the national policy and strategy in the field, and may receive the mandate to conclude international agreements of technical nature;

3. collaborates with national and international bodies and institutions in the field of electronic communications, audiovisual communications, radio and telecommunications terminal equipment, including as regards electromagnetic compatibility, and of postal services, develops and enhances the relationships with these; cooperates with foreign regulatory authorities in the field of electronic communications and postal services, including by concluding collaboration agreements and information exchange;

4. enforces, under the law, the international agreements in the field of electronic communications, audiovisual communications, radio and electronic communications terminal equipment, electromagnetic compatibility and postal services;

5. collaborates with MCSI in all the fields where the ANCOM expertise is necessary or useful;

6. elaborates and forwards to the Ministry for Information Society proposals of normative acts in the sectors of electronic communications, audiovisual communications, radio and electronic communications terminal equipment, electromagnetic compatibility and postal services, and elaborates and forwards to the General Secretariat of the Government proposals of normative acts in the sector of allotment and assignment of radio frequencies;

7. endorses the draft normative acts that regulate activities in the field of administration and management of the radio frequencies, the draft normative acts which regulate the organisation and functioning of ANCOM, as well as other draft normative acts, upon the request of the Ministry for Information Society;

8. forecasts, plans and schedules in its draft budget the financial resources required in view of implementing the policies within its competence;

9. implements the European Union financial support programmes in the field of electronic communications, audiovisual communications, radio and electronic communications terminal equipment, including as regards electromagnetic compatibility, and of postal services, which concern the institutional capacity of ANCOM;

10. elaborates and publishes reports, studies, analyses and other such documents in the field of electronic communications, audiovisual communications, radio and electronic communications terminal equipment, including as regards electromagnetic compatibility, and of postal services, with a view in particular to assessing the necessity and opportunity of issuing new regulations, evaluating and monitoring the implementation of the policies and regulations, as well as the management of the programmes and projects, organises seminars and round tables, image promoting activities, public information and awareness rising campaigns, therefor contracting – as required – consultancy, expertise, technical assistance and other such services, in accordance with the legal provisions in force;

11. monitors and verifies the enforcement of the provisions under the normative acts in force or the international agreements in the field of electronic communications, audiovisual communications, radio and electronic communications terminal equipment, electromagnetic compatibility and postal services, acting towards preventing, removing and sanctioning the infringement of these provisions, according to the competences set thereunder;

12. settles, under the law, the disputes between the providers of electronic communications networks and/or services, for the purpose of ensuring free competition and protecting the end-users' interest.

(2) ANCOM shall exercise the following specific attributions in the field of electronic communications, audiovisual communications and postal services:

1. elaborates and updates the general authorisations;

2. monitors and controls compliance with the obligations imposed on the providers of electronic communications networks and services by the general authorisations;

3. promotes and supports the European harmonisation of the use of numbering resources, in accordance with the legal instruments in force across the European Union;

4. adopts the NNP and any amendment thereof, in keeping with the restrictions imposed out of national security reasons; before adopting the NNP, ANCOM shall inform and consult the Ministry for Information Society in respect of the amendments;

5. manages, at a national level, the numbering resources and the radio frequencies in the bands allotted for non-governmental use;

6. manages, at a national level, the technical resources required in view of providing publicly available electronic communications services or of operating public electronic communications networks;

7. administrates and coordinates at a national level the management of frequencies in accordance with the NTFA and with the international agreements in which Romania is a party;

8. awards licences for the use of numbering resources, establishes and charges tariffs for the issuance of licences, in accordance with the legislation in force and with the administrative costs of their issuance;

9. establishes and charges tariffs for the use of the numbering resources, in accordance with the legislation in force;

10. issues regulations regarding the usage of the numbering resources and of the radio frequencies in the bands allotted for non-governmental use;

11. proposes the NTFA to the Government for adoption, after previously obtaining the notice of approval from the Radiocommunication Interdepartmental Commission in respect of the assignments concerning the frequency bands with non-governmental use or shared governmental/non-governmental use;

12. awards the licences for the use of the radio frequencies for the provision of the electronic communications networks and services that use the radio spectrum, as well as the broadcasting licences and establishes and charges the tariffs for the use of spectrum;

13. allots and assigns radio frequencies in the bands with full or shared non-governmental use provided in the NTFA, under the provisions of the national and international regulations, agreements and protocols, and implements the coordination procedures established by the international agreements;

14. grants the frequency assignment authorisations and the technical authorisations, observing the regulations in force;

15. conducts the technical assessments required for the rational and efficient use of the radio frequencies, to determine the possibility of allotting the radio frequency bands, under the legal provisions;

16. analyses and conducts the technical assessment of the use of radio frequencies for the purpose of ensuring electromagnetic compatibility between the authorised radiocommunication stations and networks, as well as for the purpose of preventing harmful interferences, in order to evaluate the possibility of assignment, upon request;

17. allocates and assigns the identification codes for certain radiocommunication services, authorises the radiocommunication station operating personnel and ensures the records for these activities;

18. ensures the permanent record of the radio frequency use by ensuring the registration of frequency assignments and by permanently maintaining the specialised databases that are part of the National Record of Assigned/Allotted Frequencies;

19. monitors the radio frequency spectrum with non-governmental use;

20. monitors and controls compliance with the obligations under the licences for the use of radio frequencies or under the broadcasting licences or under the regulations in the field of radiocommunications;

20¹. elaborates technical rules, including for the control of the compliance with certain obligations in the field of electronic communications, audiovisual communications, radio and electronic communications terminal equipment, electromagnetic compatibility and postal services, as well as for the use of the limited resources in the electronic communications sector;

21. identifies the relevant markets in the electronic communications sector;

22. conducts market analyses in the situations where these are mandatory, according to the law;

23. designates the providers of electronic communications networks and services with significant market power;

24. imposes specific obligations on the operators and providers of electronic communications services with significant market power, pursuant to the legal provisions in force;

25. designates the universal service providers in the field of electronic communications and of postal services and imposes on them the corresponding obligations;

26. manages the financing mechanisms related to the universal service obligations provided by the special legislation;

27. establishes the necessary steps for implementing number portability;

28. controls compliance with the obligations imposed on the universal service providers pursuant to the provisions of the special legislation;

29. exercises the attributions established by Law no. 506/2004 on processing personal data and the protection of privacy in the electronic communications sector, with the subsequent amendments and completions;

30. exercises the attributions of the regulatory authority provided for in Government Ordinance no. 31/2002, approved with amendments and completions by Law no. 642/2002, with the subsequent amendments and completions;

31. issues the necessary certificates required for obtaining the construction authorisations for the masts and buildings that may affect the functioning of ANCOM's monitoring systems;

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 from an eCall-equipped car;

33. participates in the works of the Radiocommunication Interdepartmental Commission.

(3) ANCOM shall exercise the following specific attributions in the field of radio and telecommunications terminal equipment, including as regards their electromagnetic compatibility:

1. verifies, after their putting on the market, whether all radio and telecommunications terminal equipment observe the essential requirements concerning the protection of the user's or any other person's health and safety, as well as the health and safety of any other person, and protection regarding electromagnetic compatibility; moreover, as regards radio equipment, it verifies whether such equipment is built so as to use the allotted radio spectrum efficiently, in order to prevent harmful interferences, in accordance with the applicable national legislation;

2. takes steps in view of ensuring that the radio and telecommunications terminal equipment meet the conformity requirements;

3. exercises the attributions established by Government Decision no. 982/2007 on electromagnetic compatibility.

(4) ANCOM shall also fulfil other attributions established by special legal provisions.

(5) ANCOM may conclude, under the law, contracts with legal entities under the public or the private law, with the object of conducting specific activities required in view of fulfilling its functions, objectives and attributions.

Art. 11 – (1) The management of ANCOM shall be ensured by one president and two vice-presidents, appointed by the President of Romania, upon the Government's proposal.

(2) The basic wage of the ANCOM president and vice-presidents shall be set out at the level of the indemnity of the secretary of state, as regards the president, and, respectively, of the sub-secretary of state, as vice-presidents are concerned.

(3) The ANCOM presidents and vice-presidents must:

- a) be Romanian citizens with at least 5 year-experience in the communications field or, in general, in the legal or economic field;
- b) not exercise other public or private functions, except for the didactic ones;
- c) not have criminal record;
- d) not hold, directly or indirectly, social shares or parts in commercial companies operating in the electronic communications or postal services fields or involved in other activities which fall within ANCOM's regulation scope and must not belong to the management board of such companies;
- e) not be members of any political party during his/her mandate.

(4) The provisions of Chapter IV "Other conflicts of interests and incompatibilities" within title IV "The conflict of interests and the incompatibility regime in the exercise of public dignities and public positions" of Law no. 161/2003 on certain measures to ensure transparency in exercising public dignities, public positions and positions in the business environment, and on preventing and sanctioning corruption, with the subsequent amendments and completions, shall apply correspondingly to the president and vice-presidents of ANCOM.

(5) The president and vice-presidents of ANCOM shall be appointed for 6 years. Their mandates can be extended for the same period only once. The mandates of the president and vice-presidents of ANCOM shall end in the following cases:

- a) should it be impossible to fulfil the mandate for more than 120 consecutive calendar days out of a total of 140 days;
- b) should it exist a criminal conviction delivered by final judgement, where rehabilitation did not take place;
- c) should not be observed the 3-month term provided for remedying the incompatibility status regulated under paragraph (8);
- d) by resignation;
- e) by death;
- f) upon expiry.

(6) If any of the president or vice-president positions becomes vacant, a new person will be appointed for the period remaining until the end of the mandate, as provided in paragraph (1).

(7) The members whose mandates expired keep exercising their function until their successors are appointed.

(8) The president or the vice-presidents who, at the time of their appointment or during their mandate, are found in one of the incompatibility cases stated in paragraphs (3) and (4) shall be given a 3-month term for remedying the incompatibility status.

(9) In the case provided in paragraph (8), the person concerned has the obligation to immediately notify, in writing, the Commission for information technology and communications within the Deputy Chamber and the Commission for economy, industry and services within the Senate on the existence of the incompatibility status.

Art. 12 – (1) The president shall represent ANCOM in its relations with the Parliament, Government, ministries, other public authorities and organisations, as well as with legal and natural persons from Romania and abroad.

(2) The president of ANCOM shall be a credit principal.

(3) In exercising his/her attributions, the president shall issue Decisions.

(4) The normative decisions shall be published in the Romanian Official Journal, Part One.

(5) The decisions adopted, according to the law, in the fields of electronic communications, audiovisual communications, radio and electronic communications terminal equipment, including as electromagnetic compatibility is concerned, postal services and information technology, including those adopted pursuant to the provisions of Article 36 of the Government Emergency Ordinance no. 79/2002 on the general regulatory framework for communications, approved with amendments and completions by Law no. 591/2002, with the subsequent amendments and completions, may be challenged at the Administrative Contentious section of Bucharest Court of Appeal, without previously undergoing the procedure provided for in Article 7 of the Administrative Contentious Law no. 554/2004, with the subsequent amendments and completions. The individual decisions may be challenged within 30 days from their communication date.

(6) ANCOM shall send to the European Commission and BEREC, at their reasoned request, statistical information on the amount of court actions filed in relation to the decisions issued by ANCOM, the Court judgements, including with regard to the possible temporary measures decided by the Courts, as well as the length of the judicial proceedings.

Art. 13 – (1) The president of ANCOM shall have the following attributions:

- a) approves the ANCOM institutional development strategies, the work programmes and the cooperation programmes;
- b) approves the ANCOM annual activity plan;
- c) approves the ANCOM investment plan;
- d) coordinates the process of elaboration and implementation of ANCOM regulations;
- e) convenes and presides the plenary meetings of the Consultative Council;
- f) approves, by way of an internal decision, the organisational chart, the explanatory list of positions and the number of positions within ANCOM;
- g) establishes the territorial structures of ANCOM;
- h) establishes, by internal decision, the specific attributions of each compartment within ANCOM;
- i) approves the ANCOM internal rules of procedure;
- j) coordinates the activity of ANCOM compartments;
- k) negotiates and signs for and on behalf of ANCOM the collective labour agreement;
- l) approves the organisation of exams for the occupation of the vacant positions within ANCOM;
- m) approves the employment, promotion, as well as amendment or cessation of the labour relations of the ANCOM personnel;
- n) approves the ANCOM personnel's official travels within the country and abroad;
- o) any other attributions provided by the law.

(2) The president of ANCOM may delegate certain attributions under paragraph (1) to the subordinated personnel.

(3) The president of ANCOM shall establish the attributions of the vice-presidents of ANCOM.

(4) In the absence of the president, his/her attributions shall be exercised by the vice-president designated by decision of the president.

(5) If the president and the 2 vice-presidents are missing or it is impossible for them to exercise their prerogatives, the ANCOM representation shall be ensured by a person with a managing function, designated by decision of the president of ANCOM.

Art. 14 – (1) ANCOM's current and capital expenditures shall be entirely financed from own revenues, which derive from the following sources:

a) the monitoring traffic due for the activity of surveillance and control in the field of electronic communications and postal services carried out by ANCOM, in accordance with the provisions of Chapter VIII¹ of the Government Emergency Ordinance no. 79/2002, approved with amendments and completions by Law no. 591/2002, with the subsequent amendments and completions;

b) the tariff for the use of spectrum, in accordance with the provisions of Article 19(1) of the Government Emergency Ordinance no. 79/2002, approved with amendments and completions by Law no. 591/2002, with the subsequent amendments and completions;

c) the tariff for the use of numbering resources, in accordance with the provisions of Article 19(2) of the Government Emergency Ordinance no. 79/2002, approved with amendments and completions by Law no. 591/2002, with the subsequent amendments and completions;

d) donations, legacies and patronages, according to the law;

e) internal and external contracted credits, according to the law;

f) other revenues that can be achieved under the law.

(2) The amounts cashed in from the sources provided at paragraph (1) shall be entirely and permanently considered ANCOM's own revenues. ANCOM shall administrate the outstanding debts provided at paragraph (1), to which the provisions of the Government Ordinance no. 92/2003 on the Fiscal Procedure Code, republished, with the subsequent amendments and completions, shall apply correspondingly, and they shall be used in accordance with the provisions of the budget of incomes and expenditures.

(2¹) ANCOM may decide to use the financing sources referred to in paragraph (1) 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.

(3) The ANCOM annual budget of incomes and expenditures shall be approved by decision of the Parliament, with the endorsement of the Commission for information technology and communications within the Deputy Chamber and of the Commission for economy, industry and services within the Senate, upon the proposition of the president of ANCOM.

(4) The annual surplus derived from the execution of the ANCOM budget of incomes and expenditures shall be carried forward to the following year.

(5) By way of exception from the provisions of paragraph (4), in 2013, from the registered availabilities of ANCOM, standing for surpluses registered in the previous years, the amount of 100 million lei shall be transferred to the state budget, in the income account – 36.01.05 "Transfers from the incomes and/or availabilities of the public institutions", within 15 days from the entry into force of this emergency ordinance.

Art. 15 – (1) The ANCOM work shall be analysed by the Parliament, which discusses the annual report submitted for the previous year, as well as the specific reports drawn up at the request of the Commission for information technology and communications within the Deputy Chamber and of the Commission for economy, industry and services within the Senate.

(2) The activity annual report shall be submitted to the Commission for information technology and communications within the Deputy Chamber, to the Commission for economy, industry and services within the Senate and to MCSI, by 30 April, and shall be discussed before the president and vice-presidents of ANCOM. Based on the annual report, the commissions shall draw up and adopt a report.

(3) At the request of the Commission for information technology and communications within the Deputy Chamber and of the Commission for economy, industry and services within the Senate, ANCOM shall submit them for debate and approval a programme of concrete measures to remedy the potential faults signalled in the report.

(4) The report of the Commission for information technology and communications within the Deputy Chamber and of the Commission for economy, industry and services within the Senate on the activity annual report shall be submitted for debate in the Parliament's plenum, in the presence of the president and vice-presidents of ANCOM.

Art. 16 – Within 60 days from the date this emergency ordinance comes into force, the Regulation on the Organisation and Operation and the organisational chart of ANCOM shall be approved by decision of the president of ANCOM.

Art. 17 – (1) ANCOM shall take over the number of positions and the personnel of the former National Authority for Communications, maintaining the salary rights as until the takeover.

(2) As soon as the new organisational structure of ANCOM is approved, within 90 days, exams shall take place for the vacant places within the new organisational structure, under the salary conditions set out by the new salary grid, approved by decision of the president of ANCOM. The manner in which the exams shall take place, the promotion criteria, as well as any other related aspects shall be approved by decision of the president of ANCOM.

(3) The persons whose work positions are dissolved shall be dismissed, according to the law.

Art. 18 – (1) The personnel of ANCOM shall be employed upon taking an exam organised under the law, in accordance with the organisational structure, and the individual labour agreement shall be concluded pursuant to the law.

(2) The individual attributions, tasks and responsibilities of the ANCOM personnel shall be established in the job description, signed by the hierarchical chief and by the job holder, based on the Regulation on the Organisation and Operation of ANCOM.

(3) The promotion, amendment, suspension or cessation of the labour relations of the personnel within ANCOM's compartments shall be achieved by decision of the president, pursuant to the law.

(4) The remuneration and the other staff rights of the ANCOM personnel shall be exclusively established under the conditions of Law no.53/2003 – Labour Code,

republished, with the subsequent amendments and completions, by negotiation within the collective labour agreement within ANCOM and individual labour agreement, within the limits of the budget of incomes and expenditures. The provisions of the general normative acts which concern the establishment of the collective or individual salary rights in the budgetary sector shall not apply. The collective labour contract shall be concluded at the latest on the date when the collective agreement in force expires.

(5) In its activity, ANCOM has the obligation to exercise its attributions in a transparent and impartial manner and to maintain its operational and financial independence towards:

- a) the providers of electronic communications networks and services;
- b) the manufacturers or the authorised representatives of the manufacturers of equipment required for the provision of electronic communications networks or services, importers or distributors of such equipment;
- c) the providers of postal services.

(6) The ANCOM employees may not hold shares or social parts in commercial companies operating in the sector of electronic communications, postal services, audiovisual or any other sectors which fall within ANCOM's area of competences and may not be members of the management board of such companies.

Art. 19 – (1) ANCOM shall take over the patrimony and budget of the former National Authority for Communications, which is dissolved in accordance with this emergency ordinance, as well as all its rights and obligations, except for the infrastructure and equipment required to exercise the attributions of administration and management, at the national level, of TLD ".ro", of the name servers for the .ro domain, of the national directory for the .ro domain, including the rotld.ro portal, of all applications, databases, licences, related textbooks and procedures.

(2) The patrimony of the former National Authority for Communications shall be established based on the closing accounting balance sheet at the dissolution date, along with the synthetic trial balance, the patrimony result account, the statement on the treasury flows, the execution accounts drawn up within the approved budgets and the other annexes, as the case may be, prepared according to the existing methodology, and shall be taken over on the basis of the aforementioned documents and of the handover-takeover protocol, within 30 days from the date this emergency ordinance becomes effective.

Art. 20 – Within the text of the normative acts in force, the following wordings shall be correspondingly replaced according to the provisions of this emergency ordinance:

- a) "National Authority for Communications" with "National Authority for Management and Regulation in Communications";
- b) "ANC" with "ANCOM".

Art. 21 – Government Decision no. 12/2009 on the organisation and functioning of the Ministry of Communications and Information Society, published in the Romanian Official Journal, Part I, no. 51 of 28 January 2009, is amended and completed as follows:

1. Within paragraph (1) of Article 4, after indent 53, 6 new indents will be introduced, indents 54-59, reading as follows:

"54. surveillance and control of the compliance with the legal provisions in the electronic commerce field, in its capacity of regulatory and supervisory authority, in accordance with the provisions of Law no. 365/2002 on electronic commerce, republished;

55. exercise of the attributions as regulatory and supervisory authority in the electronic signature field, as provided by Law no. 455/2001 on electronic signature;

56. exercise of the attributions as regulatory and supervisory authority in the temporal marking field, as provided by Law no. 451/2004 on temporal marking;

57. exercise of the attributions as regulatory and supervisory authority in the electronic notary activity field, as provided by Law no. 589/2004 on the legal regime of the electronic notary activity;

58. exercise of the attributions as regulatory and supervisory authority in the electronic archiving field, as provided by Law no. 135/2007 on electronic archiving;

59. surveillance and control of the compliance with the legal provisions in the field of information systems used for electronic invoicing, in its capacity of regulatory, homologation and supervisory authority."

2. After paragraph (3) of Article 4, a new paragraph, paragraph (3¹), will be introduced, reading as follows:

"(3¹) The organisation, implementation, elaboration and administration of all national programmes, infrastructure, systems and services relating to the information society will be fulfilled upon the approval, under the coordination and control of the Ministry of Communications and Information Society."

3. Paragraph (2) within Article 12 will be amended and will read as follows:

"(2) The maximum number of positions is 248, excluding the statesmen and the positions in the minister's cabinet."

4. Annex no. 1 "Organisational chart of the Ministry of Communications and Information Society" will be amended and replaced with the annex which is part of this emergency ordinance.

Art. 22 – Within Article 2(1) letter A in Annex no. 2 to the Government Decision no. 1621/2003 on the organisation and functioning of the National Institute for Research-Development in Informatics - ICI Bucharest, published in the Romanian Official Journal, Part I, no. 56 of 23 January 2004, with the subsequent amendments, after letter n), a new letter shall be introduced, letter o), reading as follows:

"o) organisation, administration and management of the TLD (top level domain) «.ro», fulfilling the function of directory for the «.ro» domain names;"

Art. 23 – Within Article 2 of the Government Emergency Ordinance no. 73/2007 on the organisation and functioning of the Agency for Information Society Services, published in the Romanian Official Journal, Part I, no. 444 of 29 June 2007, approved with amendments and completions by Law no. 125/2008, letter c) shall be amended and shall read as follows:

"c) implements and operates, at national level, information and communications systems for the purpose of providing services required for the electronic government;"

Art. 24 – Within the text of the normative acts in force the wording "National Authority for Communications" shall be replaced with the wording "Ministry of

Communications and Information Society" as regards the specific attributions provided in Article 4(1) indents 54-59 of the Government Decision no. 12/2009.

Art. 25 – (1) With the entry in force of this emergency ordinance, the Government Emergency Ordinance no. 106/2008 on the establishment of the National Authority for Communications, published in the Romanian Official Journal, Part I, no. 659 of 18 September 2008, with the subsequent amendments, Chapters VII and VIII of the Government Emergency Ordinance no. 79/2002 on the general regulatory framework for communications, published in the Romanian Official Journal, Part I, no. 457 of 27 June 2002, approved with amendments and completions by Law no. 591/2002, with the subsequent amendments and completions, as well as any other contrary legal provisions shall be repealed.

(2) The final mention on the transposition of the Community rules in the Government Emergency Ordinance no. 79/2002 on the general regulatory framework for communications shall be amended and shall read as follows:

"This emergency ordinance transposes Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of the electronic communications networks and services (the Authorisation Directive), published in the Official Journal of the European Communities no. L 108 of 24 April 2002, and Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on the common regulatory framework for the electronic communications networks and services (the Framework Directive), published in the Official Journal of the European Communities no. L 108 of 24 April 2002, except for the provisions of Articles 3, 4, 8, 17 and 19."

*

This emergency ordinance transposes the provisions of Articles 3, 4, 8, 17 and 19 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 (Framework-Directive), published in the Official Journal of the European Communities no. L 108 of 24 April 2002, with the subsequent amendments.

PRIME-MINISTER

EMIL BOC

Countersign:

Ministry of Communications and Information Society,

Gabriel Sandu

Vice-prime-minister, Minister of Administration and Interior,

Dan Nica

Head of the European Affairs Department,

Vasile Puscas

Minister of Labour, Family and Social Protection,

Marian Sarbu

Minister of Public Finances,

Gheorghe Pogea

ANNEX: ORGANISATIONAL CHART of the Ministry of Communications and Information Society

(- Annex no. 1 to the Government's Decision no. 12/2009)

