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**Government Emergency Ordinance no. 111/2011 of 14 December 2011
on electronic communications, approved with amendments and completions
by Law no. 140/2012, with the subsequent amendments and completions**

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),

Having regard to the changes to the text of the directives indicated above following 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 public communications sector, and Regulation (EC) **2006/2004** on cooperation between national authorities entrusted with the application of consumer protection law, respectively 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 electronic communications networks and

associated facilities, as well as their interconnection, and **2002/20/EC** concerning 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,

Taking into account the fact 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 national law by 25 May 2011 at the latest, has not been fulfilled,

Whereas, as a result of non-compliance with the deadline for transposing Directive **2009/140/EC** and Directive **2009/136/EC**, the European Commission has initiated proceedings prior to infringement proceedings under Article 258 of the Treaty on the Functioning of the European Union, Romania receiving from the European Commission on 18 July 2011 the letter of formal notice in cases no. 2011/0939, respectively no. 2011/0940,

Whereas on 24 November 2011 the European Commission issued the reasoned opinion in those cases, the last pre-litigation stage of the infringement proceedings, setting 25 January 2012 as the deadline for complying with the obligations and communicating the measures transposing these directives, before referring the matter to the Court of Justice of the European Union,

Bearing in mind that a further delay in complying with the obligation to communicate the transposition measures may lead to the European Commission bringing proceedings against Romania for failure to fulfil obligations before the Court of Justice of the European Union, pursuant to Article 258 of the Treaty on the Functioning of the European Union,

Bearing in mind that Directive **2009/140/EC** and Directive **2009/136/EC** have provided for rights in favour of end-users in a sufficiently concrete and detailed manner so that failure to ensure the effectiveness of such rights, as a consequence of the failure to transpose the specified Directives within the time limit, particularly affects directly the interests of end-users of electronic communications services,

Considering the fact that according to Article 260 para. (2) and (3) of the Treaty on the Functioning of the European Union, Romania's liability for breach of its obligations to transpose Directive 2009/140/EC and Directive 2009/136/EC may be materialized both in the payment of a lump sum and of periodic penalty payments to be calculated from the deadline for compliance set out in the reasoned opinion,

Having regard to the fact that, by the European Commission's Communication SEC (2011) 1.024 of 1 September 2011, the minimum lump sum for Romania was established at the level of EUR 1,710,000, and the value of the national factor "n" for the calculation of periodic penalty payments is 3.29, the penalties being between, approximately, EUR 2,000-130,000/day of delay, which, taking into account the significant delay in the transposition of Directive 2009/140/EC and Directive 2009/136/EC, could have an important impact on the state budget,

Taking into account the fact that these elements concern the public interest, constituting emergency and extraordinary situations the regulation of which cannot be deferred, pursuant to Article 115 para. (4) of the Constitution of Romania, republished, The Government of Romania adopts this emergency ordinance.

CHAPTER I

General provisions

Article 1. – (1) This Emergency Ordinance aims to:

a) establish the general framework for regulating the activities related to electronic communications networks and services, the regime of authorization of these activities, the facilities and associated services, of certain aspects on terminal equipment, as well as the measures aimed at promoting competition on 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 the operators 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) establish the regulatory framework for end-users' access or, as applicable, for consumers' access to the services falling 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.

Article 1¹ – This emergency ordinance aims:

(a) to contribute to the achievement of the internal market within the European Union in the field of electronic communications networks and services, leading to the deployment and use of very high-capacity networks, to sustainable competition, to the interoperability of electronic communications services, to the accessibility and security of electronic communications networks and services, and to the attainment of benefits in favour of end-users;

b) to ensure the provision, by means of a competitive environment and effective choices, of high quality publicly available electronic communications services at affordable prices;

c) to provide the framework for meeting the needs of end-users, including the needs of end-users with disabilities to access electronic communications services on an equal basis with the other users, where the market does not meet them;

d) to establish the rights of end-users.

Article 2. – In exercising the duties laid down 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 set out 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.

Article 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.

Article 3¹ - (1) The provisions of this emergency ordinance shall be without prejudice to:

a) actions concerning measures aimed at ensuring defence, public order and national security;

b) rules on content regulation and policy in the audio-visual field;

c) rules on the protection of personal data and privacy;

d) regulations governing the making available on the market of radio equipment;

e) regulations on roaming in public mobile communications networks within the European Union;

f) regulations on open internet access and retail charges for regulated communications within the European Union.

(2) ANCOM or any other public authority shall ensure the compliance with the provisions of Regulation (EU) **2016/679** of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free circulation of such data, and repealing Directive **95/46/EC** (General Data Protection Regulation), published in the Official Journal of the European Union, series L No. 119 of 4 May 2016, whenever processing personal data in the exercise of the duties or, as applicable, of the tasks established by this emergency ordinance.

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

1. *general authorisation* – the legal framework establishing the rights regarding the provision of electronic communications networks or services, as well as the specific obligations in the electronic communications field, under conditions which may apply to all or to specific types of electronic communications networks or services;

2. *user* – any natural or legal person who uses or requests a publicly available electronic communications service;

3. *subscriber* – any natural person or legal entity that 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 before 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 business or profession;

6. *electronic communications network* – transmission systems, whether or not based on a permanent infrastructure or a centralised management capacity, and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which allow signals to be transported by wire, by radio waves, by optical means or by other electromagnetic means, including satellite electronic communications networks, terrestrial fixed, circuit-switched and packet-switched networks, including the Internet, and mobile, electrical networks, insofar as they are used for the transmission of signals, the networks used for the transmission of audio-visual media services and the cable television networks, regardless of the type of information transmitted;

6¹. *very high capacity network* – an electronic communications network the transmission systems of which are based entirely on fibre-optic elements, at least up to the distribution point at the location or, where applicable, the area served, or an electronic communications network which is capable of delivering, under peak-time conditions, similar network performance in terms of available downlink and uplink bandwidth, resilience, as well

as errors-related parameters, packet loss, packet transfer delay and jitter; the performance of the network may be considered similar regardless of whether the end-user experience varies due to the inherently different characteristics of the medium by which the network ultimately connects with the network termination point;

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 via electronic communications networks, which encompasses the following types of services:

a) internet access service as defined in of Article 2 paragraph 2 point (2) of Regulation (EU) 2015/2.120 of the European Parliament and of the Council of 25 November 2015 laying down measures on open internet access and amending Directive 2002/22/EC on universal service and users' rights with regard to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union, published in the Official Journal of the European Union, L series, no. 310 of November 26, 2015, with subsequent amendments;

b) interpersonal communications service; and

c) any other services consisting wholly or mainly in the conveyance of signals over electronic communications networks, such as transmission services used for the provision of services between devices, machine-to-machine, and for the broadcasting of audio-visual media services;

The services through which the content of the information transmitted through electronic communications networks or services is provided or editorial control over this content is exercised, and the information society services, as defined in Article 1 point 1 of Law no. 365/2002 on electronic

commerce, republished, with subsequent amendments, which do not consist wholly or mainly in the transmission of signals through electronic communications networks are not electronic communications services;

9¹. *interpersonal communications service* – a service normally provided for remuneration that enables direct interpersonal and interactive exchange of information via electronic communications networks between a finite number of persons, whereby the persons initiating or participating in the communication determine its recipient(s) and does not include services which enable interpersonal and interactive communication merely as a minor ancillary feature that is intrinsically linked to another service;

9². *number-based interpersonal communications service* – an interpersonal communications service which uses public numbering resources, respectively a number or numbers in national or international numbering plans, or which enables communication with a number or numbers in national or international numbering plans;

9³. *number-independent interpersonal communications service* – an interpersonal communications service which does not use public numbering resources, respectively one or more numbers in the national or international numbering plans, or which does not enable communication with one or more numbers in the national or international numbering plans;

9⁴. *provider of electronic communications services* - a person whose activity consists wholly or partly in providing an electronic communications service;

9⁵. *provider of electronic hosting services with IP resources* – a person who offers, on the territory of Romania, services of storage, content distribution and access, on owned or rented servers, by managing a set of IP addresses on the Internet;

9⁶. IP address - unique identifier of a physical or logical interface, associated with an equipment connected to an electronic communications network;

10. *public electronic communications network* – an electronic communications network that is used, wholly or mainly, for the provision of publicly available electronic communications services and enables the transmission of information between the network termination points;
11. *interference* – the effect of an unwanted 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 degrades the performance of the network and may lead to the misinterpretation or loss of information which otherwise could have been received in the absence of such an unwanted energy;
12. *harmful interference* – the interference which endangers the functioning of a radionavigation service or other safety services or which, in any way, seriously affects, obstructs or repeatedly interrupts a radiocommunication service operating in accordance with the international, Union or national legal provisions;
13. *admissible interference* – the noticed or calculated interference which corresponds to the criteria provided in the international, Union or national legal provisions;
14. *assignment of a frequency band* – the designation of a certain frequency band, within the National Table of Frequency Bands Allocation, hereinafter referred to as NTFA, for use by one or several radiocommunication services or by the radio astronomy service, under certain 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 within 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. ***repealed;***
22. ***repealed;***
23. *transnational market* – market identified by the European Commission which covers the Union 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 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 that enable or support the provision, self-provision or automated provision of services via the respective network or service, or have the potential to do so, and which

include number translation or systems equivalent equivalent functionality, conditional access

26. systems, electronic programme guides, as well as other services, such as location, identity and presence services;

26. *conditional access system* – any technical measure, authentication system or device whereby access to a protected television or radio broadcasting service in an intelligible form can be made conditional, upon subscription or another 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, either on exclusive or non-exclusive basis, for the purpose providing electronic communications services, including when they are used for the delivery of information society services or audiovisual media services; access includes, 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, maintaining and repair requests, as well as billing;

e) access to number translation or systems offering equivalent functionality;

f) access to fixed and mobile networks, particularly 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 wide-screen format. The 16:9 format is the reference format for wide-screen television services;
31. *local loop* – the physical link used for the conveyance of electronic communications signals between the network termination point and a main distribution frame or an equivalent facility of a fixed public electronic communications 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. *voice communications service* – a publicly available electronic communications service for originating and receiving, directly or indirectly, national calls or national and international calls through a number or numbers in the national or international numbering plan. The means of communication specifically intended for end-users with disabilities, using relay services or total conversation services, are assimilated to voice communication services;

37. *call*- the connection established by means of a publicly available interpersonal communication service allowing two-way voice 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 an end user 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 an end-user's 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 has imposed universal service obligations;
46. *distance contract* – a contract for the provision of publicly available electronic communications services or services of access and connection to public electronic communications networks, as well as for the supply of terminal equipment related to the service provision, concluded with end-users that are legal persons, without the two parties being physically present at the same time, which makes exclusive use of one or several distance communication means, up to and at the moment of the contract conclusion.
47. *distance communication means* – 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 knowledge 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* - decoder used to connect to a television set or a television set with an integrated digital decoder able to receive interactive digital television services;

53. *application programming interface* - software interface between applications, made available by radio broadcasters or service providers, and the resources in the enhanced digital television equipment for digital television/radio services;

53¹ *Package* - commercial offer containing at least one Internet access service or a number-based interpersonal communications service and other services and/or terminal equipment provided or sold by an electronic communications service provider within the same contract or different contracts closely related to each other;

53² *durable medium* - any instrument that allows the consumer or the professional to store personally addressed information, in an accessible manner for subsequent references for an appropriate period of time, for the purpose of information, and that allows unchanged reproduction of the stored information;

53³ *commercial premises* - any unit that meets one of the following conditions:

a) *immovable retail unit, where the professional carries out his activity permanently;*

b) *mobile retail unit, where the professional usually carries out his activity;*

54. *contract concluded outside the commercial premises* – any contract for the provision of publicly available electronic communications services or of services of access and connection to the public electronic communications networks, as well as for the supply of certain terminal equipment related to the service provision, concluded between a provider and an end-user-legal person in one of the following situations:

a) concluded in the simultaneous physical presence of the provider and of the end-user, in a space that is not the provider's point of sale;

b) concluded following an offer received from the end-user under the same circumstances as those provided at letter a);

c) concluded at the provider's point of sale or by any other distance communication means, immediately after the end-user has been personally and individually approached, in a

place other than the provider's point of sale, in the simultaneous physical presence of the latter and of the end-user;

d) concluded during a visit organised by the provider aimed at or resulting in promoting or selling products or services to the end-user.

54¹ the security of networks and services - the ability of electronic communications networks and services to resist, at a certain level of confidence, any action that affects the availability, authenticity, integrity or confidentiality of these networks and services, of stored, transmitted or processed data or of the related services offered by, or accessible via, the respective electronic communications networks or services;

54² security incident – an event that has a real negative impact on the security of electronic communications networks or services;

54³ total conversation services - a multimedia real time conversation service that provide bidirectional symmetric real time transfer of motion video, real time text and voice between users in two or more locations;

54⁴ relay services - services that enable the bidirectional communication between remote end-users using different communication means, such as written, signs communication, oral communication, by means of conversion between the respective communication modes, normally performed by a human operator;

54⁵ terminal equipment – the equipment connected directly or indirectly to the interface of a public electronic communications network, for sending, processing or receiving information via cable, optical fiber or electromagnetic means or the equipment for ground stations for satellite communications; the connection of the terminal equipment to the network is indirect if other equipment is placed between it and the network interface;

54⁶ 'small-area wireless access point' – low-power wireless network access equipment of a small size operating within a small range, using radio spectrum pursuant to the law, which may be used as part of a public electronic communications network, which may be equipped with one or more low visual impact antennae, and which allows wireless access by users

to electronic communications networks regardless of the underlying network topology, be it mobile or fixed;

54⁷ *radio local area network (RLAN)* – a low-power wireless access system, operating within a small range, with low risk of interference with other such systems deployed and operated in close proximity by other users, using, on a non-exclusive basis, harmonised radio spectrum;

54⁸ *harmonised radio spectrum* - the radio frequency spectrum for which harmonised conditions relating to its availability and efficient use have been established by way of technical implementing measures in accordance with Article 4 of Decision No 676/2002/EC of the European Parliament and of the Council of March 7, 2002 on the regulatory framework for radio frequency spectrum management policy in the European Community (Radio Spectrum Decision), published in the Official Journal of the European Union, series L, no. 108 of April 24, 2002, harmonized conditions of availability and efficient use;

54⁹ *shared use of radio spectrum* - access by two or more users to use the same radio spectrum bands under a defined framework including regulatory approaches such as licensed shared use, authorised use based on a general authorisation, use under individual rights of use for radio spectrum or a combination thereof, in order to facilitate the shared use of a radio frequency band, subject to a binding agreement of all parties involved, in accordance with the rules on shared use, as contained in their radio spectrum usage rights, so as to guarantee all users a predictable and reliable framework for shared use, and without prejudice to the application of competition law;

54¹⁰ *peer review forum* - a forum that facilitates the exchange of best practices between the Member States of the European Union and the increase of the transparency of the selection procedures organized for the granting of rights of use for radio frequencies;

(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 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 amendments and completions, under Article 1 of Law no. 365/2002 on electronic commerce, republished, with the subsequent amendments, and under Article 1 of the Audio-visual Law no. 504/2002, with the subsequent amendments and completions, as well as the relevant definitions in the consumer protection legislation regarding the consumers' rights at contract conclusion, shall apply.

(3) In order to consider a network as being of very high capacity, respectively the location of the network termination point, ANCOM shall take into account the guidelines of the Body of European Regulators for Electronic Communications, hereinafter referred to as BEREC, issued in accordance with Article 82, respectively in accordance with Article 61 para. (7) of Directive (EU) 2018/1972, hereinafter referred to as the European Electronic Communications Code, giving reasons for any decisions contrary to those guidelines.

CHAPTER II

Authorisation for the provision of electronic communications networks and services

Article 5. The provision of electronic communications networks and services, other than number-independent interpersonal communications services, shall be carried out under the conditions of the general authorisation regime, in accordance with the provisions of this Chapter.

Article 5¹. - (1) The provision of electronic communications networks and services by persons from the European Union may be limited only for reasons of national defence, public order and national security or public health.

(2) Limitation of the freedom to provide electronic communications networks and services under the conditions of para. (1) shall be motivated and notified to the European Commission.

(3) The provision of electronic communications networks and services by persons outside the European Union may be limited for objective and justified reasons, by ANCOM's decision.

Article 6. - (1) In order to keep an official record of the providers, any person who intends to provide public electronic communications networks or publicly available electronic communications services, except for number-independent interpersonal communications services, shall send a notification to ANCOM, in the form provided in para. (3), excepting the cases referred to in Article 7.

(2) Foreign persons who intend to provide cross-border publicly available electronic communications services to end-users located on the national territory, with the exception of number-independent interpersonal communications services, shall send ANCOM the notification provided in para. (1).

(3) Taking into account the relevant BEREC guidelines, ANCOM shall establish and update, by decision, the standard notification form containing at most the following information:

- a) the name of the person;
- b) the legal status, the form of organization and the unique identification code of the person in a relevant registry;
- c) the address of the main headquarter and, where applicable, of the branches registered in the Member States of the European Union;
- d) the website of the person, dedicated to the provision of electronic communications networks or services, if any;
- e) a contact person who holds the legal rights to send any notifications or documents in the name and for the account of that entity and the contact details of that person;
- f) a brief description of the types of public electronic communications networks or publicly available electronic communications services that the person intends to provide;
- g) other Member States of the European Union where the respective person provides electronic communications networks or services;
- h) the estimated start date of the activity.

(4) The person who submitted the notification referred to in para. (1), provided he/she has communicated at least sufficient information to identify him/her, has the right to provide the types of public electronic communications networks and publicly available electronic communications services indicated in the notification, with the corresponding rights and obligations set out in the general authorisation.

(5) A person who has acquired the right to provide public electronic communications networks or publicly available electronic communications services under the terms of para. (4) shall not be exempted from the obligation to provide, correctly, all the data referred to in para. (3) if he/she has not provided them at the time of notification. All data shall be transmitted to ANCOM, correctly and completely, within the term set by ANCOM, which cannot be less than 10 days from the date of communication by ANCOM of the information on the non-fulfilment of the requirements set out in para. (3).

(6) Any modification of the data referred to in para. (3) shall be notified to ANCOM within 10 days.

(7) After all the necessary data referred to in para. (3) have been collected, ANCOM shall transmit to BEREC by electronic means, without undue delay, each notification received, including any subsequent change.

(8) Persons whose right to provide electronic communications networks or services has been withdrawn in accordance with Article 147 shall no longer have the right of access to properties provided for in Article 10 para. (1), to use radio frequencies, numbering resources or other categories of technical resources, where applicable, and may no longer provide electronic communications networks or services for a period of 3 years after the withdrawal of the right.

(9) The capacity as a provider of public electronic communications networks or publicly available electronic communications services, acquired as a result of the notification referred to in para. (1), shall cease if the person concerned has not transmitted the reports on the provision of public electronic communications networks or publicly available electronic communications services, or if he/she has communicated in those reports that he/she has not been active, for reference periods amounting to 24 consecutive months.

(10) The cessation referred to in para. (9) shall be established by an ANCOM decision, issued no later than 60 days from the date on which the reporting term in the last reference period has expired.

Article 7. - (1) The following persons do not have the obligation to submit the notification referred to in Article 6 para. (1):

a) persons who intend to provide electronic communications networks or services exclusively for their own needs;

b) persons who intend to provide number-independent interpersonal communications services;

c) persons requesting access or interconnection to providers of electronic communications networks and services in Romania, if they do not provide or operate networks on the national territory.

(2) By way of exception from the provisions of Article 6 para. (1) and (2), ANCOM may establish, by decision, that the transmission of the notification referred to in Article 6 will not be mandatory for the provision of public electronic communications networks or publicly available electronic communications services of a limited nature or in order to respond to the recommendations of the European Commission or to be in line with the best practices at the level of the Member States of the European Union.

(3) The persons referred to in para. (1) letter (a) and those benefiting from the derogations established in accordance with para. (2) shall be appropriately subject to the rights and obligations set out in the general authorisation, as well as to the provisions related to the withdrawal of the right to provide electronic communications networks or services or the right to use radio frequencies.

Article 8. - (1) ANCOM shall elaborate and update, by decision, the general authorization 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 para. (1) shall be objectively justified in relation to the type of network or service concerned, non-discriminatory, proportionate and transparent.

(3) The conditions established in the general authorisation for the provision of electronic communications networks and services, excepting the number-independent interpersonal communications services, may concern:

a) the payment of the annual monitoring fee, in accordance with the provisions of Chapter X;

b) the protection of personal data and privacy in the electronic communications sector, according to the specific national legislation;

c) the information to be provided pursuant to Article 6 para. (3) and Article 120;

d) the 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 confidentiality through their own systems, in accordance with Regulation (EU) 2016/679 and Law no. 506/2004 on the processing of personal data and the protection of privacy in the electronic communications sector, with subsequent amendments and completions;

e) the conditions for the use of electronic communications networks and services for the transmission, by the authorities and institutions empowered therefor, of messages meant to warn the population in case of imminent threats and to limit the consequences of major disasters;

f) the conditions for the use of electronic communications networks and services in situations generated by a major catastrophe or national emergencies, in order to ensure communications between the specialised intervention agencies and the other public authorities involved in handling that situation;

g) obligations on the granting of access, other than those provided for in Articles 100 to 105 and Article 113;

h) measures aimed at ensuring compliance with technical standards or specifications, according to Article 8 of Government Emergency Ordinance no. 22/2009, approved by Law nr. 113/2010, with subsequent amendments and completions;

i) transparency obligations imposed on the providers of public electronic communications networks offering publicly available electronic communications services on ensuring connectivity between end-users, in order to achieve the objectives set out in Articles 4-6¹ of Government Emergency Ordinance no. 22/2009, approved by Law nr. Regulation (EC) No 113/2010, as amended and supplemented, and, where justified and proportionate, on ensuring that the regulatory authority has access to the information necessary to verify compliance with these obligations.

(4) The conditions established in the general authorisation for the provision of electronic communications networks may concern:

a) network interconnection according to this emergency ordinance;

b) obligations regarding the transmission of television/sound broadcasting services through electronic communications networks, in accordance with the provisions of the audiovisual legislation;

c) measures to protect public health by limiting the population's exposure to electromagnetic fields generated by electronic communications networks, under the law, taking the utmost account of Council Recommendation no. 1999/519/EC on the limitation of exposure of the general public to electromagnetic fields (from 0 Hz to 300 GHz);

d) maintaining the integrity of public electronic communications networks, including through conditions that prevent the occurrence of electromagnetic disturbances between electronic communications networks or services, in accordance with Government Decision no. 487/2016 on electromagnetic compatibility, with subsequent amendments and completions;

e) ensuring the security of public electronic communications networks against unauthorized access, in accordance with Law no. 506/2004, with subsequent amendments and completions;

f) conditions for the use of radio frequencies which are subject to the general authorisation regime only, in accordance with the provisions of Article 23 para. (3) and (4).

(5) The conditions established in the general authorisation for the provision of electronic communications services, excepting the number-independent interpersonal communications services, may concern:

- a) interoperability of services;
- b) accessibility for the end-users of the numbering resources from the National Numbering Plan, of the free universal international numbers and, where economically and technically feasible, of the numbering resources from the national numbering plans of other Member States of the European Union, as well as other related conditions imposed in accordance with the provisions of this emergency ordinance;
- c) the protection of end-users in the electronic communications field;
- d) restrictions on the distribution of illegal and harmful content, in accordance with the legal provisions applicable in the fields of electronic commerce and audio-visual.

Article 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, unless those changes are minor and were made with the consent of the concerned provider.

(2) ANCOM may limit or withdraw the rights provided by the general authorization, respecting the principles of objectivity and proportionality, in situations justified by the provisions of Article 8 para. (3)-(5).

(3) Without prejudice to the provisions of Chapter XII, the limitation or withdrawal of the rights under the general authorization in accordance with para. (2) shall be enforced only upon undergoing the consultation procedure specified in in Article 135, except for the limitations which have been agreed with the rightsholder.

(4) The provisions of para. (3) shall not apply in the case of limitations or withdrawals of rights under the general authorisation arising from emergencies which require rapid intervention in order to protect public order and national security.

Article 10. – (1) The persons benefiting from the right to provide electronic communications networks shall benefit from the right of access to properties, under the conditions laid down in Chapter II of Law no. 159/2016 on the regime of electronic communications networks infrastructure and on establishing certain measures for reducing the cost of electronic communications networks roll-out.

(1¹) The persons benefiting from the right to provide electronic communications networks or electronic communications services, under the general authorisation regime, may acquire the right to use radio frequencies, numbering resources and technical resources, under the conditions laid down in Chapter III.

(2) The persons benefiting from the right to provide public electronic communications networks or publicly available electronic communications services, under the general authorisation regime, shall also benefit from the following rights:

a) the right to negotiate and conclude access or interconnection agreements with any other providers of public electronic communications networks or publicly available electronic communications services, under the terms of 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.

Article 10¹ - (1) The procedures and conditions that the providers of electronic communications networks must observe in order to benefit from the right of access for the installation of facilities on, over, in or under public or private property shall be those laid down in Chapter II of Law nr. 159/2016, with subsequent amendments and completions.

(2) The structural separation of the activities associated with the exercise of property rights or control from the activities associated with the granting of the right of access to property shall be carried out in accordance with the provisions of Article 10 para. (1) of Law no. 159/2016, with subsequent amendments and completions.

(3) Charges for the installation on, over, in or under public or privately owned buildings of facilities used for the provision of electronic communications networks or services and of associated facilities ensuring the optimum use thereof shall be determined and levied in accordance with the provisions of Chapter II of Law no. 159/2016, with subsequent amendments and completions.

(4) The imposition on the providers of electronic communications networks of the obligations of co-location and sharing of network elements and associated facilities shall be carried out by ANCOM in compliance with the principles of objectivity, transparency, non-discrimination and proportionality, by applying the provisions of Chapter III and V of Law no. 159/2016, with subsequent amendments and completions, which establish the access to the physical infrastructure of the network operators.

(5) The coordination of civil engineering works, the operation of the single information point on the electronic communications physical infrastructure and of the single information point on civil engineering works, as well as the allocation of costs related to the sharing of infrastructure or property and the coordination of civil engineering works shall be carried out in compliance with the principles of objectivity, transparency, non-discrimination and proportionality, according to the provisions of Chapter III and V of Law no. 159/2016, with subsequent amendments and completions.

Article 10² - (1) The providers of electronic hosting services with IP resources have the obligation to support the law enforcement bodies and the bodies with attributions in the field of national security within the limits of their competences, for the enforcement of technical surveillance methods or authorization acts ordered in accordance with the provisions of Law no. 135/2010 on the Criminal Procedure Code, with subsequent amendments and completions, and Law no. 51/1991 on national security, republished, with subsequent amendments and completions, respectively:

a) to allow the legal interception of communications, including to bear the related costs, during the period and under the conditions mentioned in the authorization acts ordered in accordance with the provisions of Law no. 135/2010, with subsequent amendments and completions, and Law no. 51/1991, republished, with subsequent amendments and completions;

b) to grant, at the request of the authorized bodies, the encrypted content of the communications transited in their own networks, which are the object of the authorization acts ordered in accordance with the provisions of Law no. 135/2010, with subsequent amendments and completions, and Law no. 51/1991, republished, with subsequent amendments and completions;

c) to allow access to its own information systems, for copying or extracting exclusively the data covered by the authorization acts ordered in accordance with the provisions of Law no. 135/2010, with subsequent amendments and completions, and Law no. 51/1991, republished, with subsequent amendments and completions.

(2) The obligations referred to in para. (1) letters a) and b) shall apply accordingly to all the providers of electronic communications networks or services.

(3) Within 60 days from the date starting the provision of services, the providers of electronic hosting services with IP resources shall send a notification in this regard to ANCOM, containing at least the following information:

- a) the identification data of the provider;
- b) the contact details of the provider;
- c) the type of electronic hosting service provided.

(4) ANCOM shall publish on its website the types of electronic hosting services for which the providers of electronic hosting services with IP resources have the obligations provided by this article.

(5) Any modification of the data transmitted according to para. (3) shall be communicated to ANCOM within 10 days from the date of occurrence.

(6) By ANCOM's decision, a certain format for the submission of the notification specified in para. (3) may be established.

Article 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.

Article 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 electronic communications network interconnected with the network of either operator;

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 through another public electronic communications network interconnected with the network of either party.

(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 to 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, particularly 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.

Article 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 the use of radio frequencies, shall be forbidden, except for the cases when the provisions of Article 26 paragraph (5) apply.

(2) 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, 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 specified in para. (2), as well as any other amendments of or completions to these conditions shall be submitted to ANCOM for approval, which is issued by President's decision within 90 days from the date of registering the document containing the proposed technical and economic conditions.

(5) ANCOM shall supervise the compliance with the technical and economic conditions established in accordance with the provisions of para. (4). In this respect, ANCOM may conclude cooperation agreements with the interested authorities.

(6) The administrative acts establishing any operation conditions for the public electronic communications networks involved in the projects under para. (2) shall not produce legal effects in the absence of the ANCOM approval mentioned in para. (4).

(7) The providers of public electronic communications networks and the providers of publicly available electronic communications services that 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) have separate accounting for the activities associated with 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 assigned methodologies, all the elements which contribute to 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 para. (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 under para. (7) letter a).

Article 13¹. – (1) In the case of projects for the installation of public electronic communications networks, completed or in progress, specified in Article 13 paragraph (2), the central or local public administration authorities that take part in or support such projects or finance them, shall send ANCOM the technical and economic conditions regarding the provision of publicly available electronic communications services or for the access to the public electronic communications networks, in pursuit of Article 13 paragraph (4), within 30 days from the date of receiving such a request from ANCOM.

(2) In case of the central or local public authorities' breach of the provisions of paragraph (1), or of failure to implement, within 90 days, ANCOM's approval issued in accordance with

Article 13 paragraph (4) for the projects mentioned under paragraph (1), ANCOM shall establish and impose - by President's Decision – on the person or persons implementing the respective projects for the installation of public electronic communications networks, the technical and economic conditions regarding the provision of publicly available electronic communications services or for the access to the public electronic communications networks.

(3) Within 60 days from the date of communicating the ANCOM President's Decision provided in para. (2), the persons implementing the projects under paragraph (1) shall bring the contracts for the provision of publicly available electronic communications services or the contracts for access to the respective public electronic communications networks in line with the technical and economic access conditions established by ANCOM.

CHAPTER II¹

Studies on the coverage of electronic communications networks

Article 13² – (1) ANCOM shall periodically, but at least once every three years, conduct studies in order to determine the territorial coverage area of public electronic communications networks capable of providing broadband electronic communications services. In order to carry out these studies, ANCOM shall collect coverage information detailed at a local level, as well as information on the quality of electronic communications services. ANCOM shall establish the content and format of the information to be transmitted.

(2) The coverage studies provided for in paragraph (1) refer to the situation existing at a certain reference date but may also include forecasts for a period set by ANCOM, which cannot be longer than three years.

(3) The forecasts referred to in paragraph (2) shall cover relevant information on planned investments in connection with the deployment of new networks or the upgrading or extension of existing networks. ANCOM shall establish which of the information on the coverage forecasts received should be taken into account, and may request, if necessary, additional data.

(4) ANCOM shall publish the results of the coverage studies referred to in paragraph (1), except for information which, according to the law, has the character of a trade secret.

(5) ANCOM shall carry out the first coverage study according to this article no later than 21 December 2023.

Article 13³. – (1) Based on the results of the coverage studies carried out according to art. 13², ANCOM shall determine and publish the areas, with clear territorial delimitations, which, cumulatively, are not covered and for which there are no coverage forecasts for a given period from the perspective of very high capacity networks or networks capable of ensuring data download speeds of at least 100 Mbps.

(2) For the areas established according to para. (1) ANCOM or, with the prior consent and under the conditions ordered by ANCOM, other central or local public administration authorities, organizations or associations may organize procedures following which declarations of intent to install very high-capacity networks during the period envisaged by the coverage forecasts are validated.

(3) The procedures referred to in para. (2) shall be transparent, objective, non-discriminatory and shall aim to achieve effectively those assumed under the declarations of intent. These procedures shall also provide information on coverage or coverage forecasts from the perspective of next-generation access networks capable of providing data download speeds of less than 100 Mbps, unless there is publicly available information to that effect or if the information has not previously been provided by any means.

(4) The declarations of intent shall be validated based on certain information at least at the same level of detail as that considered by ANCOM at the time of determining coverage forecasts.

(5) For the areas where declarations of intent have been validated, ANCOM or the other entities referred to in para. (2) may request up-to-date information for establishing other intentions to install very high capacity networks for the upgrading or extension of networks capable of providing data download speeds of at least 100 Mbps.

(6) ANCOM or the other entities referred to in para. (2) shall publish information on the declarations of intent validated in accordance with this Article, as well as any other up-to-date information on the coverage forecasts obtained in accordance with para. (5), except for information which is considered a trade secret according to the law.

Article 13⁴ – (1) ANCOM, as well as other central or local public administration authorities, shall take into account the results of the most recent studies carried out in accordance with Article 13², as well as the areas for which declarations of intent have been validated according to Article 13³ when, in accordance with the legal powers conferred, they adopt regulatory measures in the field of electronic communications, define coverage obligations corresponding to the rights of use of radio frequencies, verify the availability of services covered by universal service obligations, design public intervention measures for the deployment or upgrading of electronic communications networks, or draw up plans for the development of broadband electronic communications networks or services or other such strategies.

(2) ANCOM shall transmit to the authorities referred to in para. (1), upon their motivated request, information from the studies carried out in accordance with Article 13² which is a commercial secret according to the law, under the following conditions:

a) if the information is necessary for the authorities to exercise the legal powers they have been conferred with;

b) only if the authorities commit to take all the necessary technical and organizational measures to protect the confidentiality of the information received from ANCOM;

(c) the parties who have provided the information considered a commercial secret are informed about the possibility or the fact of their transmission to the authorities under the conditions indicated above.

Article 13⁵ - (1) ANCOM shall make available to end-users an information tool through which they can usefully identify the availability of connectivity to electronic communications networks in a certain area, the operators that provide connectivity and the providers of electronic communications services, if such a tool does not exist on the market.

(2) The information tool referred to in para. (1) shall be regularly updated based on the results of the coverage studies carried out in accordance with Article 13².

Article 13⁶. – When implementing the provisions of this Chapter, ANCOM shall take into account the BEREC guidelines issued in accordance with the provisions of Article 22 para.

(7) of the European Electronic Communications Code, motivating any decisions contrary to those guidelines.

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

Article 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, with the aim of encouraging competition in the provision of electronic communications networks and services.

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

Section 2

Radio frequencies

Article 16. - (1) The radio frequencies shall be used in line with the provisions of the NTFA, with the regulations in force in the field of electronic communications field, with the international agreements in which Romania is a party, including the regulations adopted by the International Telecommunication Union, the European Union and/or by the European Conference of Postal and Telecommunications Administrations.

(2) The NTFA shall be adopted by an ANCOM decision, following 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. The NTFA may be amended and/or completed in compliance with the public consultation procedure provided for in Article 135.

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

Article 16¹. - (1) ANCOM shall ensure that the harmonised radio frequency spectrum is used on the national territory under conditions that do not affect its use in other Member States of the European Union, especially by avoiding cross-border harmful interferences.

(2) In order to achieve the objective under para. (1), ANCOM shall seek to resolve harmful interferences, through cross-border coordination based on the applicable international agreements, in collaboration with authorities with similar attributions in the other Member States of the European Union and with the radio spectrum policy group, hereinafter referred to as the RSPG. In the event that harmful interference is not resolved, the support of the European Commission may be requested.

(3) In order to resolve issues of cross-border coordination of the use of radio frequencies with states outside the European Union, the Union's assistance may be requested.

Article 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 "military" shall be used in the NTFA;

(2) The authorities under para. (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 in order 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 radio-electric equipment owned, the competent institutions within the national defence, public order and national safety system may elaborate internal orders and guidelines.

Article 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 para. (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 interference and to limit the effects of electromagnetic fields on the protection of public health, taking into account Council Recommendation No. 1999/519/EC on the limitation of exposure of the general public to electromagnetic fields (from 0 Hz to 300 GHz);

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

Article 18¹. – (1) The use of radio frequency bands with governmental use by other persons than the institutions referred to in Article 18 para. (1) and (2) is forbidden.

(2) The use of radio frequency bands with shared governmental/non-governmental use is allowed only under the conditions of compliance with the authorization requirements established by ANCOM according to this emergency ordinance.

(3) For verifying the compliance with para. (1) and (2) and at the written request of the competent institutions of the national defense, public order and national security system, ANCOM may monitor the radio frequencies spectrum with governmental use or with shared governmental/non-governmental use.

Article 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, created by a Government decision which establishes the structure, the attributions and the functioning of the Commission.

Article 19¹. – (1) ANCOM promotes a harmonized use of the radio spectrum designated for the provision of electronic communications networks and services consistently with the need for this resource to be used effectively and efficiently, while pursuing benefits for consumers with regard to:

a) competition facilitation;

- b) economies of scale; and
- c) interoperability of electronic communications networks and services.

(2) In order to achieve the objectives set out in para. (1), ANCOM shall take the following measures, inter alia, to:

(a) ensure a wireless broadband coverage of the territory and of the population at a high quality and speed, as well as to cover the main national and European transport routes, including the trans-European transport network referred to in Regulation (EU) No 1.315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No. 661/2010/EU;

b) facilitate the rapid development of new technologies and wireless communications applications, including, where applicable, within the framework of a cross-sectoral approach;

c) guarantee the predictability and coherence of the process of granting, renewing, amending, limiting or withdrawing the rights of use for radio spectrum, in order to promote long-term investments;

(d) ensure the prevention of cross-border or national harmful interference occurrence, in compliance with Article 16¹ and Article 22¹ para. (1) letter (b), para. (2) and (5) and take preventive and remedial measures;

e) promote the shared use of radio spectrum between similar or different uses of radio spectrum, in compliance with the rules in force in the competition field;

(f) apply the most appropriate and least burdensome authorisation system possible, in accordance with Article 22¹ para. (4) so as to maximise flexibility, sharing and efficiency in the use of radio spectrum;

g) apply transparent and clear rules regarding the granting, transfer, renewal, amendment and/or withdrawal of radio spectrum usage rights, in order to guarantee regulatory certainty, coherence and predictability;

h) ensure consistency and predictability across the European Union on the authorisation of the use of radio spectrum in order to protect public health, taking into account the Recommendation of the Council of the European Union 1999/519/EC on the limitation of the exposure of the general population to electromagnetic fields (from 0 Hz to 300 GHz).

Article 19². - (1) ANCOM may authorize a total or partial alternative use or may allow an existing use of a harmonized radio frequency band, if there is no market demand at national or regional level for the rights in these bands, in accordance with Article 20, with the cumulative observance of the following conditions:

(a) the lack of market demand for harmonised use of the band is assessed after a public consultation carried out in accordance with Article 135, including a prospective assessment of market demand;

b) the alternative use does not hinder or obstruct the availability or use of that band in other Member States of the European Union; and

c) in assessing the alternative use, account has been taken of the availability or long-term use of that band in the European Union and of economies of scale for radio equipment, as a result of the use of harmonised radio spectrum.

(2) Any decision to exceptionally allow an alternative use according to para. (1) shall be subject to periodic review which, in any case, shall take place promptly upon a reasoned request for the use of the band, in accordance with the technical implementation measure, received from an interested user or potential user.

(3) ANCOM informs the European Commission and the authorities of the other Member States of the European Union about the adopted decision, together with its motivation, as well as about the outcome of any review.

Article 20. - (1) In the radio frequency bands available for the provision of electronic communications services, in accordance with the NTFA, any type of technology used for the provision of electronic communications networks and services may be used, in accordance with the requirements laid down in European Union law and/or applicable national regulations.

(2) By way of exception from the provisions of para. (1), ANCOM may justifiably establish by decision or through the license for the use of radio frequencies proportional and non-discriminatory restrictions on the provision of certain types of radiocommunication networks or the use of wireless access technologies in certain radio frequency bands, especially when this is necessary for:

a) avoiding the occurrence of harmful interferences;

b) protecting public health by limiting the exposure of the population to electromagnetic fields, taking into account Council Recommendation 1999/519/EC on the limitation of exposure of the general public to electromagnetic fields (from 0 Hz to 300 GHz);

c) ensuring the technical quality of the service;

d) ensuring the maximization of the shared use of radio spectrum;

e) guaranteeing the efficient use of radio spectrum; or

f) ensuring the achievement of an objective of general interest among those referred to as an example in para. (5).

(3) Radio frequency bands available for the provision of electronic communications services, in accordance with the NTFA, may be used for the provision of any electronic communications service in accordance with the requirements established by European Union law and/or applicable national regulations.

(4) By way of exception from the provisions of para. (3), ANCOM may justifiably establish by decision or by the licence for the use of radio frequencies proportional and non-discriminatory restrictions on the provision of electronic communications services in certain radio frequency bands, including in order to comply with the requirements in the Radio Regulations of the International Telecommunication Union.

(5) Any measure requiring the provision of a particular electronic communications service in a frequency band available for the provision of electronic communications services pursuant to para. (4) shall be motivated in order to ensure the achievement of a general interest objective established according to the law, including, but not limited to:

a) life safety;

b) promoting social, regional or territorial cohesion;

c) avoiding inefficient use of radio spectrum; or

d) promoting cultural and linguistic diversity and media pluralism, for example through the provision of audiovisual media services.

(6) Any measure prohibiting the provision of any electronic communications service other than those provided for in para. (5) in a given radio frequency band may be established only if this is justified by the need to protect life safety services or, exceptionally, in order to ensure the fulfilment of other general interest objectives established according to the law.

(7) In order to ensure compliance with the principles referred to in para. (1) and (3), ANCOM shall periodically analyse the restrictions imposed in accordance with the provisions of para. (2) and (4) to (6), as applicable, and shall publish the results of this analysis on its website.

(8) The regulatory authority may adopt the measures referred to in para. (2) and (4) to (6) upon undergoing the consultation procedure provided for in Article 135.

Article 20¹. – (1) ANCOM cooperates with similar authorities from other Member States of the European Union, including for the authorization in a coordinated manner of the use of the harmonized radio spectrum for electronic communications networks and services in the European Union, in compliance with the NTFAs and the specific situation existing on the national markets.

(2) Where harmonized conditions have been established for the use of radio spectrum for wireless broadband electronic communications networks and services, through technical implementation measures at European level, ANCOM shall take the necessary steps to allow the use of the radio spectrum as soon as possible, without exceeding 30 months from the adoption of the harmonized measures or as soon as possible, after the revocation of any decision permitting alternative use pursuant to Article 19².

(3) ANCOM may postpone the term stipulated in para. (2) for a given radio frequency band, in the following circumstances:

(a) the imposition of a restriction on the use of that band ordered pursuant to Article 20 para. (5) points (a) or (d);

b) the existence of unsolved issues of cross-border coordination resulting in cross-border harmful interferences with states that are not part of the European Union, provided that the assistance of the European Union is requested under the conditions of Article 161 para. (3);

c) for reasons related to national defence and security; or

d) in case of force majeure.

(4) ANCOM shall analyse, at least every two years from the date of application of the measure referred to in paragraph (3), whether and to what extent are maintained the circumstances for which the period referred to in paragraph (2) has been postponed.

(5) The term provided for in paragraph (2) may be delayed by up to 30 months for a given radio frequency band if:

a) there are still cross-border coordination issues which result in harmful interference between the Member States of the European Union and the assistance of the European Union has been requested under the conditions of Article 16¹ paragraph (2);

b) it is necessary to ensure, from a technical point of view, the migration of the existing users of that band, and this process is a complex one.

(6) Any postponement set pursuant to paragraphs (3) to (5), as well as its reasons, shall be brought to the attention of the European Commission and the other Member States of the European Union in due time.

Article 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 as soon as possible, in accordance with Law no. 182/2002, with the subsequent amendments and completions.

Article 22. - (1) The placing on the market/making available on the market and the commissioning and use on the territory of Romania of radio equipment is allowed under the conditions established by Government decision.

(2) Placing on the market/ making available on the market, commissioning and use on the Romanian territory of equipment in the field of electromagnetic compatibility are allowed under the conditions established by Government Decision.

(3) The regulatory authority establishes the technical regulations for the radio interfaces defining the requirements on which the radio equipment referred to in paragraph (1) must comply with in order to be put into operation and used on the territory of Romania.

Article 22¹. - ANCOM decides on the most appropriate regime for authorising the use of radio frequency bands, and will choose between individual rights of use under the conditions of Article 23 paragraphs (1) and (20), in order to ensure that the efficient use of the limited resource is maximised in relation to the existing demand, and a general authorisation scheme under the conditions of Article 23 paragraph (4), taking into account:

a) the specific characteristics of the radio frequency band or bands subject to authorisation;

b) the need to ensure protection against the occurrence of harmful interferences on the networks operated by other persons who use the radio spectrum in accordance with the law;

c) the development of coherent and appropriate conditions for the shared use of radio spectrum in accordance with the law;

d) the need to ensure the technical quality of the communications or of the electronic communications service provided;

e) objectives of general interest;

f) the need to ensure the efficient use of radio spectrum.

(2) When deciding on the appropriate authorisation regime in accordance with paragraph (1), in the case of the harmonized radio spectrum, ANCOM aims to minimize as much as possible harmful interference.

(3) ANCOM may decide to authorise the use of radio frequencies in the harmonized radio frequency bands based on a combination of the individual rights of use granted in accordance with Article 23 paragraphs (1) and (2) and of a general authorisation scheme established pursuant to Article 23 paragraph (4).

(4) The decision on the authorisation regime referred to in paragraph (3) shall be taken, reasonably, with due regard to the likely effects on competition, innovation and market entry, produced by:

- a) the different combinations between the two authorisation regimes;
- b) the gradual transition from one authorisation regime to another.

(5) In order to establish the least onerous authorisation regime for the use of radio frequencies possible, ANCOM aims at minimizing the possible restrictions on the use of the radio spectrum, taking into account also the possible technical solutions for the management of harmful interferences.

Article 22² - (1) In taking a decision in view of facilitating the shared use of radio spectrum according to Article 22¹, ANCOM ensures that, for such use, in the frequency bands in which such use is possible, the conditions for the shared use of radio spectrum are clearly set.

(2) The shared use of radio spectrum pursuant to paragraph (1) is allowed under the conditions of facilitating the efficient of radio frequency spectrum, competition and innovation.

(3) The provisions of Article 22¹ paragraph (2) also apply correspondingly in the case where the shared use of the harmonised spectrum is allowed based on a combination between the authorisation regimes provided for in Article 22¹ paragraph (1).

Article 23. – (1) Where it is necessary to grant individual rights, the radio frequencies may be used only upon obtaining a licence for the use of radio frequencies awarded under objective, non-discriminatory, proportionate and transparent conditions, that would ensure the maximization of the efficient and effective use of the limited resource in relation to the existing demand, taking into account also the criteria provided in Article 22¹ paragraph (1).

(2) In the situation referred to in para. 1, the regulatory authority shall award for individual use, by allocation or assignment, radio frequencies in the bands provided for in the NTFA, in accordance with the procedure established by an ANCOM decision 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 the need 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) If the analysis carried out based on the criteria established in Article 22¹ paragraph (1) concluded that in certain radio frequency bands it is not necessary to award individual rights of use for the provision of electronic communications networks and services, the regulatory authority shall decide that the use of radio frequencies is subject to a general authorisation regime. The access and the conditions for using the limited spectrum resources are established by ANCOM decision.

Article 23¹. – In the process of awarding, modifying or renewing the rights of use for the radio spectrum, ANCOM shall promote competition, avoiding its distortion, and may take measures in this regard such as:

a) limit the amount of radio spectrum for which rights of use are granted to any person or, in justified circumstances, establish conditions accompanying the rights of use, such as the provision of wholesale access, regional or national roaming, in certain bands or in certain groups of bands with similar characteristics;

b) reserve, if appropriate and justified in view of a particular situation occurring at market level, a certain sub-band, radio frequency band or group of bands for awarding radio frequency usage rights to new entrants;

c) refuse to award new rights of use for radio spectrum or to authorise new uses in certain sub-bands/radio frequency bands or, where there is no refusal, establish conditions accompanying the award of new rights of use for radio frequencies or the authorisation of new uses for radio spectrum, to avoid distortions of competition caused by any possible assignment, transfer or accumulation of rights of use;

d) include conditions relating to the prohibition of the transfer of rights of use which are not subject to economic concentrations control or establish conditions for the transfer of such rights, where such transfers are likely to have a significant effect on competition;

e) modify the existing rights of use, if this is necessary, to remedy *ex post* a distortion of competition caused by any transfer or accumulation of rights of use for the radio spectrum, depending on the measures set by the Competition Council in accordance with the provisions of Competition Law no. 21/1996, republished, with subsequent amendments and completions.

(2) The measures taken under the conditions of para. 1. take account of market conditions and take into account the approach to market analysis carried out in accordance with Article 922(1). (2).

(3) The measures taken under the conditions of paragraph (1) shall be based on the objective and prospective assessment of:

- a) the competitive conditions existing on the market;
- b) the necessity of such measures in order to maintain or achieve effective competition;
- c) the likely effects of the measures on existing and future investments by market participants, in particular for the implementation of networks.

(4) ANCOM shall take the measures provided for in paragraph (1) in compliance with the requirements laid down for the amendment, restriction or withdrawal of rights of use or those laid down in Articles 26¹ and 135.

Article 24. - (1) The license for the use of radio frequencies is the administrative act whereby ANCOM grants, upon request, to a provider authorised pursuant to Chapter II, the right to use one or several radio frequencies under conditions which ensure their effective, effective and efficient use for the purpose of providing 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 establishes the conditions under which its holder of the radio frequencies may exercise the right referred to in paragraph (1). Such conditions shall be objectively justified in relation to the type of application, network or service concerned, non-discriminatory, proportionate and transparent and compliant with Articles 19¹, 19² and 35. They may target, in addition to the conditions from the general authorisation:

a) the designation of the type of application, network or service or of the technology, within the limits provided for in Article 20, for which the right to use radio frequencies was granted;

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

c) terms for the effective use of frequencies allocated by the licence;

d) technical and operational requirements necessary to prevent the occurrence of harmful interferences and limit the exposure of the general population to electromagnetic fields

in accordance with Council Recommendation 1999/519/EC on the limitation of exposure of the general population to electromagnetic fields (from 0 Hz to 300 GHz), where these requirements are different from those included in the general authorisation;

e) the period of time for which the right of use is granted, subject to 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 the amortisation of the investment;

f) the possibility and conditions for the transfer or rental, total or partial, 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 established before the invitation to submit applications for obtaining the right to use radio frequencies through a selection procedure and assumed within the granting process or obligations assumed on the occasion of its renewal, as applicable;

i) obligations deriving from international agreements on frequency use;

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

k) obligations to pool or share radio spectrum or to allow other users' access to radio spectrum in certain regions (areas) or at national level.

(3) The license for the use of radio frequencies may be amended at the initiative of ANCOM, in keeping with its competences according to the legislation in force, in a proportional manner, 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 TNABF

h) promoting competition or preventing any distortion thereof.

(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 to be made and shall give the holder an appropriate term for the implementation of these changes, proportionate to their qualitative or quantitative nature, but not less than 30 days. The interventions on the rights of use of radio frequencies are published, together with the motivation, on the ANCOM website.

Article 24¹. – (1) Prior to the entry into force of the rights of use for radio frequencies, ANCOM consults and informs the interested parties, in a timely and transparent manner, about the conditions related to the individual rights of use and the criteria for assessing the fulfillment of these conditions.

(2) The conditions referred to in paragraph (1) concern:

a) the usage requirements for assessing the fulfilment of these conditions;

b) the applicable technical parameters;

c) the timeframe for the effective use of the rights of use;

d) the level of use of radio frequencies;

e) the situations in which the rights of use are revoked;

f) the possibility and conditions of sharing the passive or active infrastructure that is based on the use of radio frequency spectrum or radio spectrum;

g) the possibility and conditions of concluding commercial roaming access agreements;

h) joint implementation of the infrastructure necessary for the provision of networks or services that are based on the use of radio frequencies.

(3) The conditions under paragraph (2) letters f) to h) shall be established or applied in compliance with Law no. 21/1996, republished, with subsequent amendments and completions.

(4) The joint use of the radio frequency spectrum is allowed provided that the requirements and/or criteria related to the rights of use are complied with, the provisions of paragraph (3) applying accordingly.

Article 25. – (1) In the event that the rights of use for radio frequencies cannot be granted on the basis of a general authorisation regime pursuant to Articles 22¹ and 23 paragraph (4), and the number of rights to be granted in a radio frequency band is limited, ANCOM shall establish, without prejudice to the provisions of Article 20¹, the measures regarding the granting of rights in compliance with the following conditions:

a) indicating the reasons underlying the limitation of the number of usage rights and presenting the arguments considered in order to maximize the benefits for users and to stimulate competition;

b) public consultation of the proposed measures in accordance with the provisions of Article 135.

(2) The limitation of the number of usage rights according to paragraph (1) may be reviewed periodically, at intervals of maximum 10 years, at the initiative of ANCOM or at the justified request of an enterprise affected by the measure limiting rights.

(3) In case of limitation of the number of usage rights according to paragraph (1), ANCOM shall establish and justify the objectives to be achieved through the selection procedure organized for granting rights of use, also pursuing the need to achieve the objectives of the national market and those of the internal market of the European Union.

(4) The objectives set when designing the selection procedure according to paragraph (3) aim, in addition to promoting competition, also one or more of the following:

a) promotion of coverage;

b) ensuring the quality of the service provided;

c) promoting the efficient use of radio frequency spectrum, including by taking into account the conditions related to the rights of use and the level of the fee charged for granting the rights;

d) promoting innovation and business development.

(5) ANCOM shall establish and justify the type of selection procedure chosen, including any preliminary stage for participation in it, and shall present, where applicable, the results of the assessment carried out for this purpose on the technical, economic and competitive situation of the market, specifying the reasons for the possible use and choice of the measures adopted pursuant to Article 26¹.

Article 26. – (1) The rights for the use of radio frequencies shall be awarded carried out by means of an open, objective, transparent, non-discriminatory and proportionate procedure, within 6 weeks from the reception of a complete application, accompanied by all the necessary documents therefor.

(2) By way of exception from the provisions of paragraph (1), in the case of the rights for the use of radio frequencies that meet the conditions stated in Article 25, ANCOM shall award the rights by using objective, transparent, non-discriminatory and proportionate selection criteria and procedures, which would not have the effect of restricting, preventing or distorting competition, within 8 months from receiving a request in this regard.

(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 orbital positions or for observing Article 20¹.

(4) ANCOM may decide, within a procedure for awarding the licence for the use of radio frequencies, in compliance with the principles under paragraph (2), for reasons related to promoting competition in the electronic communications field, with the prior consultation of the Competition Council, to preclude 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 broadcasting programmes and only in the situation where the measure is necessary to achieve general interest objectives. The granting of radio frequencies under the terms of this paragraph must be objectively justified, transparent, non-discriminatory 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 initiated. The decision to cancel the selection procedure must be objectively justified or represent the consequence of certain conditions which could not have been 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.

(7) The information on the rights for the use of radio frequencies granted for the provision of public electronic communications networks, including on the possibility of their transfer or rental, shall be made public by ANCOM by publishing the information on its website, where it is kept for the entire duration of the rights.

Article 26¹. – (1) In the situation where it is intended to grant rights for the use of radio frequencies according to the procedure established under Article 26 paragraph (2), in the case of the radio frequency spectrum harmonised for the provision of wireless broadband electronic communications networks and services, through technical implementing measures at European level, ANCOM shall inform the RSPG of any draft measures falling under Article 25 paragraphs (3) to (5) and shall indicate, where applicable, whether it requests the RSPG to convene of a peer review forum.

(2) In the event of convening a peer review forum, ANCOM shall also provide the RSPG with information on how the proposed measures:

a) promote the development of the internal market of the European Union, the cross-border provision of services, as well as the competition, maximizes the benefits for consumers and generally pursues the objectives of ANCOM and those regarding the management of the radio spectrum, in compliance with the provisions of Decision no. 676/2002/EC of the European Parliament and of the Council of the European Union and Decision no. 243/2012/EU of the European Parliament and of the Council of 14 March 2012 establishing a multiannual programme for radio spectrum policy;

b) ensure the effective and efficient use of the radio frequency spectrum;

c) ensure stable and predictable investment conditions for existing and potential radio spectrum users when deploying networks for the provision of electronic communications services using radio spectrum.

Article 26². – (1) ANCOM shall award the right to use radio frequencies in radio frequency bands with harmonized use for which the procedure and conditions for granting rights have been previously agreed at European Union level, to those providers selected within a selection procedure organized at the Union level, in compliance with international agreements and European Union norms, where the corresponding national conditions for the use of radio frequencies have been fulfilled.

(2) In the event that, in the framework of the selection procedure provided for in paragraph (1), not all the national conditions related to the right to use the radio frequencies in question have been met, ANCOM may impose, through the rights for the use of radio frequencies granted, additional conditions, criteria or procedures at national level.

(3) In the situation established in paragraph (2), the imposition of additional requirements may not limit, distort or delay the correct implementation of the selection procedure referred to in paragraph (1).

Article 26³. – (1) Depending on the interest expressed by the parties involved in the market, ANCOM may cooperate with authorities holding similar powers from other member states of the European Union, as well as with the RSPG, in order to establish the common aspects of an authorisation procedure and, where applicable, to carry out together the selection process in order to grant individual rights for the use of radio frequency spectrum that also include a cross-border use of radio frequencies.

(2) When drafting the joint authorisation procedure according to paragraph (1), if the rights to use the targeted radio frequencies are available for granting in order to provide electronic communications services, ANCOM, together with the authorities holding similar powers from the member states involved, may also take into account the following:

a) the rights to use radio frequencies are available for granting for the provision of electronic communications services, and the individual national authorisation procedure must have been initiated and implemented by the competent authorities of the respective Member States of the European Union according to an agreed common timetable;

b) there are common conditions and procedures, in Romania and in the other Member States of the European Union concerned, for the selection and granting of individual rights of use for the radio frequency spectrum;

c) there are common or comparable conditions, in Romania and in the other Member States of the European Union concerned, related to the individual rights to use the radio frequency spectrum that allow, inter alia, the allocation of similar radio frequency spectrum blocks;

d) the joint authorisation procedure is open to cooperation at any time to other Member States of the European Union while it is in progress, but only until the deadline set for the submission of offers within the authorisation procedure.

(3) If, despite the interest expressed by market participants, the joint authorisation procedure is not carried out, ANCOM shall inform them of the reasons justifying such a decision.

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

a) the rights offered 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, for reasons imputable to the holder, and the direct effect is the limitation of ANCOM's possibility to award other usage rights under certain conditions;

f) in order to avoid hoarding of the radio spectrum 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.

g) the obligations under the licence are not fulfilled.

(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), prior to taking the measure of withdrawal of 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.

Article 27¹. – The restriction of individual rights to use radio frequencies or their withdrawal before the expiry of the validity period, as a result of measures taken to ensure the effective and efficient use of the radio frequency spectrum, or to implement the technical measures adopted pursuant to Article 4 of Decision No 676/2002/EC of the European Parliament and of the Council of the European Union shall be carried out by means of clear procedures established in advance in accordance with the principles of proportionality and non-discrimination, with the consultation of the interested parties and, where applicable, with the compensation of those affected.

(2) The provisions of paragraph (1) shall be without prejudice to the measures set in accordance with Articles 147 and 149 paragraphs (2)-(4).

(3) In the situation referred to in paragraph (1) the provisions of Article 29 shall also apply.

(4) The measures established pursuant to Article 20 paragraphs (1), (2) and (4) to (6) may not constitute grounds for the withdrawal of individual rights to use radio frequencies.

Article 28. – (1) The granting of licences for the use of 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 of the licence fee in the case of the comparative selection procedure, respectively its minimum value in the case of a competitive selection procedure, and the conditions concerning the payment shall be set, separately for each case, by Government decision initiated by ANCOM and shall aim, among others, at the efficient allocation and use of the usage rights and – where possible – shall take into account the costs that may be incurred by the fulfilment of the authorisation conditions imposed in pursuit of public policy objectives.

(1¹) In addition to the requirements established according to paragraph (1), the amount of the fee shall take into account the value of the rights to use radio frequencies in the possible alternative solutions for their use, considering the costs generated by the conditions attached to those rights, and where possible account shall also be taken of any payment arrangements

determined on the basis of the actual availability for use of the spectrum granted, matters which shall be determined in an objective, transparent, proportionate and non-discriminatory manner before the start of the procedure for granting rights for the use of spectrum.

(1²) The term for the payment of the license fee may not be earlier than 6 months prior to the entry into force of the rights of use.

(1³) The competitive or comparative selection procedure may be used as a means for granting the right of use in other cases established by ANCOM.

(1⁴) The selection criteria shall be established in compliance with the provisions of Articles 19¹, 19² and 20.

(1⁵) The conditions related to the rights of use, the objectives pursued according to the provisions of article 25 and the specific rules applicable within the selection procedure shall be established by the Terms of Reference elaborated by ANCOM.

(2) repealed

(3) A comparative selection is a 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.

(3¹) A competitive selection is a procedure of awarding a licence or several licences for the use of radio frequencies by which the radio frequency usage right is awarded to the winner/winners of an auction who - having fulfilled all the pre-established criteria of a technical, administrative or financial nature, as the case may be - submit the highest bid for the licence fee, starting from a minimum value set by the Government Decision provided under paragraph (1).

(4) The radio frequency band that is the subject to the selection procedure, the type of selection procedure and the general rules applicable within the procedure shall be adopted by ANCOM decision.

Article 28¹ – (1) Upon adopting the decision mentioned in Article 28 paragraph (4) or any other measures required in view of the organisation of the selection procedure, ANCOM shall launch the invitation for the submission of applications in view of awarding the rights for the use of radio frequencies.

(2) Within the selection procedure, ANCOM shall analyse the received applications based on objective, transparent, proportionate and non-discriminatory eligibility criteria that have been previously set and contain the conditions attached to the respective rights.

(3) ANCOM may request the applicants to provide all the information necessary for the assessment in view of verifying their capacity to respect the eligibility criteria referred to in paragraph (2).

(4) Where, upon the assessment under paragraph (2), it is assessed that a participant in the selection procedure does not hold the capacity required to observe the conditions attached to the rights of use, respectively where the information under paragraph (3) is not submitted, ANCOM may, on a reasoned basis, reject the application of the respective participant.

(5) Where, following a procedure for granting radio frequency usage rights, ANCOM assesses that additional frequency usage rights may be granted, including based on a combination between individual rights and the general authorisation regime, the regulatory authority shall make this conclusion public and shall start the process for granting the rights.

Article 29. – (1) The costs incurred by the change of destination or the refarming of the use 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.

Article 30. – (1) Holders of the licences for the use of radio frequencies shall owe ANCOM an annual tariff for the use of spectrum. The actual amount of this tariff shall be calculated 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 the spectrum under paragraph (1), set 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 for the purpose it is intended.

*) GEO 56/2020 - Art. 3

(1) The payment term for the tariff for the use of spectrum due by the holders of the licences for the use of radio frequencies pursuant to Article 30 paragraph (1) of Government Emergency Ordinance no. 111/2011 on electronic communications, approved with amendments and additions by Law no. 140/2012, with subsequent amendments and completions, established in the debt securities issued for the first quarter of 2020, according to the Decision of the President of the National Authority for Management and Regulation in Communications no. 551/2012 on the establishment of the spectrum usage tariff, with subsequent amendments and completions, is 31 October 2020.

(2) The holders of licences for the use of radio frequencies granted according to Government Emergency Ordinance no. 111/2011, approved with amendments and completions by Law no. 140/2012, with subsequent amendments and completions, which have paid the spectrum usage fee according to the debt securities issued before the date of entry into force of this emergency ordinance, may benefit, upon request, from the refund of the amounts paid in order to comply with the provisions of Article 1.

(3) The refund of amounts according to paragraph (2) shall be carried out under the conditions stipulated by Law no. 207/2015, with subsequent amendments.

Article 30¹. – For the use of radio frequencies under the conditions provided for in Article 23 paragraphs (3) and (4) no tariff for the use of spectrum is due.

Article 30². – (1) The spectrum usage tariff established according to Article 30 is not due in the case of radio frequencies used exclusively for the rescue of human lives by ambulance, mountain rescue or lifeguard public services.

(2) The spectrum usage tariff established according to Article 30 is not due in the case of radio frequencies used exclusively for reception.

Article 30³. – In the case of granting individual rights for the use of radio frequencies according to Article 23 paragraph (1), in conjunction with Article 25 paragraph (3), the validity period for such rights shall be determined by taking into account the need to ensure competition and the effective and efficient use of radio spectrum, as well as to promote innovation and efficient investment, including by choosing an appropriate period for the amortization of the investment.

Article 31. – (1) The rights for the use of radio frequencies within the harmonised radio frequency spectrum, conferred following comparative or competitive selection procedures for the provision of wireless broadband electronic communications services shall be granted for a period of 15 years with the possibility of extension for further 5 years.

(2) By way of exception from the provisions of paragraph (1), the validity period of the rights for the use of radio frequencies granted through comparative or competitive selection procedures, may range between 20 and 25 years, may be between 20 and 25 years, without the option of extension. The granting of rights under these circumstances shall in particular consider:

a) the situation of the band granted for the first time for the provision of wireless broadband electronic communications services; or

b) the simultaneous expiry of the duration of the rights for one or more radio frequency bands.

(3) The general criteria for the extension of the duration of the usage rights pursuant to paragraph (1) shall be made available in a transparent manner to all interested parties, prior to the initial granting of the usage rights and concern:

a) the need to ensure the effective and efficient use of the radio frequency spectrum concerned, the objectives pursued by art. 19¹ paragraph (2) letters (a) and (b), or the need to meet general interest objectives relating to the protection of life safety, national defence, public order and national security;

b) the need to ensure that competition is not distorted;

c) the payment to the state budget of a licence fee, whose amount and payment conditions shall be established by Government Decision initiated by ANCOM.

(4) Taking into account Article 19¹ paragraph (2) letter c), at least two years before the expiry of the initial duration of the usage right granted according to paragraph (1), ANCOM shall carry out an objective and prospective assessment of the general criteria provided for in paragraph (3), for the extension of the duration of that usage right.

(5) The extension of the duration of the usage right according to paragraph (1) shall be bound by:

a) the compliance with the conditions related to the right to use the radio frequencies initially granted;

b) the non-existence of an action initiated by ANCOM, caused by the non-compliance with the conditions related to the rights of use;

c) the compliance with the general criteria provided for in paragraph (3).

(6) After carrying out the evaluation according to paragraph (4), ANCOM shall notify the holder of the right on the granting of the extension of the duration of the usage right according to paragraph (1) and whether it is necessary to review the conditions which were taken into account when the licence was initially granted, giving an appropriate period for the implementation of those changes, proportional to their qualitative or quantitative nature.

(7) If the extension of the duration of the usage right is not granted according to paragraph (1), ANCOM shall grant the rights to use the radio frequencies according to Article 23 and/or 26.

(8) Any decision made pursuant to paragraphs (3) to (6) shall be proportionate, non-discriminatory, transparent, motivated and can be taken only after the interested parties have previously been given the opportunity to submit observations within at least three months from the moment of learning the measures provided for in paragraphs (3) or (4).

(9) ANCOM may decide, in justified cases, the derogation from the provisions of paragraphs (1) to (8) in the following situations:

a) in limited geographical areas where access to high-speed networks is very poor or non-existent and this is necessary to ensure the achievement of the objectives of art. 19¹ paragraph (2);

b) for specific short-term projects;

c) for experimental use;

d) for uses of the radio frequency spectrum which, in accordance with Article 20 paragraphs (1) to (6), may coexist with wireless broadband electronic communications services;

e) for the alternative use of the radio frequency spectrum in accordance with art. 19².

Article 31¹. – (1) By way of exception from the provisions of Articles 30³ and 31, in order to ensure the simultaneous expiry of the duration of the rights in one or several radio frequency bands, the rights for the use of radio frequencies may be granted for shorter periods.

(2) The rights for the use of radio frequencies may be extended for a period of up to 5 years in order to simultaneously ensure the duration of the rights for one or several radio frequency bands.

Article 31². – (1) ANCOM shall grant the individual rights for the use of radio frequencies for a maximum period of 10 years in the bands that are not part of the harmonized radio frequency spectrum and within which a general authorisation regime cannot be applied, with the possibility of extension and, where appropriate, renewal.

(2) The provisions of paragraph (1) shall apply accordingly to those rights for the use of radio spectrum granted in the harmonised radio spectrum bands, which are not covered by the technical implementing measures at European level relevant the respective frequency bands.

(3) The period of validity of the usage rights according to paragraphs (1) and (2), the cases in which it applies, as well as the conditions for extension and, where applicable, renewal shall be established by decision of ANCOM.

Article 31³. – (1) ANCOM shall decide on the renewal of the individual rights for the use of the harmonised radio frequency spectrum, in due time, before the expiry of their duration. ANCOM analyzes the necessity of renewal either on its own initiative or upon the right holder's request, formulated no later than five years, but not later than two years before the expiry, if the possibility of renewal has not been explicitly excluded at the time of granting. On this occasion, ANCOM may consider reviewing the rights of use where applicable.

(2) When making a decision pursuant to paragraph (1), ANCOM shall take into account, among other:

a) the achievement of ANCOM's general objectives, of those provided for in Article 19¹ and Article 26 paragraph (2), as well as of the public policy objectives, if these have been established;

b) the implementation of a technical implementing measure adopted in accordance with Article 4 of Decision no. 676/2002/EC of the European Parliament and of the Council of the European Union;

c) the verification of the proper fulfilment of the conditions related to the right in question;

d) promoting competition or avoiding any distortion thereof, in accordance with Article 23¹;

e) increasing the efficiency of the use of radio frequency spectrum, taking into account technological or market developments;

f) avoiding the discontinuity with serious consequences of the electronic communications service.

(3) When considering the possibility of renewal and, where appropriate, review of the individual rights of use within the harmonised radio spectrum, under the conditions of paragraph (1), for which the number of rights of use is limited pursuant to Article 26 paragraph (2), ANCOM shall organize an open, transparent and non-discriminatory consultation procedure on the conditions set out in Article 24¹ paragraph (2) and, inter alia:

a) shall give all interested parties the opportunity to express their views in the framework of a public consultation carried out in accordance with art. 135; and

b) shall clearly state the reasons for such a possible renewal and, where appropriate, review.

(4) If, following the consultation provided for in paragraph (3), there is a clear indication on the interest of other persons than that expressed by the existing holders of the rights for the use of the radio frequency band in question, ANCOM shall decide either to renew the usage rights under the conditions of paragraph (1) or to organise a new selection procedure to grant the radio frequency usage rights pursuant to Article 25.

(5) The renewal of the individual usage rights within the harmonised radio spectrum according to paragraphs (1) to (4) shall be possible for a period at most equal to the initial

period, in compliance with the other requirements established in accordance with the provisions of this emergency ordinance.

(6) The renewal and, where applicable, the review of the individual usage rights within the harmonised radio spectrum shall be carried out in accordance with this Article and shall be bound by the payment to the state budget of a licence fee which observes the objectives set out in Article 1. 28 paragraphs (1) and (1¹). The amount and the payment conditions shall be established by Government Decision initiated by ANCOM.

(7) The conditions related to the renewal and, where applicable, the review of the right to use the radio spectrum may not benefit the existing holders of those rights over a potential new entrant.

Article 32. – (1) The radio frequencies shall be used in the amateur service without the prerequisite of obtaining 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.

Article 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) **repealed**

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

Article 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.

Article 35. – (1) The rights for the use of radio frequencies granted for the provision of a public electronic communications network and/or publicly available electronic communications services may be transferred or may be leased, in whole or in part, to another person who has undergone the notification procedure under the terms of Article 6. The rights of use in question or the related radio frequency spectrum can be divided to the greatest extent possible, but in compliance with the conditions of harmonised use.

(2) The provisions of paragraph (1) shall not apply if the rights for the use of radio frequencies were obtained without payment of a licence fee.

(3) The rights for the use of radio frequencies may be transferred or may be leased in accordance with paragraphs (1) and (2) only with the prior approval of ANCOM and with the observance of all the obligations established by the licence for the use of radio frequencies.

(4) Any agreement having as object the transfer or lease of the usage rights, concluded without obtaining the prior approval of ANCOM, shall be null and void.

(5) ANCOM shall establish, on a case-by-case basis, if the usage right may be transferred fully or partly, case in which the usage conditions may also be properly revised, ensuring an optimal partition of the radio spectrum.

(6) ANCOM may request the transferee, prior to the transfer of the usage rights, to fulfil certain requirements that would lead to the observance of the conditions taken into account at the initial granting of the rights for the use of radio frequencies and/or of certain formalities regarding the file submitted for the transfer of the usage rights.

(7) The transfer or lease of the rights for the use of radio frequencies shall not restrict, prevent or distort competition and, in cases where the use of frequencies is harmonised at the European Union level, shall not lead to a change in the use of radio frequencies in a manner contrary to such harmonised use.

(8) In the case of the lease of the rights for the use of radio frequencies, the lessor shall comply with the conditions taken into account at the initial granting of the rights for the use of radio frequencies, as well as with the obligations established according to the licence held.

(9) The prior approval for the transfer of the rights for the use of radio frequencies may be refused:

a) in case there is a risk of non-compliance with the conditions envisaged at the initial granting of the rights for the use of radio frequencies;

b) for failure to observe the conditions established according to paragraph (6);

c) where there are indications that the transfer may effect in restricting, preventing or distorting competition;

d) when the holder of the usage rights has not fully paid the tariff for the use of spectrum corresponding to the rights to be transferred, as well as the related accessories, if applicable;

e) if the transferee has due debts related to the tariff for the use of spectrum, due for the previously allocated /assigned radio frequencies, as well as any accessories related to the tariff.

(10) The prior approval for the lease of the rights for the use of radio frequencies may be refused if the conditions set out in paragraphs (7) and (8) are not met.

Article 35¹. – (1) The processing of the requests regarding the issuance of the prior approval for the transfer or lease of the usage rights of use is carried out free of charge within 30 calendar days from the request submission date, or from the submission of all the additional information requested by ANCOM, as applicable.

(2) Where the transfer or lease of the usage rights involves the processing of a significant amount of data and/or information, the time limit referred to in paragraph (1) may be extended by up to 180 calendar days, provided that the concerned parties are notified.

(3) The transfer and lease of the rights for the use of radio frequencies shall be made publicly available by ANCOM by publishing the information on its website, where it will be available during the entire duration of the rights.

Article 35². – (1) Leasing the rights to use radio frequencies under the conditions of Article 35 is bound by ensuring all the conditions to prevent harmful interference or to immediately remove any causes that lead to their occurrence.

(2) The lessor shall ensure that the lessee uses the usage rights over the leased radio frequencies in compliance with all the technical parameters established by the licence for the use of radio frequencies awarded to the lessor.

(3) The lessor is bound by the obligation to comply with the technical broadcasting parameters of the radiocommunication stations and the conditions under the licence for the use of radio frequencies, regardless of the provisions of the lease contract.

(4) The procedure for issuing the prior approval for the lease of the rights for the use of radio frequencies shall be established by ANCOM decision.

Article 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.

Article 36¹. (1) The holder of a RLAN connected, as an extension, to a public electronic communications network may, by means of its own network equipment, allow third parties' access to public electronic communications networks, including through any RLAN held by the latter, as well as the use of harmonised radio frequency spectrum for RLAN applications. The use of radio spectrum in these conditions is subject only to those provisions applicable to radio spectrum within the authorisation regime established pursuant to Article 23 paragraph (3).

(2) Where the provision referred to in paragraph (1) is not part of, or is ancillary to, an economic activity or a public service, which is not dependent on the conveyance of signals over the electronic communications networks concerned, then the person providing such access, be it an entrepreneur, a public authority or an end-user, is not subject to the general authorisation regime for the provision of electronic communications networks and/or services, established in accordance with Articles 5 to 7, nor the obligations relating to end-user rights established pursuant to Articles 37 to 45 and Articles 71 to 73, nor the obligations regarding the interconnection of networks established in accordance with 100 paragraph (1).

(3) The end-users may allow access to their RLANs to other end-users, reciprocally or in other ways, including based on third-party initiatives, making multi-end-user RLANs available to the public in an aggregated manner.

Article 36² – (1) The providers of public electronic communications networks or publicly available electronic communications services may allow the access of the general public to their networks, by means of RLANs, which may be located including in premises owned by an end-user, in compliance with the applicable provisions from the general authorisation and the prior informed consent of the end-user involved.

(2) Concomitantly with the access to public electronic communications networks and publicly available electronic communications services pursuant to paragraph (1), the providers of public electronic communications networks or publicly available electronic communications services shall, without restriction, allow end-users:

a) the access and connection, at their choice, to available RLANs provided by third parties; or

b) the reciprocal access to the networks of such providers or, more generally, to granting other end-users' access to the networks of such providers through RLANs, including on the basis of third-party initiatives making available to the public RLANs of several end-users, in an aggregated manner.

Article 36³ – (1) The public authorities may make their RLANs available in order to ensure the access of the general public to these networks, at the premises of those authorities or in the public spaces adjacent to these premises, when the provision of access to the RLAN is ancillary to the public services provided.

(2) Based on initiatives of non-governmental organizations or public authorities, RLANs may be made available in an aggregated manner, including, where applicable, the RLANs referred to in paragraph (1), to ensure that the general public has access to these networks, reciprocally or in other ways.

(3) The use of the radio spectrum according to paragraphs (1) and (2) shall be subject only to those provisions applicable to radio spectrum pursuant to Article 23 paragraph (3).

(4) In the situations referred to in paragraphs (1) and (2), the provisions of Article 36¹ paragraph (2) shall apply accordingly to the public authorities or non-governmental organisations providing such access.

Article 36⁴ - In case of accessing an information society service as a result of the application of Articles 36¹ to 36³, the provisions of Article 12 of Law no. 365/2002, republished, with the subsequent amendments, shall apply.

Article 36⁵ – (1) The installation, modification or replacement by operators of small-area wireless access points that comply with the physical and technical characteristics established by the European Commission under the Implementing Regulation (EU) 2020/1070 of July 20 2020, laying down the characteristics of small-area wireless access points pursuant to Article 57 paragraph (2) of Directive (EU) 2018/1972 of the European Parliament and of the Council establishing the European Electronic Communications Code shall be carried out without the need to obtain the building permit provided for by Law no. 50/1991 on the authorization of construction works, republished, with subsequent amendments and completions.

(2) The installation, modification or replacement by operators of small-area wireless access points that comply with the physical and technical characteristics established by the European Commission under the Implementing Regulation (EU) 2020/1070, which involves the use of historical monument buildings, buildings of architectural or historical value, established by approved urban planning documentations, shall be carried out in compliance with the prior notification procedure laid down in Article 11 paragraph (4) of Law no. 50/1991, republished, with subsequent amendments and completions.

(3) The putting into operation and/or use of the small-area wireless access points referred to in paragraphs (1) and (2) shall be carried out in compliance with the provisions of Government Decision no. 740/2016 on the making available on the market of radio equipment, with subsequent amendments and completions, as well as with the legal framework on the use of radio frequency spectrum established by this emergency ordinance.

(4) Within 14 days from the date of installation, modification or replacement of the small-area wireless access points referred to in paragraphs (1) and (2), of E2 and E10 type, the operators shall submit to ANCOM an electronic notification through a single information

point, the content of which is established by ANCOM decision and which includes, at least, the location and the technical characteristics of the respective small-area wireless access points.

(5) ANCOM shall monitor and report regularly to the European Commission, first by 31 December 2021 and, subsequently, every year, on the application of the Implementing Regulation (EU) 2020/1070, especially on the application of Art. 3 paragraph (1) of this Regulation, including with regard to technologies used by the installed small-area wireless access points.

Article 36⁶ – If at the national level there are requirements in place for the installation of small-area wireless access points which are different from the limits established in the Council Recommendation 1999/519/EC on the limitation of the exposure of the general public to electromagnetic fields (from 0 Hz to 300 GHz), their adoption is conditioned by the completion of the stages established according to Government Decision no. 1.016/2004 on measures for the organization and exchange of information in the field of technical standards and regulations, as well as of the rules on information society services between Romania and the Member States of the European Union, as well as the European Commission, with subsequent amendments and completions.

Section 3: Numbering resources and associated technical resources

Article 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 enough availability of the numbering resources or to adjust to the evolution of services.

(4) The holders of the right to use numbering resources 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.

Article 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.

(3¹) ANCOM may establish, by decision, under the conditions of existence and maintenance of the availability of numbering resources from the National Numbering Plan, certain numbering resources for which the right of use is granted to persons who do not provide public electronic communications networks or publicly available electronic communications services. The provisions of Article 38¹ shall apply accordingly.

(3²) If there is a risk of exhaustion of the numbering resources, ANCOM shall suspend the allocation of numbering resources under the conditions of paragraph (3¹).

(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.

Article 38¹. – (1) Within the National Numbering Plan, ANCOM shall make available a series of non-geographic numbers that can be used, without prejudice to Regulation (EU) No. 531/2012, with subsequent amendments and completions, and art. 73 paragraphs (3) and (4) of this Emergency Ordinance, for the provision of electronic communications services, other than interpersonal communications services, across the European Union.

(2) The providers using the numbering resources referred to in paragraph (1) in other Member States of the European Union have the obligation to observe the National Numbering Plan and the conditions for the use of the respective numbering resources applicable on the territory of Romania, as well as the rules on consumer protection and other national rules, regarding the use of numbering resources, applicable in the Member States where the numbering resources are used.

(3) In enforcing the provisions of paragraph (2), ANCOM shall establish, by decision, the specific conditions attached to the right to use the numbering resources with extraterritorial use, to ensure compliance with all national rules on consumer protection and use of numbering resources in the Member States where numbering resources are used.

(4) Where a national regulatory authority or other competent authority from a Member State of the European Union where the numbering resources referred to in paragraph 1 are used notifies ANCOM of a violation of the relevant rules on consumer protection or of the applicable national law regarding the use of numbering resources in the respective Member State and proves such violation, ANCOM shall take the necessary measures to ensure observance of the conditions associated with the right to use the numbering resources, provided for in the ANCOM decision mentioned in paragraph (3), in accordance with Chapter XII.

(5) In order to facilitate the monitoring by the national regulatory authorities or by other competent authorities from the Member States of the European Union of the fulfillment of the requirements set out in the ANCOM decision mentioned in paragraph (3), ANCOM shall transmit to BEREC the relevant information in view of the setting up and permanent update of the database of numbering resources with right of extraterritorial use within the European Union.

(6) ANCOM may request BEREC's assistance in coordinating the activities of national regulatory authorities or other competent authorities from the Member States of the European Union in order to ensure the efficient management of the numbering resources with right of extraterritorial use within the European Union.

Article 38² – (1) In Romania non-geographic numbering resources may also be used, without prejudice to Regulation (EU) no. 531/2012, with subsequent amendments and completions, and Article 73 paragraphs (3) and (4) of this Emergency Ordinance, for the provision of electronic communications services, other than interpersonal communications services, for which the usage right is granted by other authorities from the Member States of the European Union.

(2) The holders of the rights for the extraterritorial use of the non-geographic numbering resources referred to in paragraph (1) have the obligation to observe the national legal rules on the conditions for the use of the numbering resources and those relating to consumer protection.

(3) Where it assesses that the obligations under paragraph (2) have been breached, ANCOM shall notify the competent authority from the Member State of the European Union where the right to use the numbering referred to in paragraph (1) were granted, in view of enforcing the measures foreseen by the national legislation of the respective Member State.

(4) In the case described in paragraph (3), the provisions of Article 73 paragraph (3) shall also apply.

Article 38³ – ANCOM may establish, by decision:

a) the conditions in which the non-geographic numbers from the National Numbering Plan may be used extraterritorially for the provision of electronic communications services, without prejudice to the provisions of Article 38¹;

b) the conditions in which non-geographic numbering resources may be used in Romania, for the provision of electronic communications services, from the numbering plans of other states, without prejudice to the provisions of Article 38².

Article 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 to the number sequences used for access to the former's services.

Article 40. – (1) The use of the numbering resources shall only be allowed upon obtaining the right to use numbering resources according to Article 41 paragraph (1) and under conditions that ensure their efficient use.

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

(3) The providers of public electronic communications networks, the providers of publicly available electronic communications services and the persons mentioned in Article 38 paragraph (3¹) have the obligation to observe the National Numbering Plan and the conditions on the use of the numbering resources.

Article 41. – (1) The right to use the numbering resources from the National Numbering Plan shall be granted by ANCOM by issuing a licence for the use of numbering resources or shall be obtained from a licence holder under the terms set out by ANCOM decision. The licence for the use of numbering resources is granted for the provision of electronic communications services, for a limited period of time, suited for the service in question, considering the pursued objective and properly taking into consideration the need to give an appropriate period for the amortisation of the investment.

(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 concern:

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 for which the usage right is granted, subject to the amendment of the National Numbering Plan;
- f) the transfer or reassignment of the numbering resources;
- f¹) other transmission means for the holder of the licence for the use 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 person 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;
- j) obligations on the extraterritorial use of numbers; in the case of the non-geographic numbers provided in Article 38¹, these obligations envisage ensuring the conformity with the rules on consumer protection and other rules on numbering resources from the Member States of the European Union where these are used.

(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.

(5) Without prejudice to the provisions of Chapter XII, the right to use numbering resources may be amended, limited or revoked, at the ANCOM initiative, in justified cases, in an objective and proportionate manner, and only upon undergoing the public consultation procedure specified in Article 135, except for the case where the respective amendments on the right to use the numbering resources are minor and have been done with the consent of the rights holder, as well as for the case where the respective limitations or revocations have been done with the consent of the rights holder.

(6) The interventions on the right to use numbering resources referred to in paragraph (5) shall be published, together with the justification, on the ANCOM website.

Article 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 assurance of their efficient use, as well as the need to satisfy the requests of numbering resources in the 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.

(5) ANCOM shall make publicly available, on its website, the licences for the use of numbering resources, except for those concerning the numbering resources used for purposes related to national security.

Article 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.

Article 44. – (1) The numbering resources under the licence may be transferred, totally or partially, to a third party, only with the prior consent of ANCOM and only if 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 regarding 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.

Article 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 of electronic communications networks and services

Article 46. – (1) The providers of public electronic communications networks or of publicly available electronic communications services shall take all adequate, objective and proportionate technical and organisational measures to appropriately manage the risks posed to the security of electronic communications networks and services.

(2) The measures taken according to paragraph (1), including encryption, as applicable, shall ensure a level of security appropriate to the risk presented, having regard to the state of the art, and shall be taken to prevent or minimise the impact of security incidents on users and other networks and services.

(3) The measures taken according to paragraph (1) shall cover the following areas: security policy and risk management, human resources security, security of networks and services, of associated facilities and information, operations management, incidents

management, activity continuation management, monitoring, testing and auditing threats awareness.

(4) The measures taken according to paragraph (1) shall properly consider the recommendations and good practice guidelines issued by ANCOM and by the European Union Agency for Cybersecurity, hereinafter referred to as *ENISA*.

(5) 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.

Article 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 security incident which has had a significant impact on the networks or services.

(2) The scale of the impact of a security incident shall be determined in keeping in particular with the following parameters, as applicable:

- a) the number of users affected by the security incident;
- b) the duration of the security incident;
- c) the geographic spread of the area affected by the security incident;
- d) the extent to which the functioning of the network or of the service is affected;
- e) the scale of the impact on the economic and community activities.

(3) The providers of public electronic communications networks or of publicly available electronic communications services shall, free of charge, inform the users potentially affected by a specific and significant security threat regarding any protection measure or corrective measure that can be taken by the users. Where applicable, the providers shall inform the users on the threat itself.

(4) 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 this is in the public interest.

(5) Where it deems necessary, ANCOM shall inform the competent authorities in other Member States of the European Union and ENISA on the existence of the case specified in paragraph (1).

(6) ANCOM shall annually submit a summary report to the European Commission and ENISA on the notifications received according to paragraph (1) and the action taken in those cases.

(7) The provisions of Article 46 and of the present article do not bring prejudice to the provisions of Regulation (EU) 2016/679 and of Law no. 506/2004 on the processing of personal data and protection of privacy in the electronic communications sector, with the subsequent amendments and completions.

(8) Regarding the incidents that may affect national security, ANCOM may cooperate with the national public institutions competent in the field.

Article 48. – (1) In the event of occurrence of a security incident or of identification of a specific and significant security threat or vulnerability, ANCOM may impose on the providers of public electronic communications networks or of publicly available electronic communications services necessary measures, under the form of mandatory guidelines, including the implementations timeframes, to remedy the security incident or to prevent its occurrence.

(2) The guidelines referred to in paragraph (1) shall be set by ANCOM decision.

Article 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 of the networks and services, including the implemented security measures and the supporting documentation;

b) submit, on their own expense, to a security audit carried out by an independent body or by another competent authority and to make the results thereof available to ANCOM.

(2) ANCOM may verify and assess the measures established by providers to guarantee the security of their networks and services. It may also verify and assess the observance of these measures and may impose measures in this regard.

Article 49¹. – (1) ANCOM may establish, by decision, the means for the implementation of the provisions of Article 46 paragraph (3), Article 47, Article 48 and, respectively, Article 49 paragraph (1), in compliance with the public consultation procedure referred to in Article 135.

(2) The ANCOM decision on the means for the implementation of the provisions of Article 46 paragraph (3) may include additional requirements to those laid down in the European Commission's implementing acts foreseen in Article 40 paragraph (5) of the European Electronic Communications Code.

Article 49². – (1) In view of enforcing this Article, ANCOM benefits from the assistance of the intervention teams in case cybersecurity incidents and of the response team to cybersecurity incidents at national level, designated on grounds of Law no. 362/2018 on ensuring a high level of security of networks and information systems, with the subsequent amendments and completions, as regards the aspects that fall under its competence.

(2) In view of enforcing this Article, ANCOM may consult and request the cooperation with the Romanian National Cyber Security Directorate, with the National Supervisory Authority for the Processing of Personal Data, and other national authorities, as applicable.

(3) The cooperation under this Article shall be carried out by ensuring the confidentiality of the information and protection of security and commercial interests of the providers of the providers of public electronic communications networks or of publicly available electronic communications services, in accordance with Article 30 of Law no. 362/2018, with the subsequent amendments and completions.

CHAPTER V

End-users' rights

Section 1

Contracts

Article 50. – (1) The provision to consumers of publicly available electronic communications services shall be carried out only on the basis of a contract which may be concluded for a single initial contractual period not exceeding 24 months.

(2) The provisions of paragraph (1) shall not apply to number-independent interpersonal communications services or transmission services used for the provision of machine-to-machine services.

(3) With the exception of the contracts referred to in art. 50⁷, the contract provided for in paragraph (1) shall be concluded in writing:

- a) on paper;
- b) if the end-user consents, as an electronic document, signed with an advanced or qualified electronic signature;
- c) by distance communication means, with the observance of the legal provisions.

Contracts shall be written in a legible font size of at least 10p, visible and easy to read, and the background colour shall contrast with that of the font used.

(4) The provisions of paragraph (1) shall not apply in respect of the duration of an instalment contract having as sole object the installation of a physical connection, in particular to very high capacity networks. An instalment contract for the installation of a physical connection shall not include terminal equipment, such as routers or modems, and shall not prevent consumers from exercising their rights under this Chapter.

(5) Consumer contracts covered by this section shall be subject accordingly to the provisions of consumer protection law, with the exception of the provisions of Article 10 letters f) and i) of Government Ordinance nr. 21/1992 on consumer protection, republished, with subsequent amendments and completions.

Article 50¹. – The providers of networks or publicly available electronic communications services may not apply restrictions or different conditions to end-users for the access to or use of networks or services for reasons related to the end-user's nationality, state of residence or place of establishment, except in objectively justified cases.

Article 50². – (1) The provisions of Article 50 paragraphs (1) to (4), Articles 50³-50⁷, Article 50¹⁰, Article 59⁹ paragraphs (1) and (2) and Article 59¹³ shall apply to end-users microenterprises, small enterprises or non-profit organisations to the extent that they have not explicitly agreed to waive all or part of their application.

(2) With the exception of Article 50¹, the provisions of this Chapter shall not apply to microenterprises providing number-independent interpersonal communications services,

unless they also provide other publicly available electronic communications services. Before concluding a contract with the end-user, they are obliged to inform the end-user of the non-application of the mentioned legal provisions.

(3) Contracts concerning transmission services used for the provision of machine-to-machine services shall be governed solely by the provisions of Article 59¹¹ paragraphs (1) to (4) and paragraph (7) and Article 59¹² paragraphs (1) and (3) and only when concluded with end-users who are consumers, microenterprises, small enterprises, non-profit organisations or economic organisations without non-profit-making legal personality.

(4) The provisions of Article 50 paragraphs (1)-(4), Article 50³⁻⁵⁰⁷, 50¹⁰, Article 59⁹ paragraphs (1) and (2) and Article 59¹³ shall also apply to end-users who are economic undertakings without legal personality, insofar as they have not explicitly agreed to waive all or part of their application. The provisions of Article 51, Article 55 para. (9), Articles 56-59, Articles 59¹⁻⁵⁹⁵, 59⁷, 59⁸, Article 76 paragraph (4), Article 77¹ paragraph (11) and Article 84 paragraph (16) shall apply accordingly to end-users economic undertakings without legal personality.

Article 50³. – (1) Before a contract or any similar offer is binding on the end-user microenterprise, small enterprise or not-for-profit organisation, the providers of publicly available electronic communications services shall provide the end-user with information on:

- a) the provider's identification data, including full contact details;
- b) the description of the main features of the service or of the package of services or of services and terminal equipment;
- c) the value of the tariff plan, with all taxes included, the types of services offered, including, as the case may be, the volumes of communications included during the billing period - the number of minutes, the number of SMS, the credit or data traffic included -, as well as the conditions of their use, and, if applicable, the option/options applied and their value, as well as the charges for calls and for minutes or additional data traffic; charges for activation of electronic communications service and/or connection or installation fee, inclusive of all taxes, if applicable; in the case of service bundles, the price of each product contracted with the service, the tariffs and how they are applied if they are also marketed separately;

d) any charges related to switching from one provider to another and compensation and refund mechanisms for delay or abuse in relation to switching and non-compliance with service or installation appointments, as well as information about those procedures;

e) where applicable, the existence of, and conditions for, prepayments or other financial guarantees to be paid or provided by the end-user microenterprise, small enterprise or non-profit organisation at the request of the provider;

f) where applicable, any additional freight, delivery or postage costs or, where these cannot reasonably be calculated in advance, an indication that such additional costs may be borne by the microenterprise, small enterprise or non-profit organisation end-user, including the period of validity of the offer or prices;

g) the existence of a legal guarantee of conformity for the terminal equipment and, where applicable, the existence of, and conditions for, post-sale services and commercial guarantees;

h) where applicable, the arrangements for payment, delivery and performance, the date by which the electronic communications provider undertakes to deliver the terminal equipment or provide the services;

i) the duration of the contract, including, where applicable, the initial contractual period, the conditions for suspension and reconnection of services, the conditions for contract termination, including those for unilateral termination before expiry of the initial contract period, and applicable penalties, if applicable;

j) any compensation and refund mechanisms that apply if contractually stipulated quality of service levels are not met or if the provider fails to respond appropriately to a security incident, threat or vulnerability;

k) the type and categories of measures that could be taken by the provider in response to security incidents or threats or vulnerabilities;

l) the contact details where any complaints can be sent, if they differ from the data provided in letter a), as well as the complaints resolution policy;

m) where applicable, the means of initiating dispute resolution procedures through an alternative dispute resolution entity established at national level.

(2) The description of the main characteristics of the service or package of services referred to in paragraph (1) letter b) shall specify:

a) information on the quality of the service provided, as follows:

(i) specific quality parameters ensured for publicly available electronic communications services, except internet access services. Information will also be provided on any minimum levels of quality of service, to the extent they are offered;

(ii) Where minimum levels of quality of service are not offered, a declaration to that effect shall be made;

(iii) the quality parameters shall be defined and expressed in a way that takes particular account of the guidelines adopted by BEREC for setting relevant quality parameters for internet access services and publicly available interpersonal communications services;

(iv) in the case of internet access services, the information provided for in Article 4 paragraph (1) of Regulation (EU) 2015/2120 and, where applicable, established by ANCOM pursuant thereto shall be specified; in addition, to the extent offered, minimum levels for parameters such as packet transfer delay, jitter and packet loss shall be indicated;

(v) in the case of publicly available interpersonal communications services, where the provider exercises control over at least some network elements or has a service-level agreement to that effect with undertakings providing network access, the information on minimum quality levels, if offered, shall cover at least the time needed to connect the call, probability of failure in connecting the call and delays in signaling the call, in accordance with Annex no. 1;

(vi) other quality parameters established by ANCOM in accordance with Article 61 paragraphs (1) to (3).

b) without prejudice to the right of the microenterprise, small enterprise or non-profit organisation end-user to use terminal equipment of their choice in accordance with Article 3 paragraph(1) of Regulation (EU) 2015/2120, information on any conditions, including charges, imposed by the provider on the use of terminal equipment supplied;

c) in the case of publicly available number-based interpersonal communications services, the following information shall in addition be provided:

(i) any limitations as to the access to emergency services or caller location information due to technical non-feasibility, to the extent that those services allow end-users to place calls to a number within a national or international numbering plan;

(ii) the rights of the end-users to include their personal data in a directory of telephone subscribers and the types of data concerned in accordance with Article 11 of Law no. 506/2004, with subsequent amendments and completions.

(3) In the case of the information referred to in paragraph (1) letter c), there shall be specified:

a) additionally, for the internet access services and the publicly available interpersonal communications services:

(i) in the case of tariff plans or plans with a predetermined volume of communications, the possibility for the micro, small enterprise or non-profit organisation end-user to carry forward any unused volume from the previous billing period to the next billing period, where this option is included in the contract;

(ii) facilities to guarantee billing transparency and monitor consumption levels;

(iii) tariff information in respect of any numbers or services subject to special tariff conditions;

(iv) details and conditions, including taxes, for any post-sale service, technical support and customer support services;

(v) the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;

b) the tariffs applied for exceeding the resources included in the subscription/option and/or the traffic, as well as the way they are charged; if the subscription/option does not include any resources or traffic, the charges for minutes/SMS/MMS/video calls and/or the tariff per minimum tariff unit;

c) in the case of dedicated tariff plans, the preferential tariffs for those resources, specifying, in the case of subscription/credit including international minutes, the area/country and/or network/type of network where these can be used;

d) the information that higher than usual rates may apply to some categories of numbers (e.g. premium rate numbers);

e) any other tariffs charged during a billing/credit validity period (e.g. equipment rental charges), if applicable.

(4) Within the framework of the information referred to in paragraph (1) letter i), the following information shall be given:

a) the conditions, including the timeframe for exercising the right of end-users microenterprises, small enterprises or non-profit organisations using pre-paid services to be reimbursed, upon request, for any outstanding credit in case of switching to another provider, as referred to in Article 75² paragraph (7);

b) any charges due in case of early termination of the contract, including information on the unlocking of the terminal equipment and any cost recovery in respect of the terminal equipment;

c) in the case of service bundles, the providers of internet access services and publicly available interpersonal communications services shall additionally provide information on the conditions for the termination of the packet or elements thereof.

(5) The providers of internet access services and of publicly available interpersonal communications services, in addition to the information referred to in paragraphs (1) to (4), shall provide, without prejudice to Article 13 of Regulation (EU) 2016/679, information on the personal data provided by the end-user microenterprise, small enterprise or non-profit organisation prior to the provision of the service or collected in the context of providing the service.

(6) The provisions of paragraph (1) letters b) and c) as regards information on packages, the provisions of paragraph (1) letters d) and i) on the conditions regarding the suspension and reconnection of services and the conditions regarding unilateral termination before the expiry of the initial contractual period, the provisions of paragraph (1) letters j) to m), as well as the provisions of paragraphs (2) to (5) shall also apply to consumers, in addition to the requirements laid down in Articles 4 and 6 of Government Emergency Ordinance no. 34/2014 on consumer rights in contracts concluded with professionals, as well as for amending and supplementing certain normative acts, approved with amendments by Law no. 157/2015, as subsequently amended and supplemented. The providers of publicly available electronic communications services shall also provide consumers with details on the products and services designed for end-users with disabilities, as well as an indication of how to obtain up-to-date information on them.

Article 50⁴. – (1) Before a distance or off-premises contract or any corresponding commercial offer is binding on the end-user microenterprise, small enterprise or non-profit

organisation, the providers of publicly available electronic communications services shall, in addition to the information referred to in Article 50³, provide the following:

a) the information on the cost of using means of distance communication for the conclusion of the contract, where calculated on the basis of a tariff other than the basic tariff;

b) where a right of withdrawal exists, information on the conditions, deadlines and procedures for exercising the right of withdrawal, in accordance with Article 58 paragraph (1) and information on the possibility of using a standard withdrawal form, presented in Annex no. 5;

c) where applicable, the information that the cost of returning the terminal equipment in the event of withdrawal will be borne by the end-user micro, small enterprise or non-profit organisation and, where the terminal equipment, by its very nature, cannot normally be returned by post, the cost of the return;

d) where the end-user microenterprise, small enterprise or non-profit organisation exercises its right of withdrawal after a request has been made in accordance with Article 54 paragraph (3), the information that the end user microenterprise, small enterprise or non-profit organization is obliged to pay reasonable costs to the provider, in accordance with Article 59² paragraph (3);

e) if the right of withdrawal is not provided for in accordance with Article 59³, the information that the micro, small enterprise or non-profit organisation end user will not benefit from a right of withdrawal or, where applicable, the circumstances in which the micro, small enterprise or non-profit organisation end-user loses the right of withdrawal.

(2) If the provider does not meet the requirements regarding the information on additional costs as referred to in Article 50³ paragraph (1) letters c) to f) and h) and, where appropriate, Article 50³ paragraph (3), or on the costs related to the return of the products, as provided for in paragraph (1) letter c), the end user of the microenterprise, small enterprise or non-profit organization shall not bear those costs.

Article 50⁵. – (1) The information referred to in Article 50³ and Article 50⁴ paragraph (1) shall be provided to end-users microenterprises, small enterprises or not-for-profit organisations in an accessible, clear and comprehensible manner, on a durable medium or, where provision on a durable medium is not feasible, in a document which can be easily

opened, viewed and downloaded. Providers subject to information obligations under this section shall explicitly inform the micro, small enterprise or non-profit organisation end-user of the availability of that document and of the importance of downloading it for information, future consultation and faithful reproduction purposes.

(2) Where pre-contractual information is submitted to the end-user microenterprise, small enterprise or non-profit organisation in the context of a telephone conversation, providers subject to information obligations under this section shall be required to communicate in the telephone conversation at least the information referred to in Article 50³ paragraph (1) letters a) – c) and i) and Article 50⁴ paragraph (1) letter d).

(3) Where pre-contractual information is provided to the end-user microenterprise, small enterprise or non-profit organisation by means of distance communication which allows limited space or time for displaying the information, the provider shall transmit by that means of communication, prior to the conclusion of the contract, at least the information referred to in Article 50³ paragraph (1) letters a) to c) and i) and Article 50⁴ paragraph (1) letter d). The other information referred to in Article 50³ and Article 50⁴ paragraph (1) shall be provided to the end-user in an appropriate manner in accordance with paragraph (1).

(4) If a distance contract to be concluded by electronic means obliges the end-user microenterprise, small enterprise or non-profit organization to pay, the provider shall provide the end-user microenterprise, small enterprise or non-profit organization in a clear and highly visible manner, directly, before the end-user places the order, with the information referred to in Article 50³ paragraph (1) letters b), c) and i). The provider shall ensure that, when the consumer places the order, the latter explicitly acknowledges that the order involves an obligation to pay. If it is necessary to activate a button or similar function in order to place the order, the button or similar function shall be labelled in a legible manner only with the words "order with payment obligation" or an appropriate unambiguous wording indicating that placing the order implies an obligation to pay the provider. If the provider violates the provisions of this paragraph, the end user microenterprise, small enterprise or non-profit organization shall not be bound by the contract or order.

(5) The provisions of paragraph (1) on means of providing information shall also apply to consumers.

Article 50⁶. – (1) Prior to the conclusion of a contract, regardless of the manner of its conclusion, the providers of publicly available electronic communications services shall provide consumers with a concise and easily readable contract summary, free of charge, on a durable medium or, where provision on a durable medium is not feasible, in a document which can be easily opened, viewed and downloaded.

(2) The contract summary template used by the providers of publicly available electronic communications services shall be drawn up in accordance with the Commission Implementing Regulation (EU) 2019/2.243 of 17 December 2019 establishing a template for the contract summary to be used by providers of publicly available electronic communications services pursuant to Directive (EU) 2018/1.972 of the European Parliament and of the Council.

(3) The contract summary shall identify the main elements of the information provided pursuant to Article 50³ and Article 50⁴ paragraph (1), including at least:

a) the name, address and contact information of the provider and, if different, the contact information for any complaint;

b) the main characteristics of each service provided;

c) the prices for activating the electronic communications service, as well as any recurring or consumption-related charges, where the service is provided for remuneration;

d) the duration of the contract and the conditions for its renewal and termination;

e) the extent to which the products and services are designed for end-users with disabilities;

f) as regards internet access services, a summary of the information to be provided pursuant to Article 4 paragraph (1) letters d) and e) of Regulation (EU) 2015/2.120.

Article 50⁷. – (1) In the case of publicly available electronic communications services for which payment is made in advance by the purchase of a prepaid card or similar means of payment, general conditions for the provision of those services shall be made available to end-users microenterprises, small enterprises or non-profit organisations at the time of their purchase, in writing, on paper or on another durable medium, in a visible and easy-to-read format, the background colour contrasting with that of the font used.

(2) The general conditions referred to in paragraph (1) shall include at least the following information:

a) the name, address and contact details of the provider of publicly available electronic communications services;

b) the standard tariff plan and its related tariffs, which are activated by default on first use, including, if applicable, information on bonuses included on first use (volume of traffic (voice/data) initially included, if applicable, as well as the standard tariff for additional traffic (voice/data), recorded in case of exceeding the initially included traffic, if applicable);

c) the validity period of the initial credit, if applicable;

d) the modalities of credit renewal and the effects of its renewal on the validity of the card;

e) the period of validity/grace of the prepaid card;

f) all documents and information that make up the contract, as well as how to obtain those that were not made available to end users microenterprises, small enterprises or non-profit organizations at the time of purchase of the service.

(3) The information referred to in Article 50³, Article 50⁴ paragraph (1) and Article 50⁶ shall be provided to end-users microenterprises, small enterprises or non-profit organisations receiving publicly available electronic communications services for which payment is made in advance, in an accessible, clear and intelligible manner, in a document that can be easily opened, viewed and downloaded. Providers subject to information obligations under this Article shall explicitly inform the end-users microenterprises, small enterprises or non-profit organisations at the time of purchase of services of the availability of the document and of the importance of downloading it for information, future reference and faithful reproduction purposes.

(4) The documents and information referred to in paragraphs (1) and (2) are the minimum terms of the contract under which publicly available electronic communications services for which payment is made in advance are provided.

(5) All documents and information making up the contract must be made available to end-users microenterprises, small enterprises or not-for-profit organisations via the provider's website so that they can be downloaded at any time for information, future reference and faithful reproduction purposes.

(6) The provisions of paragraphs (1), (2), (4) and (5) and of paragraph (3) as regards the information referred to in Article 50³ paragraph (6) and Article 50⁶ shall also apply to consumers.

Article 50⁸. – The information mentioned under this Section shall be made available, upon request, in an accessible and relevant format for end-users with disabilities, in accordance with the provisions of Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services.

Article 50⁹. – (1) The information referred to in Articles 50³, 50⁴ and 50⁶, provided before the conclusion of the contract, may not be amended, unless the contracting parties explicitly agree otherwise.

(2) The burden of proof with regard to the compliance with the information requirements laid down in this Chapter shall be on the provider.

Article 50¹⁰. – (1) The providers of internet access services or of publicly available interpersonal communications services shall provide consumers with the facility to monitor and control in a timely manner the level of consumption of each of the services included in the tariff plan, which are charged on the basis of volume or period of use.

(2) The providers shall inform the consumers when the volume of a service included in the tariff plan is fully consumed.

(3) ANCOM may establish, by decision, a consumption limit (financial or volume), including for premium services and other services subject to special tariff conditions.

(4) Where a consumption limit is established in accordance with paragraph (3), the providers shall inform consumers when the consumption limit has been reached.

(5) ANCOM may require the providers, by decision, to make available to consumers additional information on the level of consumption and to temporarily prevent the continued use of the service concerned if a financial or volume limit is exceeded.

Article 50¹¹. – In order to ensure an adequate information of end-users regarding any telephone numbers or premium services or other services subject to special tariff conditions, ANCOM may establish, by decision, general obligations for their provision, including the

obligation for tariff information to be provided immediately before connecting the call or before connecting to the service provider.

SUBSECTION 1: Paragraph 1 General framework

Article 51. – (1) Contracts concluded by end-users microenterprises, small enterprises or non-profit organisations in order to benefit from publicly available electronic communications services shall contain, as an integral part, the information required by the provisions of Articles 50³, 50⁴ and 50⁶. In the consumers' case, these will contain, as an integral part, in addition to the information specified in Articles 4 and 6 of Government Emergency Ordinance nr. 34/2014 on consumer rights in contracts concluded with professionals, as well as for amending and supplementing certain normative acts, approved with amendments by Law no. 157/2015, as subsequently amended and supplemented, the information provided by the provisions of Article 50³ paragraph (6) and Article 50⁶.

(2) Where, depending on the manner in which the contract is concluded, it is impossible for objective technical reasons to make the contract summary available to the consumer or end-user microenterprise, small enterprise or non-profit organisation at the time of conclusion of the contract, it shall be made available thereafter without undue delay at the latest at the time of delivery of the terminal equipment or before starting the provision of the service requested.

(3) With the exception of contracts referred to in Article 507 and Article 55 paragraph (9), the contracts concluded according to this Chapter shall take effect when the consumer or end user microenterprise, small enterprise or non-profit organisation gives its agreement on a durable medium after receipt of the contract summary.

(4) In addition to the information provided for in paragraph (1), the providers shall include in contracts information on:

a) where applicable, the possibility for the provider to amend the contracts and the conditions for making the amendment;

b) the right of the end user to terminate the contract, within the initial contractual period, under the conditions of this emergency ordinance, if the provider unilaterally modifies the contract under the conditions of Article 59¹¹;

c) the consumer's right to terminate the contract in respect of all services in the package before expiry of the initial contract period, when he/she has the right to terminate any element of the package, in case of non-compliance with the contract or non-provision of the service by the provider;

d) the consumer's right to trigger the mechanisms provided for in the national law, including the right to terminate the contract, at no additional cost, in the event of any significant continuous or frequent discrepancy between the actual performance of a publicly available electronic communications service, other than an internet access service or a number-independent interpersonal communications service, and the performance indicated in the contract;

e) the end-user's right to be compensated in case of delays in the porting or transfer process, in case of abusive porting or transfer and in case of non-compliance with the schedules set for services or installation in the porting or transfer process, as well as the procedure for granting compensation, provided for in Article 752 paragraph (6).

SUBSECTION 2: Paragraph 2 - Conclusion of distance contracts and of contracts outside the points of sale

Article 52. – repealed

Article 53. – repealed

Article 54. – (1) repealed

(2) repealed

(3) Where the end-user microenterprise, small enterprise or non-profit organisation wishes the provision of services covered by a distance or off-premises contract to commence during the withdrawal period provided for in Article 56 paragraph (2), the provider shall require the end-user microenterprise, small enterprise or non-profit organisation to make such express request on a durable medium.

(4) repealed

Article 55. – (1) repealed

(2) **repealed**

(3) **repealed**

(4) **repealed**

(5) **repealed**

(6) **repealed**

(7) **repealed**

(8) **repealed**

(9) Where the distance contract is concluded following an online order from the consumer or end user microenterprise, small enterprise or non-profit organisation, the moment of conclusion of the contract shall be the moment of confirmation on a durable medium by the provider of acceptance of the order submitted by the consumer or end-user microenterprise, small enterprise or non-profit organisation, after the contract summary has been made available.

(10) **repealed**

Article 56. – (1) Except for the cases provided in Article 59³, an end-user microenterprise, small enterprise or non-profit organisation benefits from a 14-day period to withdraw from a distance contract or from a contract concluded outside the points of sale, without having to justify the withdrawal decision and to bear the costs other than those provided in Article 59¹ paragraph (3) and in Article 59².

(2) Without prejudice to Article 57, the withdrawal period mentioned in paragraph (1) of this article shall expire within 14 days from:

a) the contract conclusion date, for services contracts;

b) the day when the end-user microenterprise, small enterprise or non-profit organisation or a third party different from the transporter and indicated by the end-user microenterprise, small enterprise or non-profit organisation acquires the physical possession of the products, for contracts involving the purchase of a terminal equipment.

(3) The contracting parties fulfil their contractual obligations during the withdrawal period according to the provisions of this emergency ordinance.

Article 57. – (1) Where the provider has not sent the end-user microenterprise, small enterprise or non-profit organisation information regarding the withdrawal right according to Article 50⁴ paragraph (1) letter d), the withdrawal period expires within 12 months from the end of the initial withdrawal period, as established in accordance with Article 56 paragraph (2).

(2) Where the provider sent the information provided in paragraph (1) of this Article, to the end-user microenterprise, small enterprise or non-profit organisation, within 12 months from the date specified under Article 56 paragraph (2), the withdrawal period expires within 14 days from the date when the end-user microenterprise, small enterprise or non-profit organisation receives the respective information.

Article 58. – (1) Where the end-user microenterprise, small enterprise or non-profit organisation decides to exercise their right of withdrawal, the respective end-user shall inform the provider regarding its decision to withdraw from the contract. To this end, the end-user microenterprise, small enterprise or non-profit organisation can use any unambiguous statement expressing its decision to withdraw from the contract.

(2) It is deemed that the end-user exercised its withdrawal right within the withdrawal period mentioned in Article 56 paragraph (2) and in Article 57 when the communication on exercising the withdrawal right is sent by the end-user microenterprise, small enterprise or non-profit organisation before the expiry of the respective period.

(3) The provider can grant the end-user microenterprise, small enterprise or non-profit organisation the option to fill in and send, in electronic format, on the provider's website, the unambiguous statement expressing its contract withdrawal decision. In such cases, the provider communicates to the end-user microenterprise, small enterprise or non-profit organisation, without delay, on a durable support, the confirmation of receipt of the withdrawal statement.

(4) The proof regarding the exercise of the withdrawal right in accordance with the provisions of this article is incumbent on the end-user microenterprise, small enterprise or non-profit organisation.

Article 59. – Exercising the withdrawal right brings an end to the obligations of the contracting parties, as the case may be:

- a) to enforce the distance contract or the contract concluded outside the points of sale;
- b) to conclude a distance contract or outside the points of sale, where the end-user microenterprise, small enterprise or non-profit organisation has placed an order.

Article 59¹. – (1) The provider shall return all the amounts received from the end-user microenterprise, small enterprise or non-profit organisation, as a payment, including, as required, the costs of delivery, without unjustified delay and, in any case, not later than 14 days from the date when it has been informed on the end-user's contract withdrawal decision, in accordance with Article 58.

(2) The provider returns the amounts mentioned in paragraph (1) using the same payment method as the ones used by the end user microenterprise, small enterprise or non-profit organisation for the initial transaction, except when the end-user has agreed on another payment method, with the condition that the end-user does not have to pay return commissions.

(3) Without prejudice to paragraph (1), the provider is not obliged to refund the additional costs where the end-user microenterprise, small enterprise or non-profit organisation has explicitly chosen another type of delivery than the standard one offered by the provider.

(4) Except for the case when the provider has offered to recover the products itself in sales contracts, the provider may postpone the reimbursement until the date of receiving the sold products that have been sold or until the moment of receiving a proof from the end-user microenterprise, small enterprise or non-profit organisation certifying that they sent the products to the provider, taking into account the date that is nearest.

Article 59². – (1) Except for the case when the provider offered to recover the products itself, the end-user microenterprise, small enterprise or non-profit organisation shall return the products or shall hand them in to the provider or to a person authorised by the provider to retrieve the products, without unjustified delay and within at most 14 days from the date on which it communicated to the provider its contract withdrawal decision in accordance with Article 58. The term is met if the end-user microenterprise, small enterprise or non-profit organisation returns the products before the expiry of the 14-day period.

(2) The end-user microenterprise, small enterprise or non-profit organisation bears exclusively the direct costs related to returning the product, except the case when the provider agrees to bear the respective costs or when the provider has not informed the end-user microenterprise, small enterprise or non-profit organisation that the respective costs must be borne by the latter. In the case of contracts concluded outside the points of sale, for which the products have been delivered to the premises of the end-users microenterprise, small enterprise or non-profit organisation at the moment of concluding the contract, the provider shall take over the products at its own expense, if the products' nature prevents them to be normally returned by post.

(3) The end-user microenterprise, small enterprise or non-profit organisation is exclusively liable with regards to the decrease in the product value due to handling, different from that required in order to assess the nature, characteristics and functioning of the products. The decrease in the product value must not be discouraging for the end user's microenterprise, small enterprise or non-profit organisation exercising its withdrawal right. Irrespective of the situation, the end-user microenterprise, small enterprise or non-profit organisation shall not be liable for the decrease in the product value where the provider failed to inform it on the withdrawal right in accordance with the provisions of Article 50⁴ paragraph (1) letter d).

(4) The provider must be able to prove a decrease in the product value other than what is required in order to assess the nature, characteristics and functioning of the products.

(5) When the end-user microenterprise, small enterprise or non-profit organisation exercises its withdrawal right after sending the request in accordance with Article 54 paragraph (3), the end-user shall pay the provider an amount proportionate to the products/services actually delivered until the moment when the end-user informed the provider on exercising the withdrawal right, in relation to the total contract quantity. The proportional amount to be paid to the provider by the end-user microenterprise, small enterprise or non-profit organisation shall be calculated based on the total price agreed in the contract. If the total price is an excessive one, the proportional amount shall be calculated based on the market value of the delivered products/services.

(6) The end-user microenterprise, small enterprise or non-profit organisation shall not bear the costs for the service provision during the withdrawal period, in one of the following situations:

a) the provider failed to inform the end-user in accordance with Article 50⁴ paragraph (1) letter d) or e);

b) the end-user microenterprise, small enterprise or non-profit organisation has not specifically requested the provision to start during the withdrawal period, in accordance to Article 54 paragraph (3);

(7) Except for the provisions of Article 59¹ paragraph (3) and of this Article, the enforcement of the withdrawal right shall not involve the liability of the end-user microenterprise, small enterprise or non-profit organisation.

Article 59³. – The withdrawal right provided under Articles 56-59² regarding distance contracts and contracts concluded outside the points of sale does not cover the services contracts, after the complete provision of the services, if the enforcement started upon the utter prior agreement of the end-user microenterprise, small enterprise or non-profit organisation and upon their confirmation of acknowledgement of the fact that their withdrawal right will be waived once the provider has completely carried out the contract.

Article 59⁴. – (1) Except for the case when the parties agreed otherwise on the moment of delivery, when the contract concluded with the end-user microenterprise, small enterprise or non-profit organisation involves the purchase of a terminal equipment, the provider delivers the equipment by transferring the physical possession or control over the equipment to the end-user microenterprise, small enterprise or non-profit organisation, without unjustified delay and in any case no later than 30 days from the contract conclusion.

(2) Where the provider has failed to fulfil its obligation to deliver the equipment at the moment agreed with the end-user microenterprise, small enterprise or non-profit organisation or within the term established at paragraph (1), the end-user shall request the delivery within an additional term, according to the circumstances. Where the provider fails to deliver the equipment within the respective additional term, the end-user microenterprise, small enterprise

or non-profit organisation is entitled to the contract rescission or cancellation, as the case may be.

(3) The provider shall reimburse, no later than 7 days from the date of communication of the contract termination, the amounts paid by the end-user microenterprise, small enterprise or non-profit organisation for the terminal equipment.

Article 59⁵. – (1) Where a provider operates a telephone line by means of which it can be contacted regarding the concluded contract, the end-user microenterprise, small enterprise or non-profit organisation has no obligation to pay a tariff above the flat rate, when contacting the provider.

(2) Paragraph (1) does not prejudice the right of the communications service providers to charge these calls.

Article 59⁶. – **repealed**

Article 59⁷. – (1) In case of the provision of services or of the delivery of terminal equipment without the end-user's microenterprise, small enterprise or non-profit organisation consent, the latter shall be exonerated from all counter-performance.

(2) The lack of an answer from the end-user microenterprise, small enterprise or non-profit organisation cannot be deemed as consent.

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

(4) The provisions of paragraph (3) shall also apply to consumers.

Article 59⁸. – In the case of contracts where the provider delivers the products to the end-user microenterprise, small enterprise or non-profit organisation, the risk of losing or damaging the products shall be transferred to the end-user when the latter or a third party designated by it, other than the transporter, acquires the physical possession of the products. Nevertheless, the risk is transferred to the end-user microenterprise, small enterprise or non-profit organisation at the moment of delivering the products to the transporter, if the transporter has been mandated by the end-user microenterprise, small enterprise or non-profit

organisation to transport the products, and this option has not been offered by the provider, without prejudice to the end-user's microenterprise, small enterprise or non-profit organisation rights towards the transporter.

Article 59⁹. – (1) Where a package offered to a consumer includes at least an internet access service or a publicly available number-based interpersonal communications service, the provisions of Article 50 paragraph (1), Article 50⁶, Article 59¹⁰, Article 59¹¹ paragraphs (1)-(4) and paragraph (7), Article 59¹² paragraphs (1) and (3), Article 59¹³, Article 60 paragraph (1) and Article 75¹ paragraphs (1), (3) and (4) shall apply to all package elements, including *mutatis mutandis* to those elements that otherwise would not be covered of the mentioned provisions.

(2) Where, during the performance of the contract, the consumer adds additional services or terminal equipment offered or distributed by the same provider of internet access services or publicly available number-based interpersonal communications services, the initial contract period may not be extended, unless explicitly agreed otherwise by the consumer at the time of subscribing to the additional services or terminal equipment.

(3) In the case referred to in paragraph (2), the provider shall make available to the consumer, in the manner provided for in Article 50⁵, at least the information specified in Article 50³ paragraph (1) letters a)-c) and i) and in Article 50⁴ paragraph (1) letter d).

(4) In the case referred to in paragraph (2), the extension of the initial contractual period may not be for a period exceeding the difference between the contractual period belonging to the new service or additional terminal equipment purchased and the remaining period of the performance of the first contract.

Article 59¹⁰. – (1) In the case of contracts for the provision of publicly available electronic communications services, other than number-independent interpersonal communications services, which provide for a fixed term and are automatically extended, end-users shall have the right, at any time during the extension period, to terminate the contract unilaterally after giving no more than 30 days' advance notice.

(2) If they exercise their right of unilateral termination under the conditions of paragraph (1), the end-users shall only bear the charges for the use of the service during the prior notice period.

(3) By way of derogation from Article 10 letter i) of Government Ordinance no. 21/1992, republished, as subsequently amended and supplemented, before contracts are automatically extended, the providers shall inform consumers in due time and on a durable medium of the termination of the contract and the means of terminating it unilaterally. These provisions shall also apply to other categories of end-users. At the same time, providers shall provide end-users with information on the best tariffs for their services.

(4) In the case of automatically extendable contracts, the providers shall provide end-users, at least once a year after the expiry of the initial contract period, with information on the best tariffs for the publicly available communications they benefit from.

Article 59¹¹. – (1) End-users shall have the right to terminate their contract for publicly available electronic communications services, other than number-independent interpersonal communications services, without payment of any penalty or compensation, upon receipt of a notification that changes will be made to the contractual conditions proposed by the provider of publicly available electronic communications services, unless the proposed changes:

- a) are exclusively for the benefit of the end user;
- b) are of a purely administrative nature and have no negative effect on the end-user;
- c) are imposed by the law.

(2) In all cases where the concluded contract provides for the possibility of unilateral modification for the provider, providers shall notify end-users, at least 30 days in advance, of any change in the contractual conditions and, where appropriate, inform them at the same time of their right to withdraw from the contract without payment of any penalty or compensation if they do not accept the new conditions.

(3) The notification shall be made in a clear and comprehensible manner, on a durable medium and by means ensuring its transmission to each end-user.

(4) From the moment of receipt of the notification, the end-user must have at least 30 days to exercise the right of withdrawal from the contract, if he/she does not agree with the changes imposed by the provider.

(5) If the end-user agrees with the proposed changes in accordance with paragraph (2), no indication of will is required in this case.

(6) If it considers that providers do not properly implement the provisions of paragraphs (1)-(3), ANCOM shall determine, by decision, the format and modalities of transmission of the notification.

(7) If an end-user is entitled, under the conditions of paragraphs (1) and (2), to terminate the contract for publicly available electronic communications services, other than number-independent interpersonal communications services before the end of the initial contractual period, the end-user shall not owe any compensation other than for the terminal equipment if he/she decides to retain it.

(8) the following may not be subject to unilateral change:

a) the initial contractual period;

b) the addition of new services, against payment.

Article 59¹². – (1) The compensation due for the subsidised equipment retained in accordance with the provisions of Article 59¹¹ paragraph (7) shall not exceed the lowest value between its value calculated *pro rata temporis* in relation to its price agreed at the time of conclusion of the contract and the value of the remaining part of the service tariff until the termination of the initial contractual period.

(2) The provisions of paragraph (1) shall also apply if the end-user unilaterally terminates the contract before the termination of the initial contractual period, under the conditions set out in Article 51 paragraph (4) letters c) and d).

(3) The provider is obliged to remove, free of charge, any restriction on the use of the terminal equipment on other networks:

a) upon request, upon expiry of the initial contractual period;

b) in the case referred to in Article 59¹¹ paragraph (7), at the latest when the compensation is paid.

Article 59¹³. – Without prejudice to the initial contractual period, the procedure and conditions for terminating contracts concluded in accordance with the provisions of this Chapter may not be used as a means of discouraging the change of the service provider.

Section 2

Transparency

Article 60. – (1) To enable the end-users to make well-informed decisions, the providers of publicly available electronic communications services, other than the transmission services used for the machine-to-machine provision of services, have the obligation to make publicly available the following information:

- a) the provider's contact data;
- b) the description of the services supplied;
- c) the dispute resolution mechanisms, including those made available by the providers.

(2) The information under paragraph (1) shall be published as open data and shall be made publicly available to end-users in a clear, complete, updated form that can be read optically and in a format accessible and relevant for the disabled end-users, in accordance with the provisions of Directive (EU) 2019/882.

(3) The information under paragraph (1) letter b) shall be detailed as regards:

a) the name of the services offered and the main characteristics of each service provided, including quality of service performance where a minimum level of quality is offered, and any restrictions imposed by the provider on the use of the terminal equipment supplied;

b) the tariffs for the services offered, including information on volumes of services offered - such as number of voice minutes, number of messages, volume of data traffic, as well as related restrictions, etc. - included in each tariff plan and the applicable tariffs for additional communications units, numbers or services subject to special tariff conditions, charges for access and maintenance, all types of charges applicable to the use of services, special tariff schemes and those for a specific category of users and any additional charges, as well as costs related to terminal equipment;

c) the contact details of the customer service and technical support service, terms of use (opening hours, calling limits) and associated charges, if applicable;

d) the standard contract conditions, including the duration of the contract, charges due as a result of termination during the initial contractual period and, in the case of a contract for bundles, conditions for termination of the bundle or parts thereof, as well as procedures and direct charges relating to the porting of numbers and other identifiers, where applicable;

e) in the case of providers of number-based interpersonal communications services, information on access to emergency services and caller location or any limitation on the latter. In the case of providers of number-independent interpersonal communications services, indication of whether access to emergency services is offered;

f) details on products and services, including any functions, practices, policies and procedures, and changes in the functioning of the service specifically intended for end-users with disabilities, in accordance with Union law harmonising accessibility requirements for products and services;

g) in the case of audiovisual media retransmission services, the list of programmes retransmitted as well as the minimum number of channels included in each tariff plan.

(4) The information shall be sent, upon request, to ANCOM, before its publication.

(5) ANCOM may, by decision, detail the categories of information referred to in paragraph (1) and determine in connection therewith additional information to be made available to the public and the manner in which such information is to be published.

(6) ANCOM will offer, directly or through third parties, at least one independent comparison tool allowing end-users to compare and evaluate different internet access services and publicly available number-based interpersonal communications services, and, where appropriate, number-independent interpersonal communications services, intended for the public, in respect of the following:

a) periodic and unit consumption-based tariffs for the services provided; and

b) performance in terms of quality of service, where a minimum level of quality is offered or the provider is obliged to publish such information pursuant to Article 61.

(7) The comparison tool referred to in paragraph (6):

a) is operationally independent from the providers of those services, thereby ensuring equal treatment of those providers in search results;

b) clearly states the names of the owners and operators of the comparison tool;

c) sets out clear and objective criteria on which the comparison is based;

d) uses simple and unambiguous language;

e) provides accurate and up-to-date information and states the date of the last update;

f) is open to any provider of internet access services or publicly available interpersonal communications services which makes the relevant information available;

g) includes a broad range of offers covering a significant part of the market and, where the information presented does not give an overview of the market, contains a clear statement to that effect before results are displayed;

h) provides an effective procedure for reporting incorrect information;

i) includes the possibility to compare prices, tariffs and quality of service performance in offers available to consumers and, where available, between those offers and standard offers for microenterprises, small enterprises or non-profit organisations end-users.

(8) ANCOM certifies, at the request of the comparison tool provider, based on an audit carried out by an independent body, the comparison tools that meet the requirements set out in paragraph (7). The instrument made available by ANCOM according to paragraph (6) meets the requirements of paragraph (7).

(9) Other persons shall have the right to use, free of charge and in open data format, the information published in accordance with paragraph (1) by the providers of internet access services and publicly available number-based interpersonal communications services, and, where applicable, publicly available number-independent interpersonal communications services, for the purpose of providing such independent comparison tools.

(10) On its own initiative or at the request of the competent public authorities, ANCOM may request the providers of internet access services and publicly available number-based interpersonal communications services to make available, free of charge, to existing and new end-users, where appropriate, information of general interest, by the same means used in communicating with its own subscribers.

(11) The information of general interest referred to in paragraph (10) shall be transmitted to ANCOM by the competent public authorities, respectively by ANCOM to the providers of internet access services and publicly available number-based interpersonal communications services, in a standardized form, and shall concern, in particular:

a) the most frequent ways of using the internet access services and publicly available number-based interpersonal communications services for the purpose of engaging in illegal activities or disseminating harmful content, in particular where such activities may prejudice the rights and freedoms of others, including violations of data protection rights, copyright and related rights and the legal consequences of infringing them;

b) the means of protection against risks to personal security, privacy and personal data associated with the use of internet access services and publicly available number-based interpersonal communications services.

Article 61. – (1) ANCOM may require the providers of internet access service and the providers of publicly available interpersonal communications services, to the extent they exercise control over at least some network elements or have an agreement on the service quality level, to publish complete, comparable, correct, easily accessible 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.

(2) ANCOM may specify the quality parameters to be measured, the applicable measurement methods, including any quality certification mechanisms, as well as any other elements necessary to assess the quality of the offered services, including possible quality certification mechanisms, considering the quality parameters, definitions and measurement methods provided for in Annex no. 1, where appropriate. When enforcing the provisions of this paragraph ANCOM shall take into account the BEREC guidelines, motivating any decisions contrary to those guidelines.

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

(4) ANCOM may also require the providers of publicly available interpersonal communications services to inform the end-users if the quality of the services they provide depends on external factors, such as the control over the conveyance of the signal or the network connectivity.

(5) The measures by which the providers ensure the quality of the internet access service comply with Regulation (EU) 2015/2.120.

(6) The information referred to in paragraphs (1) and (2) shall be sent, upon request, to ANCOM, prior to its publication.

(7) The measures and obligations pursuant to paragraphs (1) to (4) shall be set by decision, after undergoing the consultation procedure laid down in Article 135.

Section 3
Availability of services and equipment

Article 62. – (1) The providers of voice communications services or internet access 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 serious network breakdown or in cases of force majeure.

(2) The providers of voice communications services shall take all necessary measures in order to ensure uninterrupted access to emergency calls, as well as uninterrupted communication of public warnings.

(3) ANCOM may impose the minimum measures to be taken by the providers of voice communications services and by the providers of internet access services in view of properly fulfilling the obligations incumbent according to paragraphs (1) and (2).

Article 63. – (1) ANCOM shall take measures in order to ensure that the disabled end-users have access to publicly available electronic communications services, including as regards the contract information provided according to Articles 50³-50¹¹, under conditions equivalent to those enjoyed by the majority of end-users.

(2) ANCOM shall take measures in order to ensure that disabled end-users benefit from the choice of providers of publicly available electronic communications services, as well as the services offered by them, in conditions equivalent with most end-users.

(3) When adopting, by decision, the measures specified in paragraphs (1) and (2), ANCOM shall foster the observance of the relevant standards or technical specifications asset in accordance with Article 8 of Government Emergency Ordinance no. 22/2009, approved with amendments and completions by Law no.113/2010, with the subsequent amendments and completions.

Article 64. – 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.

Article 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 fully functional form.

Article 66. – All consumer equipment allowing 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, 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 complies with the relevant rental agreement;

c) enable interoperability so that, where technically feasible, digital television equipment can be re-used by other providers of digital television services.

(2) End-users should be provided, upon termination of their contract, with a free and easy way to return the digital television equipment, unless the provider demonstrates that it is fully interoperable with the digital television services of other service providers, including that of the provider to which the end-user has switched, in compliance with Chapter 5 - "Separate collection" of Government Emergency Ordinance no. 5/2015 on electrical and electronic equipment waste, with subsequent amendments and completions.

(3) The digital television equipment which is compliant with the harmonised standards whose references have been published in the Official Journal of the European Union or with parts thereof shall be presumed to fulfil the interoperability requirement referred to in paragraph (2) contained in those standards or parts thereof.

Article 66¹. – Measures to ensure interoperability of consumer radio equipment for other equipment than that referred to in Articles 66 and 681 may be taken by ensuring a limited impact on the market for low-value radio equipment and shall not apply to products where the reception of the sound/television radio-broadcasting signal is a purely ancillary function, such as smartphones or equipment used by radio amateurs.

Article 66². – The requirements and conditions regarding the introduction and marketing on the territory of Romania of radio receivers used for the reception of broadcasting programme services in digital format, except for those provided in Article 681, including the prohibition of placing on the market certain radio receivers that do not allow the reception of such programmes shall be established by Government Decision.

Article 67. – **repealed**

Article 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.

Article 68¹. – Any car radio equipment incorporated into a new category M passenger car which is placed on the market for sale or rent shall contain a receiver capable of receiving and reproducing at least radio services provided by digital terrestrial broadcasting. Receivers

which are in conformity with harmonised standards whose references have been published in the Official Journal of the European Union or with parts thereof shall be presumed to satisfy that requirement of those standards or parts thereof.

Article 69. – (1) All subscribers to number-based interpersonal communications services have the right to be included in databases in view of the provision of directory enquiry services or subscriber directories, 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).

(1¹) The directory enquiry services or subscriber directories under paragraph (1) shall contain information on the telephone numbers and personal data of the subscribers to number-based interpersonal communications services, in compliance with the legal framework on the protection of personal data and privacy, in particular the provisions of Article 11 of Law no. 506/2004, with subsequent amendments and completions.

(2) The providers of number-based interpersonal 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 number-based interpersonal communications 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 regarding the availability of access to the 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.

Article 70. – (1) All end-users of the services specified in paragraph (2), including users of public pay telephones, may access the emergency services free of charge and without using any means of payment, through the emergency communications, by using the single European emergency call number 112 or any other national emergency numbers.

(2) By ANCOM decision, the necessary measures shall be established to ensure that the providers of publicly available number-based interpersonal communications services ensuring call origination to a number or numbers in the National Numbering Plan or in international numbering plans provide the end-users with access to the single emergency call number 112 or to other national emergency numbers, through emergency communications to the most appropriate PSAP.

(3) In the case of electronic communications networks which are not intended for the public but which allow calls to public electronic communications networks, the provisions of the national legal framework on the organisation and functioning of the National Unique System for Emergency Calls shall establish measures to promote access to emergency services by using the single European emergency number 112 or other national emergency numbers, in particular when the provider of such a network does not offer an alternative and easy access to an emergency service.

(4) All the emergency communications to the single emergency call number 112 or other national emergency numbers 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.

(5) The providers of public electronic communications networks have the obligation to ensure call routing to the single emergency call number 112 or to other national emergency numbers, according to the national legal framework on the organisation and functioning of the National Unique System for Emergency Calls, regardless of whether these emergency calls are initiated on their own networks or on other public electronic communications networks, to the extent in which routing is technically feasible for other emergency communications than the calls. Routing of emergency communications to the single emergency call number 112 or to other national emergency numbers shall be ensured with priority, according to the provisions of Government Emergency Ordinance no. 34/2008, approved with amendments and completions by Law no. 160/2008, with subsequent amendments and completions.

(6) To the extent it is technically feasible, the emergency communications initiated from the mobile terminal equipment of end users found in an area outside the coverage area of their network shall be taken over by the providers of publicly available 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.

(7) The providers of publicly available number-based interpersonal communications services ensuring call origination to a number or numbers in the National Numbering Plan or in international numbering plans shall take measures to ensure that end-users with hearing and/or speech disability or documented hearing and/or speech impairment have access to the single emergency call number 112 or to other national emergency numbers under conditions equivalent to those experienced by other end-users, in accordance with the provisions of Directive (EU) 2019/882.

(8) By the provisions of the national legal framework on the organization and functioning of the National Unique System for Emergency Calls, additional measures may be established to those provided for in paragraph (7) in order to ensure access by end-users with disabilities to emergency services.

(9) By decision, ANCOM may establish the measures which the providers of publicly available number-based interpersonal communications services must take in order to ensure the compliance with the provisions of paragraphs (7) and (8).

(10) To the extent it is feasible, ANCOM and the administrator of the National Unique System for Emergency Calls shall take measures in view of facilitating the access of the foreign disabled end-users, especially of those with hearing and/or speaking impairment, to emergency services whilst travelling in Romania, without needing to make a prior registration, under conditions equivalent to those enjoyed by the other end users.

(11) The measures established in accordance with the provisions of paragraph (10) aim to ensure interoperability with the other Member States of the European Union, taking account as far as possible of the European standards or specifications referred to in Article 8 of Government Emergency Ordinance nr. 22/2009, approved by Law no. 113/2010, with the subsequent amendments and completions.

(12) The providers under paragraph (2) shall make the primary caller location information available to the most suitable PSAP of the administrator of the National Unique System for Emergency Calls, as soon as the emergency communication is initiated, and, as applicable, other network technical parameters, set in accordance with Emergency Ordinance no. 34/2008, approved with amendments and completions by Law no. 160/2008, with subsequent amendments and completions, which contributes to locating the terminal equipment and, where available, also the location information obtained from the terminal equipment, for emergency communications initiated to the single European emergency number 112 or other national emergency number.

(13) The providers referred to in paragraph (2) shall bear all costs incurred in establishing and transmitting the location information in accordance with the provisions of paragraph (12), irrespective of the technical means of transmission used.

(14) After consulting BEREC, ANCOM shall establish by decision the conditions for the provision of location information in accordance with paragraph (12) so as to ensure its accuracy and reliability.

(15) ANCOM establishes by decision the necessary measures to ensure the adequate information of the public on the existence, use and accessibility of the single European emergency call number 112, as well as on the conditions for providing location information to the 112 emergency service, including by imposing the obligation to provide this information in the lists of telephone subscribers, in end-user documents and bills, as well as by measures specifically targeting persons travelling between Member States of the European Union or end-users with disabilities.

(16) In the case of end-users with disabilities, the information measures provided for in paragraph (15) are carried out in formats accessible to them, adapted to different types of disabilities.

(17) ANCOM and the administrator of the National Unique System for Emergency Calls shall take all measures to enforce the delegated acts issued by the European Commission pursuant to Article 109 paragraph (8) of the European Electronic Communications Code, which completes the provisions of paragraphs (2) and paragraphs (7)-(14), to ensure compatibility, interoperability, quality, reliability and continuity of emergency communications, for end-user

location information solutions, access for disabled end-users and routing to the most appropriate PSAP.

(18) At the request of BEREC or of the organisation responsible for maintaining the database of E.164 numbers of the emergency services of the Member States, the administrator of the National Unique System for Emergency Calls shall communicate data on the E.164 numbers of the Romanian emergency services used to ensure mutual contact from one Member State to another.

Article 70¹. – (1) The measures for the transmission by the providers of mobile number-based interpersonal communications services of public warnings to all end-users located in geographical areas likely to be affected by imminent or developing major emergencies and disasters during the warning period shall be set out according to the provisions of Government Emergency Ordinance nr. 46/2019 regarding the operation of the Population Emergency Warning System «RO-ALERT», approved by Law no. 24/2021.

(2) Taking into account BEREC guidelines and motivating any provisions contrary to those guidelines, the provisions of the national legal framework on warning the population in emergency situations may establish the transmission of public warnings to end-users by means of publicly available electronic communications services other than those referred to in paragraph (1) as well as other than sound and television broadcasting services or by means of a mobile application relying on an internet access service, provided that the effectiveness of the alternative systems is equivalent in terms of coverage and ability to reach end-users, including those only temporarily present in the area concerned, and that these warnings can be received easily and free of charge.

(3) When establishing the alternative population warning systems in emergency situations, provided for in paragraph (2), the information of end-users entering the territory of Romania about the existence of these systems shall also be considered. This information shall be done by sending an SMS automatically, free of charge and without undue delay, containing an easily understandable text on how they can receive these warnings.

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

(2) The number-based interpersonal communications services between adjacent locations on different sides of the Romanian border may be provided 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) ANCOM may adopt, together with the competent authorities from other Member States of the European Union, a joint numbering plan for all or certain categories of numbering resources.

Article 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, particularly to ensure the use and accessibility of the 116000 number as a hotline for missing children.

(2¹) Access to national short numbers in the 116(xyz) range is free of charge for end-users.

(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.

(6) ANCOM shall take the necessary measures to ensure that the person that was granted the right to use the «116000» number allocates the necessary resources for the operation of the hotline.

Article 73. – (1) The providers of public electronic communications networks and the providers of publicly available electronic communications services have the obligation to offer the end-users 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 it 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) can 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 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 additional facilities

Article 74. – (1) Without prejudice to the universal service obligations which may be imposed according to Article 84 paragraphs (3) to (15), by decision, ANCOM may require the providers of internet services or of publicly available number-based interpersonal communications services to ensure for the end-users the facilities referred to in paragraphs (2) and (6) free of charge.

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

a) services of calling-line identification, under the conditions of Article 7 of Law no. 506/2004, with the subsequent amendments, and in compliance with the legislation in the field of personal data protection.

b) redirection of electronic mails or access to electronic mail services after the termination of the contract with a provider of internet access services.

(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 (2) letter a) among the Member States of the European Union.

(4) The facility of redirecting electronic mail messages or of accessing the electronic mail services allows end-users who terminate their contract with an internet access service provider, upon request and free of charge, for a period established by ANCOM in the decision imposing the obligation, to access their e-mail messages received at one or more e-mail addresses based on the trade name or trademark of their former provider or to transfer messages sent to that e-mail address or addresses to a new e-mail address indicated by the end user.

(5) To ensure a higher level of end-user protection, ANCOM may set, by decision, additional facilities to those mentioned in paragraphs (2) and (6), with the observance of the public consultation procedure provided for in Article 135.

(6) ANCOM may require the providers specified in paragraph (1), in compliance with the public consultation procedure provided for in Article 135, to offer the end-users one or several of the facilities provided for in Article 84 paragraphs (3)-(15).

(7) By way of exception from the provisions of paragraph (6), the facilities under Article 84 paragraph (3) letters c), d) and g) are offered only to consumers.

(8) ANCOM may decide not to impose or may withdraw the obligations imposed according to paragraphs (1) to (7), 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.

Article 75. – (1) The providers of publicly available electronic communications services shall ensure the end-users, who were assigned numbers from the National Numbering Plan, the possibility to keep upon request these numbers, if they change their 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 also apply in a timeframe of at least one month from termination, at the initiative of the end-user, of the contract for the communications service provision, except for the case where the end-user waived this right expressly and individually.

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

(4) ANCOM shall impose, by decision, specific obligations to ensure that the pricing between the electronic communications providers related to the provision of number portability service are cost-oriented.

(5) The providers of publicly available electronic communications services shall not charge end-users for the number portability service.

(6) The process of porting and activating the numbers to the new provider shall be carried out in the shortest time possible. The end-user who has concluded a contract involving the porting of a number to another provider shall have that number activated within one working day from the date explicitly agreed with the new provider, while the interruption of the electronic communications service during the porting process may not exceed one working day. The provider whose services are waived at shall continue to provide, under the same conditions, the corresponding services until the number is activated by the new provider.

(7) In the event of porting failure, the provider whose services are waived at shall reactivate the end-user's number and continue to provide the related services under the same conditions until the new provider activates the services.

Article 75¹. – (1) When switching from one provider of internet access services to another, those providers shall provide the end-user with adequate information both before and

during the switching process, respectively ensure continuity of the internet access service, unless technically not feasible.

(2) The transfer referred to in paragraph (1) may be carried out only at the express request of the end-user concerned.

(3) The provider whose internet access service is requested shall ensure that the activation of the service takes place in the shortest time possible within the period agreed with the end-user. The provider whose internet access service is renounced at has the obligation to continue providing the service, under the same conditions, until the service is activated by the new provider. Interruption of the Internet access service during the transfer process provided for paragraph (1) may not exceed one working day.

(4) ANCOM shall take measures to ensure that the transfer provided for in paragraph (1) is efficient and easy for end-users.

Article 75². – (1) The provider whose service is requested shall be responsible for carrying out the porting process or, as the case may be, the transfer process provided for in Article 75¹. This provider together with the one whose service is renounced at have the obligation to cooperate in good faith in order to carry out the processes mentioned above.

(2) The contract that the end-user has concluded with the provider whose services are renounced at terminates de jure, without any formality, at the moment of completion of the porting process or, as the case may be, of the transfer process provided for in Article 75¹.

(3) The operators whose access networks or infrastructures are used by the providers involved in the porting or, where appropriate, transfer process referred to in Article 75¹ have the obligation to ensure that there is no unavailability of the services they provide that could delay the execution of these processes.

(4) ANCOM may establish, by decision, the conditions for carrying out the porting and transfer processes provided for in Article 75¹, taking into account the legal provisions on contracts, the technical feasibility, the need to maintain the continuity of service provision for the end-user and the celerity of the porting or, as the case may be, transfer process. ANCOM may require, to the extent technically feasible, that the porting is carried out by activating the remote service, on wireless support, unless the end-user requests another way of activating the service.

(5) ANCOM takes appropriate measures to ensure the information and protection of end-users during the porting or transfer process provided for in Article 75¹, as applicable, respectively so that these processes are not carried out without their consent.

(6) ANCOM establishes, by decision, the rules based on which providers grant, in an easy manner and in a short term, compensation to end-users in case of non-compliance by providers with their obligations under Article 75 or, as the case may be, Article 75¹, including in the event that the porting or transfer processes provided for in Article 75¹ are not completed on time or with the consent of end-users, or do not comply with established service or installation schedules.

(7) Providers whose services are renounced at shall, upon request, return the unused credit to consumers who have paid services in advance. If specified in the contract, a proportionate and adequate fee may be charged for the return of the credit remaining unused in relation to the actual costs incurred by the provider for carrying out this operation.

CHAPTER VI

Universal service

Section 1

Services within the scope of universal service

Article 76. – (1) The right of access to the universal service is ensuring the availability for all end-users, respectively the affordability in terms of consumer price, with regard to a minimum set of functional broadband internet access services and of voice communication services, at a certain quality, on the national territory, including to the corresponding connection, at a fixed location.

(2) Under the terms of art. 77 para. (1), the affordability in terms of price of the services specified at para. (1) may be ensured as well for the services that are not provided at a fixed location, if this is necessary to ensure the full social and economic participation of consumers to the society.

(3) At the consumer's request, the electronic communications services offered pursuant to para. (1) and, as applicable, to para. (2), under the conditions of affordability in terms of price, may be limited to the voice communications services.

(4) Under the terms of art. 77 para. (1), the provisions of this article, regarding the affordability in terms of price, may become applicable to end-users that are microenterprises, medium and small sized enterprises and non-profit organisations, as defined in the legislation in force.

Article 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.

(1¹) In view of ensuring the bandwidth required for the consumers' social and economic participation to the society, the public authority mentioned in para. (1) sets out the characteristics of the functional broadband internet access service specified at art. 76 para. (1), considering the national conditions and the minimum bandwidth that most consumers on the national territory benefit from and taking account of the BEREC report on European best practices.

(1²) The functional broadband internet access under para. (11) must allow the consumers to benefit at least from the following facilities:

- a) use of electronic mail services;
- b) access to search engines that would allow the search and identification of information;
- c) access to online basic education and professional training tools;
- d) access to online newspaper or news;
- e) online purchase or ordering of goods or services;
- f) search for a job, as well as job search tools;
- g) professional interactions through dedicated networks;
- h) access to internet banking services;
- i) use of e-government services;
- j) access to social communication means and instant messaging services;
- k) initiation and reception of calls and video calls at standard quality.

(2) Based on the policy and strategy referred to in paragraph (1), ANCOM shall establish, by decision, 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 availability/affordability of the services referred to in art. 76 paragraph (1) throughout Romania. To this end, ANCOM may designate one or several universal service providers to provide these services, at a certain quality level, 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, non-discrimination and proportionality, 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 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 the European Commission in the shortest time possible on the universal service providers and the universal service obligations imposed, as well as on any other related changes.

Article 77¹. – (1) ANCOM monitors the evolution and the level of retail tariffs for the services specified in Article 76 paragraph (1), available on the market, in particular as the national prices and the consumers' revenues are concerned.

(2) Where it establishes that, account taken of the national conditions, the retail tariffs for the services specified in Article 76 paragraph (1) are not affordable for the low income consumers or those with special needs, ANCOM may obligate, by decision, the providers of internet access and voice communications services to offer those consumers tariff options or

packages different from those applied under normal commercial conditions, to ensure that the persons on low income or with special social needs have access to and use, at affordable tariffs, services of broadband internet functional access and of voice communications at least at fixed location. To this end, by ANCOM decision, the providers of internet access and voice communications services may be obliged to apply common tariffs, including by establishing an average on geographic areas, on the national territory, given the specific conditions.

(3) Under exceptional circumstances, in particular where the imposition of the obligations provided for in paragraph (2) on all the providers of internet access and voice communications services would be an excessive administrative or financial burden for the state or for the providers of internet access and voice communications services, the respective obligations may be imposed by ANCOM decision in accordance with the provisions of Article 77 paragraphs (2) to (6). The provisions of Article 78 apply correspondingly.

(4) When imposing the measure provided in paragraph (3), ANCOM shall ensure that all the consumers established according to paragraph (9) as having low incomes or special social needs shall benefit from the possibility of choosing from among several providers which offer tariff options or packages meeting their needs, except for the cases where guaranteeing such option is impossible or would generate an additional excessive organizational or financial burden for the state.

(5) ANCOM shall ensure that all the consumers established according to paragraph (9) as having low incomes or special social needs have the real possibility to conclude a contract either with a provider of internet access and voice communications services or with a provider designated according to paragraph (3) and that the allocated number remains available for a proper period of time, while avoiding the unjustified interruption of the service.

(6) The conditions under which the consumers benefit from the tariffs specified in paragraphs (2) and (4) shall be transparent, shall be published and shall be applied in a non-discriminatory manner by the providers of internet access and voice communications services, respectively, by the universal service providers designated according to paragraph (3).

(7) The providers referred to in paragraph (6) shall inform ANCOM on the details of the offers for the persons with low incomes or with special social needs, under the terms established by ANCOM decision.

(8) By ANCOM decision, the change or waving of certain tariff options or packages may be imposed, with the observance of the consultation procedure under Article 135.

(9) The strategy referred to in Article 77 paragraph (1) shall set the categories of persons that can benefit from tariff options or packages, the possible alternative or complementary support measures for communication means, as well as the categories of persons that may benefit from these.

(10) By decision, ANCOM may impose the alternative or complementary measures referred to in paragraph (9) in accordance with the provisions of Article 77 paragraphs (2)-(6). The provisions of Article 78 apply correspondingly.

(11) In accordance with Article 77 paragraph (1), the measures under this article may also be established in favour of en-users representing microenterprises, small and medium sized enterprises and non-profit organizations, as these are defined in the legislation in force.

(12) When imposing the obligations pursuant to this Article, ANCOM shall seek to minimise the negative effects on the market.

Article 77². – (1) Where, account taken of the results of the studies on the coverage of electronic communications networks performed in accordance with Chapter II¹, if these are available and, if necessary, of any additional proofs, ANCOM has established that the availability at a fixed location of the broadband internet functional access service, defined pursuant to Article 77 paragraphs (11) and (12), and of the voice communications services cannot be ensured under regular commercial circumstances or by means of other public policy tools, on the entire national territory or different parts thereof, ANCOM may impose adequate universal service obligations to give course to all the end-users' reasonable requests for access to the respective services in relevant parts of the national territory.

(2) ANCOM shall impose the obligations provided in paragraph (1) by decision, in accordance with the provisions of Article 77 paragraphs (2)-(6). The provisions of Article 78 apply correspondingly.

(3) The universal service providers designated to provide the services under paragraph (1) shall settle the reasonable requests of all end-users within a specified term, under the conditions imposed by ANCOM.

Article 78. – (1) Without prejudice to the obligations incumbent as regards the economic concentration operations, when a universal service provider, designated in accordance with Articles 77¹ or 77², intends to transfer, under any title, a substantial part or the totality of the assets corresponding to the access network to a distinct legal entity directly or indirectly controlled by a different owner, the respective provider shall inform ANCOM beforehand, 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.

Article 79. – repealed

Article 80. – repealed

Article 81. – repealed

Article 82. – (1) Except for the cases where equivalent measures have been taken to protect the disabled consumers' rights on grounds of Article 63, ANCOM shall, where appropriate, take specific measures in order to ensure the access and possibility of disabled consumers to benefit from the services specified in Article 76 paragraph (1), under equivalent conditions available to other consumers. Considering the national circumstances, in addition to the measures foreseen in Article 77¹, ANCOM shall take measures to ensure that the related terminal equipment, as well as the specific equipment and the specific services which enhance the equivalent access, including, where necessary, the total conversation services and relay services, are available and affordable to consumers with disabilities.

(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 consumers, while seeking to minimise the negative effects on the market.

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

(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.

Article 83. – repealed

Article 84. – (1) The provision of services under the conditions of Articles 77, 78 and 82 by the universal service providers, respectively by the providers of internet access and voice communications services 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 of internet access and voice communications services and the providers with universal service obligations imposed according to Article 77¹ and Article 82 shall ensure the following facilities, to enable the consumers to monitor and control expenditure and avoid unwarranted disconnection of service, including by means of a suitable mechanism for verifying the continuous interest in using the 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;
- h) facility to deactivate third party billing.

(4) By decision, ANCOM may set out, in compliance with Article 6 of Law no. 506/2004, with the subsequent amendments and completions, the minimum information which needs to be found in the itemised bill to be issued free of charge by the providers of internet access and voice communications services, respectively by the universal service providers according to paragraph (3) letter a), to enable the consumers:

a) to verify and control the expenditure incurred by the use of voice communications services or broadband internet access services;

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 consumers at reasonable tariffs or at no charge, with the prior approval of ANCOM. Calls which are free of charge to the calling consumer, including emergency calls, are not to be identified in the calling consumer's itemised bill. The itemised bill corresponding to a broadband internet access service shall indicate only the time, duration and consumption level in a session, without specifying the internet addresses accessed or the access points from which connection was achieved during such session.

(6) Unless the consumer requests otherwise, the itemised bill referred to in paragraph (4) shall explicitly mention the identity of the provider and the duration of the premium rate services billed.

(7) By decision, ANCOM may require the operators to make available, at no charge, services for identifying the calling line.

(8) By decision, ANCOM may require the providers of internet access and voice communications services and the universal service providers to provide means for consumers to pay for access to the public electronic communications network and for voice communications services or for broadband internet access services on pre-paid terms.

(9) By decision, ANCOM may require the providers of internet access and voice communications services and the universal service providers to provide means to allow the consumers to pay for connection to the public electronic communications network on the basis of payments phased over time.

(10) By decision, ANCOM shall authorise the specific measures which the providers of internet access and voice communications services and the universal service providers may

take in case of non-payment of bills. These measures shall be published, shall be proportionate and shall apply in a non-discriminatory manner.

(11) Except in cases of fraud, persistent late payment or non-payment of telephone bills, the measures under paragraph (10) are to ensure, as far as it is technically feasible, that any service interruption is confined to the service concerned.

(12) In all cases, the interruption of the provision, at a fixed location, of the voice communications service or of the broadband internet access service, or the disconnection from the public electronic communications network for non-payment of the bill shall take place only after due warning is given to the consumer 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 consumer, as well as a minimum level of internet access services are permitted, under the terms set by ANCOM.

(13) By decision, ANCOM may impose on providers of internet access and voice communications services and on universal service providers the obligation to make available to consumers, at their request, information on alternative tariff plans, with lower prices, if these exist within the public offers.

(14) By decision, ANCOM may impose on providers of internet access and voice communications services and on universal service providers the obligation to offer the consumers the facility that the bill for internet access services is not used by other providers for the billing of their own products or services.

(15) By decision, ANCOM may impose on providers of internet access and voice communications services and on universal service providers the obligation to offer other cost control facilities, including the free of charge sending of messages to alert the consumers when an abnormal or excessive consumption pattern occurs.

(16) Pursuant to Article 77 paragraph (1), the measures specified in paragraphs (3)-(15) may be set also for the end-users representing microenterprises, small and medium sized enterprises and non-profit organisations, as defined by the legislation in force.

(17) ANCOM may decide not to impose or to withdraw the obligations laid down in paragraphs (3) to (16) in all or part of the national territory, if these facilities are widely available.

Article 85. – repealed

Section 2

Mechanisms for financing universal service obligations

Article 86. – (1) ANCOM shall determine the net cost of the universal service provision and to this end ANCOM may resort to one of the following methods:

a) verify the calculation of 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).

(2) Where ANCOM decides from the provision of the universal service under the terms of Articles 76-78 and Article 82 results a net cost that represents an unfair burden for the universal service providers, a compensation mechanism for that net cost shall be set by Government decision. The amounts required for the compensation shall be covered from ANCOM's income and expenditure budget, within the limits of availabilities registered by the National Authority for Management and Regulation in Communications, representing surplus from the previous years from the universal service fund and/or from European funds, if such financing source is available and feasible. If the amount required for the net cost compensation may not covered from these financing sources, the remaining amount shall be compensated by using the following financing means, individually or cumulatively:

a) by the sharing of the net cost incurred by the universal service obligations between the providers of electronic communications networks and services, with the observance of the national and European legal framework in the state aid field;

b) from ANCOM's income and expenditure budget, within the limit of the budgetary credits approved therefor by the Parliament and without exceeding the availabilities registered by the National Authority for Management and Regulation in Communications, representing surplus from the previous years from own revenues;

c) from the state budget through the budget of the Ministry of Research, Innovation and Digitalisation, within the limit of the budgetary credits approved therefor by the annual budget law, with the observance of the national and European legal framework in the state aid field.

(3) In view of enforcing the provisions of paragraph (2), within 160 days from receiving a correct and complete request for the compensation of the net cost, that is to include the calculation of the net cost made by the requester, the regulatory authority shall communicate to the Ministry of Research, Innovation and Digitalisation the decision on the amount of the net cost determined upon its analysis, and the Ministry of Research, Innovation and Digitalisation has the obligation to initiate the draft Government decision on the compensation mechanism.

(4) The Government sets the net cost compensation means in compliance with the principles of transparency, minimum harm to competition, non-discrimination and proportionality.

Article 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 shall be determined based upon the following categories of 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 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; the audit shall be approved by ANCOM. The results of the cost calculation and the conclusions of the audit shall be made publicly available by ANCOM.

Article 88. – repealed

(2) Where the net cost is shared pursuant to Article 86 paragraph (2), ANCOM shall determine the mechanism on sharing the net cost of the universal service obligations, in compliance with the principles of objectivity, transparency, minimum harm to competition, non-discrimination and proportionality. For that purpose, ANCOM shall establish by decision:

a) the providers of electronic communications networks and the providers of electronic communications services providing services on the national territory 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.

(2¹) The amount of the owed contributions, referred to in paragraph (2) letter b), shall be thus established as to cover the net cost of the universal service obligations which must be financed from the contributions of the providers of electronic communications networks and services according to the government decision issued on ground of Article 86 paragraph (2).

(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 threshold.

(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 Article 77 paragraphs (2) to (6) may be financed via the compensation mechanism referred to in paragraph (2).

Article 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.

Article 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.

(1¹) ANCOM makes publicly available the principles applied in the calculation of the net cost, including the details on the methodology to be used.

(1²) Where the mechanism for the sharing of the net cost of universal service obligations pursuant to Article 88 paragraph (2) is in place, ANCOM makes publicly available the principles applied for sharing and compensating the net cost.

(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 were accrued to the universal service provider in relation to the services within the scope of universal service it is obliged to provide.

Article 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.

Article 91¹. – In the event the public authority specified in Article 77 paragraph (1) decides to take the measure referred to in Article 76 paragraph (2) and/or the measure in Article 76 paragraph (4), the provisions of this Chapter shall apply correspondingly.

CHAPTER VII **Promoting market competition**

Section 1

Market analyses

Article 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 justify the imposition of specific obligations on the providers of electronic communications networks or services with significant market power, referred to in Article 64 paragraph (1) of the European Electronic Communications Code, and of the guidelines of the European Commission for market analysis and the assessment of significant market power, specified in Article 64 paragraph (2) of the European Electronic Communications Code, identify the relevant markets in the electronic communications sector appropriate to national circumstances, in particular relevant geographic markets within the national territory, hereinafter referred to as relevant markets.

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

(3) ANCOM may identify relevant markets together national regulatory authorities from other Member States of the European Union, if there sufficiently homogeneous market conditions in at least some part of the territories where each of the authorities in question have competences. The market conditions are sufficiently homogeneous from the perspective, for instance, of similarities in terms of costs, market structures or providers of electronic communications networks or services or if the demand of end-users is transnational or comparable.

(4) If ANCOM holds evidence pointing at the existence of a transnational market which covers at least part of the national territory, it shall convey that evidence to BEREC together with the request that this body performs an analysis in accordance with Article 65 paragraph (1) of the European Electronic Communications Code. In enforcing this provision, ANCOM

cooperates, as applicable, with the European Commission or with other national regulatory authorities from other Member States of the European Union in question.

(5) On the relevant markets identified according to paragraphs (1)-(3), as well as on the transnational markets identified by the European Commission according to Article 65 paragraph (1) of the European Electronic Communications Code, if these cover at least part of the national territory, ANCOM, as applicable, individually or jointly with other national regulatory authorities from other Member States of the European Union in question, shall carry out, pursuant to the guidelines referred to in paragraph (1), market analyses to determine the competitive environment on these markets and to decide whether the specific obligations under paragraph 3 of Section 2 within the present Chapter or under Section 3 within the same Chapter need to be imposed, maintained, amended or withdrawn.

(6) The relevant markets in the electronic communications sector shall be identified and the market analyses on the identified markets shall be carried out by taking into account, inter alia, the degree of competition at the infrastructure level in the concerned areas, respectively the results of the studies mentioned in Article 13², and in compliance with the principles of the competition law. As for market analyses, where required, ANCOM shall request the collaboration of the Competition Council.

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

Article 92¹. – (1) If ANCOM has evidence of serious problems in meeting the transnational demand of end-users for certain products or services, provided on one or more markets listed in the recommendation provided for in Article 92 paragraph 1, which affects at least part of the national territory, it shall transmit that evidence to BEREC together with the request for that body to carry out an analysis in accordance with Article 66 paragraph (1) of the European Electronic Communications Code. In order to apply this provision, ANCOM cooperates, as appropriate, with the European Commission or with national regulatory authorities from other Member States of the European Union concerned.

(2) When fulfilling its regulatory duties, including, where appropriate, deciding on the imposition of obligations pursuant to Article 105, ANCOM shall take into account BEREC's

guidelines on identified common approaches to meet transnational demand issued in accordance with Article 66 paragraph (2) of the European Electronic Communications Code, giving reasons for any decisions contrary to these guidelines.

Article 92². – (1) A market in the electronic communications sector shall have characteristics which justify the imposition of the specific obligations referred to in Article 105 if all of the following criteria are met:

a) there are significant and non-transitory structural, legal or regulatory barriers to market entry;

b) there is a market structure which does not tend towards effective competition within the time horizon of the analysis; in order to decide whether the market tends towards effective competition, ANCOM considers all forms of competition, including infrastructure-based competition;

c) competition law is insufficient to adequately correct the identified market failures.

(2) In order to decide whether the criteria in paragraph (1) are met, ANCOM shall also analyse the evolution of the market from a forward-looking perspective, in the absence of imposing obligations on that market, taking into account the following elements:

a) market developments affecting the likelihood of it tending towards effective competition;

b) all relevant competitive constraints, at wholesale and retail level, irrespective of whether those constraints are deemed to stem from electronic communications networks, electronic communications services or other types of services or applications which are comparable from an end-user's perspective, and irrespective of whether those constraints are part of the market;

c) other types of regulations or obligations imposed that affect the related retail market or markets throughout the relevant period, including, but not limited to, obligations imposed in accordance with Law no. 159/2016, as subsequently amended and supplemented, Article 12 and Articles 100-100²; and

d) obligations imposed in other relevant markets.

(3) For the markets covered by the recommendation referred to in Article 92 paragraph (1), the criteria referred to in paragraph 1 shall be presumed to be fulfilled. However, for these markets, ANCOM may establish, based on specific national circumstances, that one or more of the criteria set out in paragraph (1) are not fulfilled.

(4) On markets where the criteria in paragraph (1) are not cumulatively met, ANCOM shall not impose any of the specific obligations provided for in Article 105 or withdraw them if they exist.

(5) ANCOM decision which, in accordance with paragraph (4), withdraws specific obligations imposed on a provider of electronic communications networks or services shall set an appropriate term from which those obligations cease. This period must ensure a balance between the need to allow both beneficiaries of specific obligations previously imposed and end-users to adapt to the new conditions, for the latter in terms of choice, and the need that regulatory measures do not continue longer than necessary. ANCOM's decision may establish conditions to be fulfilled during this term, as well as a deadline for termination of specific obligations in relation to existing access agreements.

(6) The measures referred to in paragraphs (4) and (5) may be taken only following the procedures laid down in Articles 97, 98 and 135.

Article 93. – (1) On the relevant markets identified, ANCOM determines the competitive environment, in order to establish whether there are providers of electronic communications networks or services that have, according to Articles 94 or 95, individually or together, significant market power.

(2) If there are providers with significant power on the identified relevant markets, and ANCOM considers that, in the absence of the specific obligations set out in Article 105, there will be no effective competition to the benefit of end-users, it shall impose on those providers, accordingly, one or more of these specific obligations or shall maintain or modify them, where these already exist.

(3) The measures under paragraph (2) shall be subject to the procedures referred to in Articles 97, 98 and 135.

(4) If there are no providers with significant power on the identified relevant markets or if such providers exist, but ANCOM considers that there will be effective competition to the benefit of end-users even in the absence of the specific obligations provided for in Article 105, the regulatory authority shall proceed in accordance with art. 92² paragraph (4). In this case, the provisions of Article 92² paragraphs (5) and (6) shall apply accordingly.

Article 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).

Article 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.

Article 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 5 years from the adoption of the measures on the basis of the previous analysis conducted if ANCOM has defined the relevant market and has established the providers with significant power on the corresponding market. Exceptionally, this term may be extended with up to one year if ANCOM notifies to the European Commission, at least 4 months before the expiry of the 5-year term, a reasoned proposal of extension and the Commission does not transmit any objection within one month from notification;

b) within 3 years from the adoption of a new recommendation by the European Commission, in line with the provisions of Article 64 paragraph (1) of the European Electronic Communications Code, for the markets which have not been previously notified to the Commission.

(2) If ANCOM appreciate it may not or it does not conduct the market analyses provided for in the recommendation adopted according to Article 64 paragraph (1) of the European Electronic Communications Code 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 from the expiry of the timelines foreseen in paragraph (1), pursuant to Article 97.

Article 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 34 of the European Electronic Communications Code, where ANCOM intends to take a measure from those mentioned in Articles 92, 92², 93, 100-100², 105 or in Section 3 of this Chapter, which would affect the trade between the Member States of the European Union, it shall notify the draft measure, individually or, in the cases provided for in Article 92 paragraphs (3) and (4), together with the national regulatory authorities of other Member States of the European Union concerned, to the European Commission, BEREC and the national regulatory authorities in communications of the other Member States of the European Union, at the same time,

alongside the reasoning on which the measure is based. ANCOM also publishes the draft measure on its website. 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 64 paragraph (1) of the European Electronic Communications Code, 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 4–6¹ of Government Emergency Ordinance no. 22/2009, approved by Law no. 113/2010, with the subsequent amendments and completions, 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, in accordance with paragraph (1).

(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).

(8) ANCOM may withdraw at any time a draft measure notified under the terms of this Article.

Article 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 100-100², 106-110¹ 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 6¹ 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.

(4¹) ANCOM shall withdraw the draft measure if the European Commission adopts, within one month from the end of the 3-month period provided for in paragraph (1), a decision in accordance with Article 33 paragraph (5) letter c) of the European Electronic Communications Code.

(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 competition in wholesale markets

Article 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

Article 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, roll-out of very high capacity networks, efficient investments and innovation, and gives the maximum benefit to end-users.

(1¹) In order to ensure that small and medium-sized enterprises, as well as the operators providing electronic communications services or networks in a limited geographical area benefit from the provisions of paragraph (1), ANCOM shall publish on its website the applicable access and interconnection procedures.

(2) The measures adopted according to paragraph (1) may concern particularly 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 or associated complementary services set out by ANCOM, obligations on operators to provide access to application program interfaces or to electronic programme guides on fair, reasonable and non-discriminatory terms.

d) in justified cases, where lack of interoperability between interpersonal communications services may affect connectivity between end-users, obligations to ensure interoperability of services for providers of number-independent interpersonal communications services whose services are provided over a wide geographical area and are used by a significant number of end-users.

(2¹) The obligations referred to in paragraph (2) letter d) may be imposed on providers of number-independent interpersonal communications services only if, cumulatively:

a) these are necessary to ensure interoperability of interpersonal communications services; such obligations may include, inter alia, the obligation to publish and allow the use, modification or redistribution by public authorities or other providers of relevant information, or the obligation to apply the standards or specifications referred to in Article 8 of Government Emergency Ordinance nr. 22/2009, approved by Law no. 113/2010, as subsequently amended and supplemented, or any other relevant European or international standards;

b) The European Commission has adopted, pursuant to the provisions of Article 61 paragraph (2) subparagraph 2, point (ii), of the European Electronic Communications Code, implementing measures subject thereto.

(3) **repealed**

(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.

Article 100¹. – (1) ANCOM may impose the obligation to grant access under certain conditions, at the reasonable request of a provider of public electronic communications networks, to the wiring, cables and associated facilities inside buildings or up to the first concentration or distribution point, if this point is located outside the building.

(2) ANCOM may impose the obligation under paragraph (1) on any person who owns wiring, cables or associated facilities on any basis, even if that person is not a provider of electronic communications networks.

(3) ANCOM may impose the obligation under paragraph (1) only if the multiplication of those network elements and associated facilities is economically inefficient or physically impossible and only if this is justified and proportionate to ensure sustainable competition.

(4) The conditions referred to in paragraph (1) may include rules on access to network elements, associated services or facilities, on transparency and non-discrimination, and on sharing access costs, taking into account, where appropriate, risk factors.

(5) If, taking into account, as the case may be, the obligations imposed following relevant market analyses carried out in accordance with the provisions of Article 92, ANCOM finds that the obligations imposed in accordance with the provisions of paragraph (1) do not effectively remove economic or physical barriers, identified as high and non-transitory, to the deployment of electronic communications networks, which cause an existing or emerging situation which significantly limits the creation of competitive effects in favour of end-users, ANCOM may extend the obligations to grant access beyond the first concentration or distribution point, at a point as close as possible to end-users, which can serve a sufficient

number of connections to ensure commercial viability for an efficient access requester, while setting fair and reasonable conditions of access.

(6) In the situation referred to in paragraph (5), ANCOM may impose obligations to grant access to active or virtual network elements if it finds that imposing obligations to grant access to passive elements would be economically inefficient or physically impossible and if, in the absence of this measure, the purpose of imposing the obligation provided for in paragraph (5) would not be reached.

(7) The obligations referred to in paragraphs (5) and (6) shall not be imposed to the providers of electronic communications networks which are in one of the following situations:

a) the provider of electronic communications networks fulfils the conditions set out in Article 112² and makes available to any requester a similar and viable alternative means of connecting end-users by granting access to a very high capacity network on fair, reasonable and non-discriminatory terms, including tariff;

b) imposing obligations would affect the economic or financial viability of projects to deploy new electronic communications networks, in particular small-scale projects developed locally.

(8) In addition to the situations provided for in paragraph (7), ANCOM may also exempt from the application of the obligations set out in paragraphs (5) and (6) other providers of electronic communications networks offering access to a very high capacity network on fair, reasonable, non-discriminatory and transparent terms, including tariff.

(9) In the case of projects for the installation of public electronic communications networks financed, wholly or partly, from public funds, ANCOM may impose the obligations set out in paragraphs (5) and (6) to the providers of electronic communications networks that meet the criteria set out in paragraph (7) letter a) or are in the situation referred to in paragraph (8).

(10) ANCOM shall take into account the relevant BEREC guidelines when applying the provisions of this Article, giving reasons for any decisions contrary to those guidelines.

(11) The obligations under this Article may be imposed by ANCOM by decision; these obligations may be imposed in addition to the obligations and measures taken in accordance with the provisions of Article 100 or those of Article 24 of Law no. 159/2016, as subsequently amended and supplemented.

Article 100². – (1) Without prejudice to the provisions of Article 100, ANCOM may impose on providers of electronic communications networks, in compliance with the principles set out in art. 100³ paragraph (1), obligations for the sharing of the passive infrastructure or obligations for the conclusion of agreements on localised access to roaming services, where the imposition of such obligations is necessary to ensure the local provision of services relying on the use of radio spectrum and where no alternative, similar and viable means are available to providers of public electronic communications networks, under fair and reasonable conditions allowing access to end-users.

(2) ANCOM may impose the obligations set out in paragraph (1) where this possibility is expressly provided for among the conditions laid down for the granting of licences for the use of radio frequencies and where their imposition is justified by the fact that, in the geographical area in which such obligations will be imposed, the deployment, under market conditions, of passive infrastructures necessary for the provision of electronic communications networks or services relying on the use of radio spectrum is hampered by insurmountable economic or physical obstacles, such that end-user's access to these networks or services is non-existent or severely deficient.

(3) Where the imposition of the obligations referred to in paragraph (1) does not remedy the indicated problems, ANCOM may impose, in compliance with the principles set out in article 100³ paragraph (1), obligations regarding the shared use of the active network elements.

(4) When imposing the obligations referred to in paragraphs (1) and (3), ANCOM takes into account:

a) the need to maximise connectivity along major transport routes and in certain geographical areas, as well as the possibility of significantly increasing end-user choice and quality of service;

b) efficient use of radio spectrum;

c) technical feasibility of the solutions for the shared use of the passive infrastructure, respectively of the active network elements, and related conditions;

d) the status of infrastructure-based competition as well as service-based competition;

e) technological innovation;

f) the need to incentivise the provider that will provide access or sharing to deploy that infrastructure.

Article 100³. – (1) Obligations and conditions imposed under Articles 100 to 100² shall be objective, transparent, proportionate and non-discriminatory and shall be imposed following the procedures laid down in Articles 97, 98 and 135.

(2) ANCOM assesses the effects of the obligations and conditions imposed according to the provisions of Articles 100-100² periodically, at least once every 5 years, analysing the opportunity of withdrawing or modifying them depending on the evolution of the conditions that led to their imposition, in compliance with the procedures provided for in Articles 97, 98 and 135.

(3) No standards or specifications set out in the list of standards or specifications published in the Official Journal of the European Union or referred to in Article 8 of Government Emergency Ordinance nr. 22/2009, approved by Law no. 113/2010, as subsequently amended and supplemented, shall prevent access that may be requested pursuant to art. 100-100², if feasible.

Subparagraph 2

Conditional access systems and other facilities

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

Article 102. – Providers of conditional access services, irrespective of the means of transmission used, which provide access to digital broadcasting services of radio and television programs whose access services the broadcasters depend on to provide radio and television services to any group of potential consumers of such services, have the obligation to:

- a) offer to all broadcasters, on fair, reasonable and non-discriminatory terms compatible with the principles of competition law, technical services enabling authorized users to receive radio and television broadcast digital services, via decoders managed by service providers;
- b) keep separate financial accounts within their internal accounting system regarding their activity related to the provision of conditional access services.

Article 103. – (1) When granting licences to consumer equipment manufacturers, the holders of industrial property rights over conditional access products and systems shall ensure equitable, reasonable and non-discriminatory conditions.

(2) Taking into account technical and commercial factors, the holders of the rights referred to in paragraph (1) may not bind the granting of the respective licences to elements prohibiting, deterring or discouraging the inclusion in the same equipment of:

- a) a common interface allowing connection with 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.

Article 104. – (1) The regulatory authority undertakes market analyses periodically, 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) this decision does not adversely affect actual competition in the markets for retail digital television and radio broadcasting services, and conditional access systems and other associated facilities.

(3) The measures under paragraph (2) shall be subject to the procedures provided for by Articles 97 and 135, and the parties affected by these measures benefit from an adequate prior notification period.

Subparagraph 3

Obligations imposed on providers with significant power on wholesale markets

Article 105. – (1) Where an undertaking 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 correspondingly impose, by decision, any of the obligations set out in Articles 106 to 110¹ or Article 112², as appropriate. ANCOM chooses the least intrusive means for resolving the problems identified following the market analysis.

(2) To the extent the law does not provide otherwise and without prejudice to Article 13, Article 24 paragraph (2) letter h), Articles 73, 75-75², 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 amendments and completions, or to the obligations deriving from international agreements in which Romania is a party, the regulatory authority may impose the obligations set out in Articles 106 to 110¹ or in Article 112² only on the undertakings that have been designated as having significant market power pursuant to paragraph (1).

(3) In exceptional circumstances, when the regulatory authority intends to impose on an undertaking designated with significant market power according to paragraph (1) other obligations for access or interconnection than those set out in Articles 106 to 110¹ or in Article 112², 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:

a) based on the nature of the problem identified within the market analysis carried out by ANCOM, keeping account, as appropriate, of the transnational demand of electronic communications products and services identified pursuant to Article 66 of the European Electronic Communications Code;

b) proportionate, keeping account, where possible, of cost and benefits;

c) justified in the light of the objectives of the regulatory authority laid down in Articles 4 to 6¹ of Government Emergency Ordinance no. 22/2009, approved by Law no. 113/2010, with the subsequent amendments and completions;

d) adopted in accordance with the procedures referred to in Articles 97, 98 and 135.

(5) ANCOM shall analyse the impact of the new market developments, in particular the commercial agreements, including the agreements on joint participation to investments, which influence the dynamics of competition. If these developments are significant, ANCOM shall carry out a new market analysis in accordance with Section 1 of this Chapter.

(6) If the impact of new market developments does not require a new market analysis according to Section 1 of this Chapter, ANCOM shall assess, without delay, the need to review the specific obligations imposed on the providers designated as having significant market power, in order to modify or withdraw these obligations or to impose new obligations so as to continue to comply with the provisions of paragraph (4). These measures shall be applied upon following the procedures laid down in Articles 97, 98 and 135.

(7) 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.

Article 106. – (1) ANCOM may, in accordance with Article 105, impose on undertakings obligations for transparency in relation to interconnection of the public electronic communications networks or access to these networks or associated facilities. These obligations may regard making public specified information, such as technical specifications, network characteristics and foreseen developments, prices, accounting information, including those specified in Article 108 paragraphs (2) and (3) or in Article 110 paragraphs (2) and (3), or terms and conditions for supply and use of services and applications, including any conditions changing the access to and use of services and applications, related in particular to the transition from a traditional infrastructure, 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) Without prejudice to the provisions of paragraph (5), where an undertaking has obligations under Article 108¹ and Article 109 concerning network infrastructure access, the regulatory authority shall impose the obligation to publish a reference offer which shall take into account BEREC's guidelines on minimum criteria for a reference offer issued pursuant to Article 69 paragraph (4) of the European Electronic Communications Code, ANCOM motivating any decisions contrary to these guidelines. This reference offer shall also specify key performance indicators, where appropriate, and service quality levels.

Article 107. – (1) The regulatory authority may, in accordance with Article 105, impose on undertakings obligations of non-discrimination regarding interconnection or access in order 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, including in terms of quality, as they provide for their own services, or those of their subsidiaries, secondary headquarters or partners.

(2) ANCOM may impose on the undertakings referred to in paragraph (1) the obligation to provide access products and services to all undertakings, including themselves, under the same terms and conditions, including those regarding tariffs and quality of service levels, and through the same systems and processes, in order to ensure equivalent access.

Article 108. – (1) ANCOM may, in accordance with Article 105, impose on undertakings, obligations for accounting separation, within their internal accounting system, in relation to specified activities related to the interconnection or access.

(2) Particularly, 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.

Article 108¹. – (1) ANCOM may impose on undertakings, in accordance with the provisions of Article 105, the obligation to allow access to and use of physical infrastructure elements, including, but not limited to, buildings or entrances to buildings, building wiring, including cables, antennas, towers and other supporting constructions, poles, masts, ducts, conduits, inspection chambers, manholes and cabinets, where it considers that denial of access or the imposition of clauses having a similar effect would result in hindering the emergence of a sustainable competitive market or in harming the end-user's interest.

(2) ANCOM may impose the obligation set out in paragraph (1) irrespective of whether the physical infrastructure subject to this obligation is part of the relevant market identified by the market analysis carried out pursuant to this Chapter.

(3) ANCOM imposes the obligation set out in paragraph (1) if this is necessary and proportionate to achieve the objectives laid down in Articles 4 to 6¹ of Government Emergency Ordinance no. 22/2009, approved by Law no. 113/2010, as subsequently amended and supplemented.

Article 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 the right to access and use specified network elements or associated facilities, including unbundled access to the local loop and sub-loop;

a¹) to give third parties access to specific active or virtual network elements and services;

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, 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.

(3¹) ANCOM shall not impose any of the obligations under paragraph (1) of other forms of access on the wholesale level, either on the same or on a related market, are sufficient to address the problem identified within the market analysis. In this sense, ANCOM shall assess the commercial access offers, the regulated access pursuant to Articles 100-100² or the existing or planned regulated access pursuant to this Article.

(3²) ANCOM shall not impose any of the obligations under paragraph (1) if the imposition of obligations pursuant to Article 108¹ is a proportionate measure to promote competition and end-users' interests.

(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, considering the nature and type of interconnection and access involved, including the viability of other upstream access products such as access to ducts;

a¹) the expected technological evolution affecting network design and management;

a²) the need to ensure technology neutrality enabling the parties to design and manage their own networks;

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, with particular regard to investments in, and risk levels associated with, very high capacity networks;

d) the need to safeguard competition in the long term, particularly of economically efficient infrastructure-based competition and innovative business models that support sustainable competition, such as those based on co-investment in networks;

e) where appropriate, any relevant intellectual property rights;

f) the provision of pan-European services.

(5) When imposing obligations 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.

Article 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 undertaking 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, ANCOM shall take into account the efficient investment made by the operator concerned and, if it deems appropriate imposing a price control obligation, shall allow it a reasonable rate of return on the adequate capital employed, taking into account any risks specific to a particular new network investment project.

(1¹) In determining whether price control obligations would be appropriate, ANCOM shall take into account the need to promote competition and long-term end-user interests related to the deployment and take-up of next-generation networks, and in particular of very high capacity networks.

(1²) ANCOM shall not impose any of the obligations provided for in paragraph (1) or shall withdraw them if these exist were it establishes that a demonstrable retail price constraint is present and that any obligation imposed in accordance with Articles 106-109 ensures effective and non-discriminatory access, including, in particular, where it establishes that obligations imposed according to Article 107 allow replication of retail offers.

(1³) ANCOM may impose the obligations provided for in paragraph (1) on the undertakings providing call termination services only if the single mobile or fixed, as applicable, call termination tariffs throughout European Union no longer subsist. When imposing the obligations specified in paragraph (1) on the undertakings providing call termination services, ANCOM shall keep account of the requirements in Annex no. 3.

(2) Any cost recovery mechanism or pricing methodology, imposed according to paragraph (1), shall serve to promote the deployment of new and enhanced networks, economic efficiency and sustainable competition, and to maximise end-user benefits. In this regard, ANCOM 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, as a compliance statement, under the conditions set out by the regulatory authority.

(5) When imposing the price control obligation for the access to existing network elements, ANCOM shall also take into account the benefits brought by predictable and stable wholesale tariffs on ensuring efficient market entry and on providing sufficient incentives for all undertakings to install new or enhanced networks.

Article 110¹. – (1) Undertakings designated, in accordance with Article 105, as having significant market power on one or more relevant markets may undertake, in accordance with the procedure laid down in Article 112¹, to allow joint participation in investments for the deployment of a new very high capacity network consisting of optical fibre elements up to the end-user's premises or to the base station serving the end-user. In this respect, undertakings may, by way of example, undertake to grant co-ownership rights, share long-term risks by means of co-financing contracts or grant specific structural rights to other providers of electronic communications networks or services by means of procurement contracts.

(2) ANCOM shall evaluate the commitments referred to in paragraph (1) determining, in particular, whether offers for joint participation in investments fulfil the following cumulative conditions:

a) are available to any provider of electronic communications networks or services and are valid at any time for the lifetime of the network;

b) enable other providers of electronic communications networks or services that are jointly participating in the investment to compete effectively and sustainably in the long term

on downstream markets where the undertaking designated as having significant market power is present;

c) are made known to the public in due time, and if the undertaking does not meet the conditions listed in Article 112², at least 6 months before the start of installation of the new network;

d) access requesters not participating in the investment are able to benefit from the same conditions, including quality, speed and end-user accessibility that were available before the deployment of the new very high capacity networks; Also, access requesters must have at their disposal a mechanism, approved by ANCOM, to adapt the access conditions, depending on developments on related retail markets, which maintains the incentives to participate jointly in the investment; such mechanism shall ensure access by requesters at a given time to very high capacity elements of the network on the basis of transparent and non-discriminatory conditions, which reflect in an appropriate manner the degree of risk incurred by those joint participants in the investment at different stages of deployment and take into account the competitive situation in retail markets;

e) comply with the criteria set out in Annex no. 4 and, where applicable, with other additional criteria established by ANCOM decision in order to ensure the accessibility of joint participation in the investment, taking into account the specific conditions and structure of the Romanian market, and are carried out in good faith.

(3) When assessing compliance with the condition laid down in paragraph (2) letter b) ANCOM shall analyse, inter alia, whether:

a) access on fair, reasonable and non-discriminatory terms to the full capacity of the network is allowed to the extent that it is subject to a joint investment;

b) there is flexibility in terms of the value and timing of each participant's joint participation in the investment;

c) there is a possibility to increase participation in the investment;

d) the participants in the investment grant each other access rights after the installation of the infrastructure in which they have jointly invested.

(4) ANCOM may impose, in accordance with Article 112¹, the obligation to respect, in whole or in part, the commitments referred to in paragraph (1) if the following cumulative conditions are fulfilled:

a) ANCOM found, taking into account the results of the market analysis carried out in accordance with Article 112¹, that the commitments meet the conditions set out in paragraph (2);

b) at least one joint investment participation agreement has been concluded with the undertaking designated as having significant market power on one or more relevant markets.

(5) Where paragraph (4) applies, ANCOM may not additionally impose any obligation in accordance with Article 105 with regard to the elements of the new very high capacity networks subject to joint investment participation commitments.

(6) Failure to meet the conditions for the application of paragraph (4) is without prejudice to ANCOM's possibility to take into account relevant circumstances in accordance with Section 1 of this Chapter.

(7) By way of exception from the provisions of paragraph (5), in duly justified circumstances, ANCOM may impose, maintain or modify specific obligations set out in Section 1 of this Chapter in relation to new very high capacity networks, if it has established that there are significant competitive problems on certain markets which could not be solved otherwise, taking into account the special characteristics of those markets.

(8) ANCOM may impose on the undertaking designated as having significant market power on one or more relevant markets the obligation to submit annually declarations of conformity regarding compliance with the cumulative conditions set out in paragraph (2).

(9) In order to apply the provisions of this Article, ANCOM shall take into account, where appropriate, BEREC guidelines issued in accordance with the provisions of Article 76 paragraph (4) of the European Electronic Communications Code.

Article 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 measures 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. Based on 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).

Article 112. – (1) Without prejudice to the obligations incumbent with regard to the economic concentration operations, vertically integrated undertakings 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 ANCOM, at least 3 months in advance 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, in order to allow the regulatory authority to assess, according to paragraph (4), the effect of the intended transaction.

(2) Undertakings shall also inform as soon as possible the regulatory authority of any change of the intentions communicated pursuant to paragraph (1), as well as the outcome of the planned measures.

(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 planned measures.

(3¹) In order to ensure effective and non-discriminatory network access for the benefit of third parties, the undertakings referred to in paragraph (1) may offer commitments on access conditions to be applied for a certain period after implementation of the planned measures. The undertakings referred to in paragraph (1) may undertake to apply commitments for periods longer than those provided for in Article 96 for the purpose of carrying out market analyses. The commitments offered must be sufficiently detailed, including in terms of

timetable and implementation period, to allow ANCOM to carry out the assessment provided for in paragraph (4).

(4) Within 12 months from receiving the notification under paragraph (1) or the changes communicated pursuant to paragraph (2), ANCOM shall assess the effect of the intended measures and, if applicable, of the commitments offered according to paragraph (3¹) on the specific obligations imposed in accordance with the provisions of this Chapter.

(4¹) In the assessment process mentioned in paragraph (4) ANCOM shall conduct an analysis of the different markets related to the access network, in accordance with the provisions of Section 1 of this Chapter, taking into account, where appropriate, any commitments offered pursuant to paragraph (3¹), taking into account in particular the objectives set out in Articles 4-6¹ of Government Emergency Ordinance no. 22/2009, approved by Law no. 113/2010, as subsequently amended and supplemented. In order to decide on these commitments, ANCOM shall seek the views of third parties directly affected by the planned measures and shall organise a consultation procedure in accordance with the provisions of Article 135.

(4²) Following the assessment process provided for in paragraph (4), ANCOM may:

a) impose, maintain, amend or withdraw one or several specific obligations under this Chapter, in compliance with the procedures laid down in Articles 97, 98 and 135 and applying, where appropriate, the provisions of Article 112²;

b) impose the obligation to respect, in whole or in part, the commitments offered under paragraph (3¹), including for longer periods than those provided for in Article 96, if so proposed.

(5) **repealed**

(6) Without prejudice to the provisions of Article 112², 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), only when the commitments offered pursuant to paragraph (3¹) are insufficient to achieve the objectives set out in Articles 4-6¹ of Government Emergency Ordinance no. 22/2009, approved by Law no. 113/2010, as subsequently amended and supplemented.

(6¹) ANCOM shall monitor the implementation of the commitments whose observance it has required pursuant to paragraph (4²) letter b) and shall decide on any request to extend the commitment period beyond the proposed initial deadline.

(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.

Article 112¹. – (1) Undertakings designated as having significant market power may offer ANCOM commitments regarding the conditions of access and/or joint participation in investments in their networks, in relation to, *inter alia*:

a) cooperation agreements relevant for the assessment of appropriate and proportionate obligations pursuant to Article 105;

b) joint participation in investments in very high capacity networks pursuant to Article 110¹;

c) effective and non-discriminatory access by third parties pursuant to Article 112, both during the implementation of voluntary separation of a vertically integrated undertaking and after the proposed form of separation has been implemented.

(2) The commitments offered under paragraph (1) must be sufficiently detailed, including with regard to the timetable and scope of implementation, respectively the duration of applicability, so as to allow ANCOM to carry out the assessment provided for in paragraph (4).

(3) The duration of commitments may be longer than that corresponding to the periods when market analyses are carried out in accordance with Article 96.

(4) ANCOM shall assess the commitments submitted by an undertaking according to paragraph (1), by carrying out a market test, in particular in relation to the conditions offered, by means of a public consultation of interested persons, in particular those directly affected. As part of this public consultation, persons interested in participating in joint investments or in network access may provide views on the conditions offered in the commitments submitted by the undertaking designated as having significant market power and propose amendments to those commitments.

(5) ANCOM shall perform the market test provided for in paragraph (4) only in respect of commitments which fulfil all the conditions laid down in, as the case may be, Articles 105, 110¹ or 112.

(6) When assessing the imposition of obligations pursuant to Article 105, with regard to the commitments offered under paragraph (1), ANCOM shall take into account in particular:

a) evidence for the fairness and reasonableness of the commitments offered;

b) the extent to which the commitments are applicable to all market participants;

c) timely availability of access on fair, reasonable and non-discriminatory terms, including to very high-capacity networks, prior to the launch of appropriate services on the retail market;

d) the extent to which, overall, the commitments offered enable sustainable competition on downstream markets, respectively facilitate cooperation in the deployment of very high-capacity networks and the provision of services based on such networks, to the interest of end-users.

(7) Taking into account all opinions expressed during the public consultation provided for in paragraph (4) and the extent to which they are representative for the various stakeholders, ANCOM shall communicate to the undertaking designated as having significant market power its preliminary conclusions on the extent to which the commitments offered meet the objectives, criteria and procedures set out in this Article and, where applicable, in Articles 105, 110¹ or 112, as well as on the conditions under which it may consider making commitments binding.

(8) The undertaking designated as having significant market power may review the commitments initially offered in order to take into account ANCOM's preliminary conclusions referred to in paragraph (7) and with a view to meeting the criteria laid down in this Article and, where appropriate, in Articles 105, 110¹ or 112.

(9) Without prejudice to Art. 110¹ paragraph (4), ANCOM may issue a decision imposing on the undertaking designated as having significant market power the obligation to respect, in whole or in part, the commitments offered under paragraph (1).

(10) At the time of issuing the decision referred to in paragraph (9), ANCOM shall analyse, in accordance with the provisions of Article 105, its consequences for market developments, as well as the appropriateness of any obligation it has imposed or, in the

absence of commitments offered, would have intended to impose under this section. ANCOM notifies, according to Article 97, the draft measures provided for in art. 105 together with the decision issued pursuant to paragraph (9).

(11) ANCOM shall establish the period of validity of the obligations imposed under paragraph (9), which may cover the entire period for which commitments have been offered, without any obligation to comply with the time limits laid down in Article 96. In the case of commitments to participate jointly in investments which have become binding pursuant to Article 110¹ paragraph (4), the validity period imposed by ANCOM according to paragraph (9) shall be at least 7 years. ANCOM is competent to analyse the extension of the duration regarding the compliance with the commitments imposed under paragraph (9) upon expiry of their period of validity.

(12) Without prejudice to the possibility of imposing sanctions under Chapter XII, ANCOM may reassess the obligations imposed in accordance with Article 105 if the commitments imposed by it under paragraph (9) are not respected.

(13) Subject to Article 110¹, the application of this Article shall be without prejudice to the application of the market analysis procedure in accordance with Section 1 of this Chapter and to the imposition of specific obligations pursuant to Article 105.

Article 112². – (1) In the case of undertakings which have been designated, in accordance with Section 1 of this Chapter, as having significant power on one or several relevant wholesale markets and, at the same time, are not present on any retail market for electronic communications services, ANCOM shall analyse whether these meet the following conditions:

a) no business unit within the undertaking, no secondary establishment of the undertaking, no subsidiary or other person over whom the undertaking has control, or any person exercising control over the undertaking, carries out or plans to operate in any market for electronic communications services provided to end-users in the European Union;

b) the undertaking is not required, as a result of the conclusion of an exclusive agreement or of such nature, to provide services to a single separate undertaking operating in any retail market for electronic communications services.

(2) The concept of control referred to in paragraph (1) shall be interpreted in accordance with the provisions of the competition law.

(3) If it finds that the conditions laid down in paragraph (1) have been met, ANCOM may impose, by decision, on the respective undertaking, if justified on the basis of a market analysis, including of a prospective assessment of the likely behaviour of the undertaking, only obligations in accordance with Articles 107 and 109 or relating to the fairness and reasonableness of prices.

(4) If it finds, at any time, that the conditions laid down in paragraph (1) are no longer met, ANCOM shall review the obligations imposed on the respective undertaking according to paragraph (3) and, as appropriate, apply the provisions of this Section and Section 1 of this Chapter.

(5) Undertakings have the obligation to immediately inform ANCOM about the change of any circumstances that could be relevant for the analysis provided for in paragraph (1).

(6) ANCOM shall review the obligations imposed under this Article if, based on evidence regarding the terms and conditions under which the undertaking provides services to providers operating on the retail market, the regulatory authority finds that competitive problems have arisen or are likely to arise, affecting end-users and requiring the imposition of one or several obligations in accordance with Articles 106, 108, 108¹ or 110 or the modification of obligations imposed pursuant to paragraph (3).

(7) The imposition and review of obligations pursuant to this Article shall be carried out upon completing the procedures laid down in Articles 97, 98 and 135.

Article 112³. – (1) Designated undertakings with significant market power on one or several relevant markets in accordance with Section 1 of this Chapter shall notify ANCOM, at least one year in advance, of plans for decommissioning or replacing parts of the network, including traditional infrastructure necessary for the operation of the copper network, with new infrastructure, where those networks are subject to obligations imposed pursuant to Articles 105 to 108, 108¹, 109, 110, 110¹, 111, 112, 112¹ and 112².

(2) Based on the information contained in the notification provided for in paragraph (1), ANCOM shall assess the availability of alternative products or services for access to the resulting upgraded network or associated facilities, respectively, of at least a level of quality comparable

to that ensured prior to decommissioning or replacement of parts of the network with new facilities, to the extent necessary to protect competition and end-user rights.

(3) The notification referred to in paragraph (1) shall include the timetable and conditions under which the process of decommissioning or replacement of parts of the network with new infrastructure will be carried out, respectively measures necessary to ensure the transparency of the process, including an adequate period of prior notification on the transition and information on alternative access products or services referred to in paragraph (2).

(4) ANCOM shall verify the achievement of the objectives set out in paragraphs (2) and (3) and may require the undertaking concerned to make any amendments or additions necessary to that end.

(5) ANCOM may withdraw the obligations imposed under Articles 105 to 108, 108¹, 109, 110, 110¹, 111, 112, 112¹ and 112², as regards elements subject to decommissioning or replacement by new infrastructure of parts of the network, after having ascertained that the undertaking referred to in paragraph (1) meets, cumulatively, the following criteria:

a) it has established appropriate conditions for the transition, including by making available alternative access products at levels of quality at least comparable to those provided on legacy infrastructure and allowing access requesters to reach the same end-users;

b) it has complied with the conditions and process for decommissioning or replacing with new infrastructure parts of the network included in the notification referred to in paragraph (1).

(6) Withdrawal of obligations in accordance with the provisions of paragraph (5) shall be carried out upon following the procedures laid down in Articles 97, 98 and 135.

(7) The provisions of this Article are without prejudice to the obligations imposed by ANCOM under Sections 1 and 2 of this Chapter and which concern the enhanced networks.

Section 3

Promoting competition in retail markets

Article 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 6¹ 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 6¹ of Government Emergency Ordinance no. 22/2009, approved by Law no. 113/2010, with the subsequent amendments.

Article 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 implementation obligation shall be annually verified by a qualified independent body. The results of this verification shall be published, under the form of a compliance statement, according to the conditions set out by the regulatory authority.

Article 115. – ANCOM shall not impose the obligations laid down in this Section on certain geographic or retail markets, if it concludes that there is effective competition.

CHAPTER VIII

Dispute resolution

Article 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 legislation with direct applicability in the electronic communications field if the monitoring and verification of compliance with these obligations was not granted to another authority, or imposed by ANCOM pursuant to these provisions between providers of electronic communications networks or services, or between such providers and providers requesting or benefiting from access or interconnection, or between providers of electronic communications networks or services and providers of associated facilities, 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, on paper or in electronic form. 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 keeping with 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. The parties have the obligation to fully cooperate with ANCOM in view of resolving the dispute.

(4) Where, after analysing all the information and after hearing all the views in the respective cause, ANCOM 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.

(5¹) If it is addressed for resolving a dispute related to the obligation to share the passive infrastructure used for the provision of wireless electronic communications services or to the obligation to conclude localised roaming access agreements, in accordance with the provisions of paragraph (1), by settling, ANCOM may, at the request of the interested party, impose on the beneficiary of the mentioned obligations to share the radio frequency spectrum with the provider on which those obligations are incumbent.

(6) **repealed**

(7) In resolving the disputes referred to in paragraph (1), ANCOM shall take account of the objectives laid down in this Emergency Ordinance, as well as those in Articles 4 to 6¹ of Government Emergency Ordinance no. 22/2009, approved by Law no. 113/2010, with the subsequent amendments and completions.

(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 do not prejudice the persons' right to bring an action before the competent courts, according to the law.

(13) If a complaint with the same object, the same cause and between the same parties has been submitted to the court, ANCOM shall:

a) reject the complaint, if the complaint was submitted to the court before or simultaneously with the submission to ANCOM;

b) suspend the dispute settlement procedure, if the complaint was submitted to the court after ANCOM was notified.

(14) The dispute, suspended under the conditions of paragraph (13) letter b), shall be reinstated, *ex officio* or at the request of one of the parties, after the final decision of the court. The provisions of Articles 430 to 432 of Act No 134/2010 on the Code of Civil Procedure, republished, as subsequently amended and supplemented, are applicable.

Article 117. – (1) In the event of a cross-border dispute between the providers mentioned in Article 116 paragraph (1) from Romania and 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.

(1¹) The provisions of paragraph (1) shall not apply to disputes concerning radio spectrum coordination falling within the scope of Article 16¹.

(2) Where addressed according to paragraph (1), ANCOM shall collaborate with the authority or, as appropriate, the national regulatory authorities in communications from other Member States of the European Union, to ensure a consistent resolution of the dispute.

(3) Where the dispute affects the commercial relations between Member States, ANCOM shall notify BEREC of the dispute in order to resolve it appropriately, in accordance with the objectives set out in art. 4-61 of Government Emergency Ordinance nr. 22/2009, approved by Law no. 113/2010, as subsequently amended and supplemented. In this case, the dispute shall be resolved after BEREC's opinion, unless there is an urgent need to act to safeguard competition or protect end-users' interests, in which case, at the request of the parties or on its own initiative, ANCOM may order interim measures.

(4) The provisions of Article 116 paragraphs (2) to (5¹) and (7) to (12) shall apply as appropriate.

(5) The disputes referred to in paragraph (3) shall be settled taking into account the provisions of this Emergency Ordinance and in accordance with BEREC's opinion, within 30 days of its receipt.

Article 118. – repealed

Article 119. – (1) In order to resolve the disputes provided for in this chapter, ANCOM shall establish by decision an optional, clear and efficient procedure.

(2) The access to the dispute resolution procedure established according to paragraph (1) is free of charge.

CHAPTER IX
Provision of information

Article 120. – (1) ANCOM has the right to request from any person, including providers of electronic communications networks or services, providers of associated facilities or services, providers of information society services, owner associations, local and central public authorities and institutions, information - including finance-related - required with a view to:

- a) exercise the attributions stipulated by this Emergency Ordinance;
- b) exercise the attributions stipulated by the legislation in the consumer protection field, for the obligations whose compliance monitoring and verification lie with ANCOM;
- c) exercise other duties than those provided for in letters a) and b), respectively those provided for by special national or European legislation, with direct applicability in the national law, in the field of electronic communications, for the obligations whose competence to monitor and verify belongs to ANCOM;
- d) performance by the European Commission, BEREC or any other authority with similar competences to ANCOM from another Member State of the European Union of their duties provided for in the special European legislation in the field of electronic communications;
- e) exercise other duties than those provided for in letters a) to d), established for ANCOM by national legislation.

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

a) to verify the compliance with the obligations stipulated by the provisions of this emergency ordinance, by the legislation in the consumer protection field, in the cases when the competence of monitoring and verifying compliance with these obligations belongs, among others, to ANCOM, or by the special legislation in the electronic communications field, or imposed by ANCOM in accordance with these provisions, as well as to enforce the European legislation in the electronic communications field, especially with regards to the monitoring of the market and the verification of compliance by the providers of electronic communications networks and service with their obligations consequential to this legislation, where the competence of monitoring and verifying these obligations belongs to the national regulatory authority;

b) to set 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 regarding 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 use and effective management of the radio frequencies, numbering and technical resources, as well as to verify compliance with the obligations regarding coverage and quality of service related to rights of use for radio frequency spectrum.

o) to conduct studies on electronic communications network coverage;

p) to reply to reasoned requests for information from BEREC and other public authorities and institutions;

q) to solve petitions, in accordance with Government Ordinance nr. 27/2002 regarding the regulation of the activity of solving petitions, approved with amendments and completions by Law no. 233/2002, as subsequently amended, as well as other requests and complaints.

(3) Without prejudice to the provisions of paragraphs (1) and (2), ANCOM may specifically 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, on the territorial coverage, including as regards the identification of areas not served as per Article 13³, or on connectivity available to end-users;

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.

(3¹) When requesting information in accordance with the provisions of paragraphs (1) to (3) in order to be made available to BEREC, ANCOM shall use the information requests templates developed by BEREC.

(4) ANCOM may impose, by decision, the obligation to send certain categories of information, on a regular basis, in view of exercising its duties pursuant to paragraph (1).

(5) Without prejudice to the information 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 within the timeframe 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 community rules, observing the privacy protection, the principle of confidentiality and the legal provisions on the free access to public interest information, specifying the conditions and procedure for accessing this information.

(8) **repealed**

(9) ANCOM may request the central or local public administration authorities provided in Article 13 paragraph (2) all the documents and information required with a view to enforcing the provisions of Article 13 paragraphs (4) and (5);

(10) Where the documents and information provided according to paragraph (9) require completions or clarifications, the term provided under Article 13 paragraph (4) shall be suspended on the date of communicating the request for completion or clarification, until the date of ANCOM's receiving the respective clarifications or completions.

(11) ANCOM may not ask the persons referred to in paragraph (1) the same information already requested and received by BEREC, if it has been made available to ANCOM.

(12) The information referred to in this Article shall be requested from information society service providers only if the information made available by the other categories of providers referred to in paragraph (1) are insufficient.

Article 121. – (1) ANCOM shall cooperate with other similar authorities from the other Member States of the European Union, 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 electronic communications 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 BEREC or other similar authorities 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 in the shortest time possible 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 in accordance with the provisions of Article 120, ANCOM shall inform the respective person 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 similar authorities from other Member States of the European Union.

(6) ANCOM shall request the European Commission, BEREC or the similar authorities from other Member States of the European Union to observe the confidential character of the information which is considered confidential in accordance with the provisions of the national legislation and of the European Union on trade secret.

(6¹) The confidential nature of the requested information may not prevent the timely transmission of information by ANCOM to the European Commission, BEREC or other authorities with similar attributions in the other Member States of the European Union, when this information is made available for the purpose of reviewing, monitoring and supervising the application at national level of Directive (EU) 2018/1.972 of the European Parliament and of the Council.

(7) ANCOM may request the authorities with similar attributions 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

Article 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.

Article 123. – (1) The full amount of the annual fee charged by ANCOM as a monitoring tariff shall be calculated as a difference between:

a) the amount of ANCOM's administrative expenses provided under paragraph (2), except those related to regulating and monitoring postal services, and

b) the revenue from other sources, minus the amounts required to cover ANCOM's expenses, other than the ones provided under letter a), and the amounts from the annual surplus resulting from the execution of previous years' budgets.

(2) ANCOM's administrative expenses are expenses 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.

Article 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 2%, as a ratio between:

a) the amount provided in Article 123 paragraph (1), minus the revenues from the tariff provided in Article 126 paragraph (1) letter a) and from the monitoring tariff set in the previous years, at the end of the month preceding the one when the percentage is calculated; and

b) the cumulated turnover of the persons under paragraphs (1) and (2).

(4) By derogation from the provisions of Article 122, the monitoring tariff calculated according to this Article shall be set only for the providers of public electronic communications networks and publicly available electronic communications services.

(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 also 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.

Article 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.

Article 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 and a monitoring tariff had not been established, excluding the month when the capacity ended, and the last percentage of the turnover set by ANCOM, with a view to calculating the monitoring tariff prior to cessation.

(4) The monitoring tariff owed pursuant to paragraph (1) letter a) shall be set 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 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 in which it ceased.

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

(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 applicable.

Article 127. – (1) ANCOM may require the persons referred to in Article 122 to phase out the payment of the annual monitoring tariff, as follows:

a) a share of 30% of the last monitoring tariff owed, until the 15th 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 15th 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 15th 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.

Article 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 25th of the month following the month when the decision was issued, but not less than 15 days from its communication date.

Article 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 apply correspondingly.

(2) In view of applying the provisions of paragraph (1), the providers shall submit for certification the revenues obtained from the provision of electronic communications networks or services or from the provision of postal services, as applicable. These revenues shall be certified by an independent auditor under the conditions of the Government Emergency Ordinance no.75/1999 on the financial audit activity, republished, with the subsequent amendments and completions, or by an accounting expert authorised under the law.

(3) Where the documents stating 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).

Article 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.

Article 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.

Article 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 information

Article 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, as well as their respective duties;

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 internal procedure on the public consultation described in Article 135 as well as the documents that must be published during the consultations launched in accordance with Article 135;

h) the income and expenditure budget of ANCOM;

i) the procedure of general authorisation and of granting 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, including, in an overview and easy to consult form, the conditions for exercising the right of access on properties, indicating the entities responsible for settling requests for access on properties;

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 and, subject to the requirements relating to the protection of information covered by a trade secret, the documents justifying the imposition of such obligations;

m) any other information useful for informing the public, related to ANCOM's activity.

(2) ANCOM shall deploy all necessary efforts in order to ensure that the information published on its website is also available in at least one international language.

Article 134. – (1) ANCOM shall communicate to the European Commission the measures adopted in the national legislation in the regulatory field covered by the European Electronic Communications Code, 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.

(3) ANCOM shall communicate annually to the European Commission and BEREC the measures taken to ensure compliance with the single tariffs at European Union level for fixed and/or mobile termination services, as appropriate.

Article 135. – (1) Except for the measures adopted pursuant to Article 13 paragraph (4), Article 13¹ paragraph (2), Article 20 paragraphs (1) and (3), Article 48, 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.

(1¹) For the application of Article 26¹ and in order to promote the use of wireless broadband electronic communications networks and services, ANCOM shall inform the RSPG,

at the latest on the date of initiating the public consultation process, of any draft measures regarding the granting of rights of use for radio frequencies pursuant to Article 25 and Article 26 paragraph (2) and for which harmonised conditions of use have been established in accordance with Decision no. 676/2002/EC of the European Parliament and of the Council.

(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.

Article 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 consumers and disabled persons, 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 consider safeguarding the interests of the consumers of publicly available electronic communications services, including by providing end-users with disabilities with an appropriate consultation modality.

(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, *inter alia* by elaborating codes of conduct 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 or authorities interested in promoting legal content electronic communications networks or services, such as those on the protection of the intellectual property rights and related rights. Such cooperation may also involve coordinating the making available to the public of information of general interest provided pursuant to Article 60 paragraph (9).

CHAPTER XII

Surveillance, control and sanctions

Article 137. – (1) The verification of the compliance with the provisions of this Emergency Ordinance, of the special legislation in the electronic communications field and of the normative or individual acts issued by ANCOM in accordance with this Emergency Ordinance or the special legislation in the electronic communications field, as well as the compliance by the providers of electronic communications networks or services with their obligations deriving from the directly applicable legislation of the European Union in electronic communications field, if the competence of monitoring and verification of the compliance with these obligations is not granted to another authority, it shall lie with ANCOM, which shall act through its specialised personnel empowered for this purpose, hereinafter referred to as *control personnel*.

(2) The control personnel, as well as their attributions, shall be established by decision of the ANCOM president.

Article 137¹. – By way of exception from the provisions of Article 137 paragraph (1), the control of compliance with the provisions of Articles 66, 68 and 68¹ shall lie with the

National Authority for Consumer Protection, which acts through the specialized personnel empowered for this purpose.

Article 138. – (1) The control personnel may undertake control actions, including unexpected ones, during which they may request any documents necessary to carry out the control, specifying the legal ground and the purpose therefor, 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 timeframes 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.

(2¹) The control personnel within ANCOM has the competence to verify, including by declining the quality of ascertaining agent at any time during the control action, but before drawing up, in accordance with the provisions of this Chapter, the control statement or the statement-of-facts on the contravention and enforcement of the sanction, the fulfilment of the following obligations and measures:

- a) the pre-contractual information obligation referred to in Article 50³;
- b) the pre-contractual information obligation provided for in Art. 50⁴ paragraph (1) as regards distance contracts or contract negotiated off-premises;
- c) the obligation referred to in Article 50⁵ paragraph (1) on how to provide the pre-contractual information;
- d) the obligation of pre-contractual information in a telephone conversation or by a distance communication means allowing limited space or time for displaying information in accordance with art. 50⁵ paragraphs (2) and (3);
- e) the information obligation laid down in Article 50⁵ paragraph (4) in the case of a distance contract concluded by electronic means obliging the consumer to pay;
- f) the summary obligations laid down in Article 50⁶;
- g) the obligations referred to in Article 50⁷ relating to the provision of general conditions for the provision of services for which payment is made in advance;
- h) the obligation to inform end-users with disabilities in accordance with Article 50⁸;

i) the obligation to make available to the public the information referred to in Article 60 paragraphs (1) to (3) and (5), under the conditions established pursuant to Article 60 paragraph (5);

j) measures and obligations imposed pursuant to Article 75² paragraphs (4) to (6).

(2²) By way of derogation from Article 3 paragraph (4) of Law no. 252/2003 regarding the single control register, with subsequent amendments, in order to carry out the control action provided for in paragraph (2¹), ANCOM's control personnel shall record in the single control register the data provided for in Article 3 paragraph (2) of Law no. 252/2003, with subsequent amendments, after declining the quality of ascertaining agent.

(3) The result of the control actions shall be written down in a control statement, except for the cases provided for in Article 144.

Article 139. – (1) Where discovering the contraventions referred to in Article 142 indent 10 or 10¹, 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.

Article 140. – In view of assessing the contraventions referred to in Article 142 items 1, 7, 9¹, 10, 10¹, 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.

Article 141. – (1) Where discovering the non-compliance with an obligation laid down in Article 142, before applying the sanction, ANCOM shall notify the person in question on the assessed infringement and applicable sanction, giving that person a time period to submit a point of view.

(2) The notification procedure 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 or the information set out by the normative or individual acts issued by ANCOM or provided by the directly applicable legislation of the European Union;

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 indents 1, 7, 9, 9¹, 10, 10¹, 11, 11¹, 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;

g) in case of non-compliance with the obligation laid down in Article 13¹ paragraph (3) regarding the reconciliation of contracts for the provision of publicly available electronic communications services or contracts for access to public electronic communications networks referred to in Article 13¹ paragraph (1) with the technical and economic conditions established by ANCOM;

h) in case of non-compliance with the obligation to inform the public pursuant to Article 47 paragraph (4);

i) in case of non-compliance with the obligation to undergo, at its own expense, a security audit carried out by an independent body or other competent authority and with the obligation to transmit to ANCOM the results of the audit, provided for in Article 49 paragraph (1) letter b).

Article 142. – The following deeds shall be deemed contraventions:

1. provision of electronic communications networks or services by a person who has not sent a notification authorised pursuant to Article 6 paragraphs (1) to (3) and (6) or by a person

whose provision right has been restricted, suspended or withdrawn in accordance with the provisions of this Emergency Ordinance;

2. failure to comply with the conditions set out in the general authorisation pursuant to Article 8;

2¹. failure of providers of electronic communications networks or services or providers of electronic hosting services with IP resources to comply with the obligations set out in Article 10² paragraph (1);

2². failure of providers of electronic hosting services with IP resources to submit to ANCOM the notification provided for in Article 10² paragraph (3), with all data included therein, including any modification of these data, within the deadline and, where appropriate, in the format established by ANCOM;

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);

6¹. the provision by any person participating in the procedures referred to in Articles 13² and 13³ of misleading, erroneous or incomplete information, without objective justification, concerning forecasts relating to planned investments in connection with the deployment of new networks or the upgrading or extension of existing networks;

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);

9¹. failure to comply with the conditions laid down in the general authorisation for the use of radio frequencies, under the conditions of Article 23 paragraph (4);

10. causing by any person and in any way of a harmful interference on a radiocommunications service authorized according to law, for which radio-electrical protection must be ensured;

10¹. use of radio spectrum with governmental use by other persons than those referred to in Article 18 paragraphs (1) and (2);

11. use of the numbering resources without obtaining the necessary licence pursuant to the provisions of Chapter III;

11¹. failure to comply with the obligation to send ANCOM a notification in accordance with Article 36⁵ paragraph (4);

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 paragraph (1);

16. breach of the notification obligation laid down in Article 47 paragraph (1);

16¹. failure to inform users potentially affected by a specific and significant security threat pursuant to Article 47 paragraph (3);

16². failure to comply with the instructions established by ANCOM in accordance with the provisions of Article 48 in order to remedy a security incident or prevent its occurrence;

16³. failure to comply with the modalities for implementing the provisions of Article 46 paragraph (3), Articles 47, 48 and 49 paragraph (1) established by decisions issued by ANCOM in accordance with Article 49¹;

16⁴. failure to comply with the measures imposed pursuant to Article 49 paragraph (2);

17. provision of publicly available electronic communications services in violation of the provisions of Article 50 para. (1) concerning the initial contract period;

17¹. breach of the obligations laid down in Article 50 paragraph (3);

17². application of different restrictions or conditions on end-users' access to or use of networks or services, breaching Article 50¹;

17³. non-compliance by microenterprises providing number-independent interpersonal communications services with the obligation to inform the end-user laid down in Art. 50² paragraph (2);

17⁴. failure to comply with the pre-contractual information obligation laid down in Article 50³;

17⁵. failure to comply with the pre-contractual information obligation laid down in Article 50⁴ paragraph (1) as regards distance contract or contracts negotiated off-premises;

17⁶. failure to comply with the obligation laid down in Article 50⁵ paragraphs (1) and (5) on the means to provide pre-contractual information;

17⁷. failure to comply with the obligation to provide pre-contractual information in a telephone conversation or via distance communication means allowing limited space or time for displaying information in accordance with Article 50⁵ paragraphs (2) and (3);

17⁸. failure to comply with the information obligation laid down in Article 50⁵ paragraph (4) in the case of a distance contract concluded by electronic means obliging the consumer to pay;

17⁹. failure to comply with the obligations relating to the summary sheet laid down in Articles 50⁶ and 51 paragraph (2);

17¹⁰. failure to comply with the obligations laid down in Article 50⁷ concerning the provision of the general conditions for the provision of services for which payment is made in advance;

17¹¹. failure to comply with the obligation to inform end-users with disabilities in accordance with Article 50⁸;

17¹². failure to comply with the obligation laid down in Article 50⁹ paragraph (1) of not altering, without the consumer's explicit consent, the information submitted prior to the conclusion of the contract;

17¹³. failure to make available to consumers the facility provided for in Article 50¹⁰ paragraph (1);

17¹⁴. failure to comply with the obligation to provide information pursuant to Article 50¹⁰ paragraph (2);

17¹⁵. failure to comply with the obligation to inform about the reaching of the consumption limit established pursuant to Article 50¹⁰ paragraph (3);

17¹⁶. failure to comply with the obligations imposed by ANCOM under Article 50¹⁰ paragraph (5) on making available additional information on the level of consumption and temporarily preventing further use of the service;

17¹⁷. non-compliance with the obligations imposed by ANCOM under Article 50¹¹ regarding premium services or other services subject to special tariff conditions;

18. non-inclusion in the contracts of the information provided in Article 51 paragraphs (1) and (4);

19. provision of publicly available electronic communications services in violation of Article 51 paragraph (3);

20. repealed;

21. repealed;

22. repealed;

23. repealed;

24. repealed;

24¹. repealed;

24². repealed;

24³. non-observance of the provisions of Article 54 paragraph (3) regarding the request for starting the service provision;

24⁴. repealed;

24⁵. repealed;

24⁶. non-observance of the provisions of Article 56 paragraphs (1)-(2) regarding the withdrawal right;

24⁷. non-observance of the provisions of Article 56 paragraph (3) regarding the contractual obligations during the withdrawal period;

24⁸. non-observance of the provisions of Article 57 regarding the information on the withdrawal right;

24⁹. non-observance of the provisions of Article 58 paragraph (3) regarding the confirmation of receipt of the withdrawal statement;

24¹⁰. non-observance of the provisions of Article 59 to end the contract parties' obligations in case of exercising the withdrawal right;

24¹¹. non-observance of the provisions of Article 59¹ paragraphs (1) and (2) regarding the provider's obligations in case of withdrawal;

24¹². non-observance of the provisions of Article 59¹ paragraph (4) regarding the postponement of the reimbursement;

24¹³. non-observance of the provisions of Article 59² where the end-user observed its obligations;

24¹⁴. non-observance of the provisions of Article 59⁴ regarding the delivery;

24¹⁵. non-observance of the provisions of Article 59⁵ regarding the payment of the flat rate in case of telephone communication;

24¹⁶. repealed;

24¹⁷. non-observance of the end-user's right on exoneration from all counter-performance exercised in accordance with the provisions of Article 59⁷ regarding the lack of consent;

24¹⁸. non-observance of the provisions of Article 59⁸ regarding the risk of losing or damaging the products.

24¹⁹. extension of the initial contract period without obtaining the consumer's explicit consent in accordance with Art. 59⁹ paragraph (2);

24²⁰. failure to comply with the information obligation in case of addition of additional services or terminal equipment under the conditions of Art. 59⁹ paragraph (3);

24²¹. failure to comply with the obligation regarding the duration of the extension of the initial contract period according to art. 59⁹ paragraph (4);

24²². failure to comply with the end-user's right to unilaterally terminate the contract pursuant to Article 59¹⁰ paragraphs (1) and (2);

24²³. failure to comply with the obligation to inform prior to automatic extension of the contract pursuant to Art. 59¹⁰ paragraph (3);

24²⁴. failure to comply with the obligation to provide end-users with information on the best tariffs for the publicly available communications services from which they benefit, in accordance with Article 59¹⁰ paragraph (4);

24²⁵. failure to comply with the end-user's right to unilaterally terminate the contract pursuant to Art. 59¹¹ paragraphs (1) and (7);

24²⁶. unilateral modification of the contract by the provider in violation of the provisions of art. 59¹¹ paragraphs (2)-(4) and (8);

24²⁷. failure to comply with the format and modalities of transmission of the notification established by ANCOM pursuant to Article 59¹¹ paragraph (6);

24²⁸. collecting compensation in violation of Article 59¹² paragraphs (1) and (2);

24²⁹. failure to comply with the obligation to remove, free of charge, any restriction on the use of terminal equipment under the conditions laid down in Article 59¹² paragraph (3);

24³⁰. use of the procedure and conditions for termination of contracts as a means to discourage the change of the service provider in accordance with Article 59¹³;

25. breach of the obligation to make publicly available the information provided at Article 60 paragraphs (1)-(3) and (5), under the terms established pursuant 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 (9);

28. breach of the obligation laid down in Article 60 paragraph (10);

28¹. failure to comply with the measures and obligations imposed pursuant to the provisions of Article 61 paragraphs (1)-(4);

29. breach of the obligations laid down in Article 62 paragraphs (1) and (2);

29¹. failure to comply with the measures and obligations imposed pursuant to Article 63 paragraphs (1) and (2);

30. making available equipment which does not comply with the provisions of Article 66 paragraph (1);

30¹. breach of the obligation laid down in Article 66 paragraph (2) on providing end-users with a free and simple way to return digital television equipment;

31. repealed;

32. non-observance of the provisions under Article 68;

32¹. placing on the market for sale or rental of a new category M car with radio equipment which does not contain a receiver capable of receiving and reproducing at least radio services provided by terrestrial digital radio broadcasting, an obligation laid down in Article 68¹;

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);

35¹. failure to comply with the measures and obligations imposed pursuant to the provisions of Article 69 paragraph (4);

36. non-observance of the provisions under Article 69 paragraph (5);

37. non-observance of the provisions under Article 70 paragraphs (1), (5) to (7) and (12);

37¹. failure to comply with the measures and obligations imposed pursuant to Article 70 paragraphs (2), (9), (10) and (14);

37². non-observance of the obligation to bear the costs incurred in establishing and transmitting location information in accordance with Article 70 paragraph (13);

37³. failure to comply with the measures and obligations imposed by ANCOM to ensure adequate information of the public in accordance with Article 70 paragraphs (15) and (16);

37⁴. failure to comply with the measures imposed pursuant to Article 70 paragraph (17) for the application of delegated acts issued by the European Commission;

38. non-observance of the provisions under Article 71 paragraph (3);

38¹. non-observance of the obligation to provide free access to 116(xyz)-type national short numbers specified in Article 72 paragraph (2¹);

38². failure to comply with the measures and obligations imposed pursuant to Article 72 paragraph (3);

39. breach of the obligation laid down in Article 73 paragraph (1);

39¹. failure to comply with the measures and obligations imposed pursuant to the provisions of Article 73 paragraph (2);

39². failure to comply with the measures and obligations imposed pursuant to Article 74 paragraphs (1), (5) and (6);

40. breach of the obligations in connection to number porting and activation laid down in Article 75 paragraphs (1) and (6);

40¹. non-observance of the obligation to ensure that end-users are able to retain, upon request, their number in case of termination of contract in accordance with Article 75 paragraph (2);

40². failure to comply with the measures and obligations imposed pursuant to Article 75 paragraph (4);

40³. non-observance of the obligation laid down in Article 75 paragraph (5) to not charge the end-users for the number portability service;

40⁴. non-observance of the obligation laid down in Article 75 paragraph (7) to reactivate the number and continue to provide services in case of porting failure;

40⁵. non-observance of the obligations on transfer from one provider of internet access services to another under the conditions of Article 75¹ paragraphs (1)-(3);

40⁶. non-observance of the measures imposed pursuant to Article 75¹ paragraph (4) on the transfer of end-users from one provider of internet access services to another;

40⁷. non-observance by the operators of the obligation to ensure that there is no unavailability of services in accordance with Article 75² paragraph (3);

40⁸. failure to comply with the measures and obligations imposed pursuant to Article 75² paragraphs (4)-(6);

40⁹. non-observance of the tariff obligations established pursuant to Article 77¹ paragraphs (2), (3) and (8);

40¹⁰. non-observance of the obligations of transparency and non-discrimination laid down in Article 77¹ paragraph (6);

40¹¹. non-observance of the obligation imposed pursuant to Article 77¹ paragraph (7) to inform ANCOM about the details of the offers for persons with low incomes or special social needs;

40¹². non-observance of the alternative or complementary measures imposed pursuant to Article 77¹ paragraph (10);

40¹³. non-observance of the universal service obligations imposed pursuant to Article 77²;

41. breach of the obligation laid down in Article 78 paragraph (1);

41¹. non-observance of the measures and obligations imposed pursuant to Article 78 paragraph (2);

41². non-observance of the measures and obligations imposed pursuant to the provisions of Article 82 paragraphs (1) and (3);

42. repealed;

43. repealed;

44. repealed;

45. repealed;

46. breach of the obligations laid down in Article 84 paragraphs (1), (3), (5), (6) and (12);

46¹. failure to comply with the measures and obligations imposed pursuant to Article 84 paragraphs (4), (7) to (10) and (13) to (16);

47. repealed;

47¹. non-observance of the measures and obligations imposed pursuant to Article 100 paragraphs (1) and (2);

47². non-observance of the obligations to grant access to infrastructure imposed pursuant to Article 100¹ paragraphs (1), (5) and (6);

47³. non-observance of the obligations imposed pursuant to Article 100² paragraphs (1) and (3) on the shared use of the physical infrastructure and active network elements, respectively;

48. non-observance of the provisions under Article 101;

49. breach of the obligations provided in Article 102;

50. breach of the provisions under Article 103;

50¹. failure to comply with the measures and obligations imposed pursuant to the provisions of Article 104 paragraphs (1) and (2);

50². non-compliance with the key indicators introduced in the reference offer in accordance with the provisions of Article 106 paragraph (6);

50³. failure to comply with the measures and obligations imposed pursuant to Article 107;

50⁴. failure to comply with the measures and obligations imposed pursuant to Article 108 paragraphs (1) and (2);

50⁵. failure to comply with the obligation imposed pursuant to Article 108¹ paragraph (1) to allow access to and use of physical infrastructure elements;

50⁶. failure to comply with the measures and obligations imposed pursuant to Article 109 paragraphs (1) to (3) and (5);

50⁷. failure to comply with the measures and obligations imposed pursuant to the provisions of Article 110 paragraphs (1), (3) and (4);

50⁸. breach of the obligation imposed pursuant to Article 11¹ paragraph (4) to respect, in whole or in part, the commitments entered into pursuant to Article 110¹ paragraph (1);

50⁹. failure to comply with the measures and obligations imposed pursuant to Article 111 paragraphs (1) and (2);

51. non-observance of the provisions under Article 112 paragraphs (1) to (3);

51¹. failure to comply with the measures and obligations imposed pursuant to Article 112 para. (4²) and (6);

51². breach of the obligation imposed pursuant to Article 112¹ paragraph (9) to respect, in whole or in part, the commitments offered pursuant to Article 112¹ paragraph (1);

51³. non-observance of the obligations imposed pursuant to Article 112² paragraph (3) on the fairness and reasonableness of prices;

51⁴. non-observance of the obligation laid down in Article 112² paragraph (5) to immediately inform ANCOM of the change in any circumstances that could be relevant for the analysis carried out in accordance with Article 112² paragraph (1);

51⁵. decommissioning or replacement of parts of the network with new infrastructure without sending the notification within the time limit laid down in Article 112³ paragraph (1) and under the conditions laid down in Article 112³ paragraph (3);

52. repealed

53. non-observance of the measures and obligations imposed pursuant to Article 113 paragraphs (1) to (3) and Article 114;

54. non-submission of the annual financial statements according to Article 130;

55. non-observance of the obligations deriving from the directly applicable legislation of the European Union in the field of electronic communications, where the competence of monitoring and verification of the compliance with these obligations belongs to the national regulatory authority.

Article 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 5% of the turnover, and, in case of repeated breaches, with fine amounting to up to 10% of the turnover.

(2) In view of setting a 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.

(6) For usage of the radio frequencies provided for in Article 28 paragraph (1) without a licence, the amount of the fine applied according to paragraph (1) is 0.1% of the turnover registered in the previous year by the person who commits the deed, for each day of usage without a licence.

(7) By way of derogation from the provisions of Article 16 paragraph (1) and of Article 28 paragraph (1) of the Government Ordinance no. 2/2001, approved with amendments and completions by Law no. 180/2002, with the subsequent amendments and completions, and of Article 22 paragraph (2) of Law no. 203/2018 on the measures to increase the efficiency of the payment of contravention fines, with the subsequent amendments, in the case of sanctions applied for the contraventions under Article 142, the offender may pay – within 15 days of the date when the minutes on assessing the contravention and applying the sanction under Articles 144 or 145 are handed over or otherwise communicated – half of the fine, and the investigating official will mention this possibility in the statement-of-facts.

Article 144. – (1) The contraventions under Article 142 items 1-2², 4, 5, 7-9¹, 11-19, 24³, 24⁶-24¹⁵, 24¹⁷-29, 29¹, 33, 35, 36-37³, 38-40¹, 40³-40¹³, 41², 46, 46¹ and 48-50 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.

(3) The contraventions provided for in Article 142 items 10 and 10¹ shall be assessed and sanctioned by the ANCOM control personnel in the statement-of-facts on the contravention and enforcement of the sanction.

Article 144¹. – The contraventions provided for in Article 142 items 30, 30¹, 32 and 32¹ shall be assessed and sanctioned, in accordance with Government Ordinance no. 2/2001 on the legal regime of contraventions, approved with amendments and completions by Law no. 180/2002, with subsequent amendments and completions, and with Government Decision no. 700/2012 on the organization and functioning of the National Authority for Consumer

Protection, with subsequent amendments and completions, by the control personnel of the National Authority for Consumer Protection, in the statement-of-facts on the contravention and enforcement of the sanction.

Article 144². – (1) The statement-of-facts on the contravention and enforcement of the sanction may also be concluded in electronic form. By way of derogation from the provisions of Article 19 of Government Ordinance nr. 2/2001 on the legal regime of contraventions, approved with amendments and completions by Law no. 180/2002, with subsequent amendments and completions, the statement-of-facts on the contravention and enforcement of the sanction concluded in electronic form shall be signed by the ascertaining agent with a qualified electronic signature.

(2) The statement-of-facts on the contravention and enforcement of the sanction concluded in electronic form shall be communicated according to Chapter V: Communication through «My ANCOM» service of Law no. 198/2022.

(3) The statement-of-facts on the contravention and enforcement of the sanction concluded in electronic form, if it cannot be communicated in the manner provided for in paragraph (2) shall be deemed to have been served on the date of communication of the paper copy thereof. The resulting document shall not bear the handwritten signature of the ascertaining agent and shall be communicated in accordance with Article 27 of Government Ordinance no. 2/2001, approved with amendments and completions by Law no. 180/2002, as subsequently amended and supplemented.

(4) In order to enforce the contravention fine, the statement-of-facts on the contravention and enforcement of the sanction concluded in electronic form shall be sent to the competent public authority by electronic means.

(5) If it cannot be transmitted in the manner provided for in paragraph (4), in order to enforce the contravention fine, the copy of the statement-of-facts on the contravention and enforcement of the sanction concluded in electronic form, printed on paper, without bearing the handwritten signature of the ascertaining agent, shall be sent. The statement-of-facts on the contravention and enforcement of the sanction concluded in electronic form can be accessed by electronic means. ANCOM shall ensure the access of the competent public authority to the original copy of the statement-of-facts on the contravention and enforcement of the sanction concluded in electronic form.

(6) This Article shall apply accordingly to the following normative acts: Government Emergency Ordinance no. 13/2013 on postal services, approved with amendments and completions by Law no. 187/2013, with subsequent amendments and completions, the Audiovisual Law no. 504/2002, with subsequent amendments and completions, Law no. 159/2016 regarding the regime of electronic communications networks infrastructure and on establishing certain measures for reducing the cost of electronic communications networks roll-out, with subsequent amendments and completions, Law no. 506/2004 regarding the processing of personal data and the protection of privacy in the electronic communications sector, with subsequent amendments and completions, Government Emergency Ordinance no. 34/2008 on the organization and functioning of the Single National Emergency Call System, approved with amendments and completions by Law no. 160/2008, with subsequent amendments and completions, Law no. 356/2018 regarding certain sanctioning measures in the field of radiocommunications, Government Decision no. 740/2016 regarding the making available on the market of radio equipment, with subsequent amendments and completions, Government Decision no. 487/2016 on electromagnetic compatibility, with subsequent amendments and completions, Government Emergency Ordinance no. 34/2014 on consumer rights in contracts concluded with professionals, as well as on amending and supplementing certain normative acts, approved with amendments by Law no. 157/2015, with subsequent amendments and completions, Government Emergency Ordinance no. 46/2019 regarding the operation of the Emergency Warning System "RO-ALERT", approved by Law no. 24/2021, Law no. 163/2021 on the adoption of measures regarding information and communication infrastructures of national interest and the conditions for the implementation of 5G networks and Law no. 198/2022.

Article 145. – (1) The contraventions under Article 142 items 3, 6, 6¹, 34, 35¹, 37⁴, 40², 41, 41¹, 47¹-47³, 50¹-50⁹, 51-51⁵, and 53-55 shall be assessed and the due sanctions shall be enforced by decision issued by ANCOM.

(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. In individualizing the sanction applicable to the offence referred to in Article 142 item 6¹, account shall be taken, inter alia, of whether the offender's conduct has had a negative impact on competition and, in particular, whether, contrary to information initially provided or subsequently updated, the offender has either installed, extended or upgraded a network or has not installed a network and has not provided objective justification for that change of plan.

(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 after the deed was committed. As for the breaches which last in time or those consisting of committing, based on the same resolution, at different time intervals, 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 of 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.

Article 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 timeframe granted to the provider pursuant to Article 141 paragraph (1).

Article 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.

Article 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 10th 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.

Article 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 applicable.

(4) When it deems 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.

Article 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 according to the law.

Article 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, and of the information provided for in the directly applicable legislation of the European Union;

a¹) compliance with the obligation provided for in Article 13¹ paragraph (3);

b) the level of public awareness under the terms of Article 47 paragraph (4), 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) submission to the control provided for in Articles 137 and 138;

d) compliance with the transparency obligation laid down in Article 106;

e) compliance with the measures provided 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 fully kept as own revenues, on a permanent basis, available to ANCOM, and shall be used in accordance with the provisions of the income and expenditure budget approved according to the law.

Article 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.

Article 153. – Any ANCOM decision jeopardising the rights of a legal or natural person, recognised under this emergency ordinance, or ANCOM's unjustified refusal to solve the request regarding a right recognised by this emergency ordinance may be challenged in

administrative contentious, in accordance with the provisions of Article 12 paragraph (5) of the Government Emergency Ordinance no. 22/2009, approved by Law no. 113/2010, with the subsequent amendments and completions.

CHAPTER XIII

Transitory and final provisions

Article 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.

Article 154¹ – (1) By 31 August 2022, in order to facilitate the implementation of new technologies within terrestrial electronic communications network capable of providing wireless broadband electronic communications services, ANCOM shall take the necessary measures to:

a) reform the 3.4-3.8 GHz frequency bands and grant the rights of use of the radio frequencies for frequency blocks that are sufficiently large in this band;

b) grant for use at least one GHz of the 24.25-27.5 GHz radio frequency band, under certain clear market demands and the absence of significant constraints for the migration of current users or for the release of the band.

(2) The term specified in paragraph (1) may be extended, where justified, according to the provisions of Article 19² or Article 20¹, paragraphs (2), (3) and (5).

Article 154² – (1) The provisions of Article 31³, paragraph (1) shall not apply to the rights of use of the radio frequencies entered into force before 31 December 2021, while the granting of new rights for the specific radio frequencies shall be carried out as laid down in Article 25.

(2) By way of exception from the provisions of paragraph (1), renewal of rights of use of radio frequencies awarded through selection procedure which have already established, by Government Decision, the licence fee for extension, shall be made under the conditions and for the period covered therein, without completing the steps provided for in Article 31³.

Article 154³ - (1) For the radio frequency bands subject to certain technical implementing measures adopted at European level by 20 December 2018, which set harmonized conditions to enable the use of radio spectrum for the provision of broadband electronic communications networks and services, the provisions of Article 20¹ paragraphs (2), (3) and (5) shall apply by reference to 20 December 2018.

(2) For the technical implementing measures provided at paragraph (1), adopted at European level after 20 December 2018, the provisions of Article 20¹ paragraphs (2), (3) and (5) shall apply by reference to the date of adoption of these measures.

Article 154⁴ – On the date of entry into force of ANCOM Decision provisioned at article 16, paragraph (2), the Government Decision no. 376/2020 on the approval of National Table of Frequency Allocations, published in Romanian Official Journal, Part I, no.427 and 427 bis of 21 Mai 2020, shall be repealed.

Article 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 the 25th of 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 the 25th of 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 own 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.

Article 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.

Article 156¹. – (1) National measures regarding end-users’ access to, or use of, services and applications through electronic communications networks shall be adopted with the observance of the Charter of Fundamental rights of the European Union and the general principles of Union’s law.

(2) Any measures of those provided for at paragraph (1) which may restrict the exercise of rights or freedoms laid down by the Charter of Fundamental Rights of the European Union shall be proportionate, necessary to meet the objectives of general interest and to be imposed only within the limits provided by the legal provisions.

Article 156². – The provisions of Chapter III – Provisions for establishing certain measures to facilitate the roll-out of electronic communications networks under Law no. 198/2022 shall apply accordingly to construction works concerning the electronic communications networks and physical infrastructure elements owned or managed by the public institutions within the national defence, public order and national security system.

Article 157. – Annexes no. 1 and 3-5 are an integral part of this Emergency Ordinance.

Article 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 (1¹), reading as follows:

“(1¹) 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. Under Article 6, paragraph (1), letter c) shall be repealed.

4. Under Article 6, paragraph (1), letter d) 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. Under Article 6, Paragraph (2), letters d) and e) 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. Under Article 6, a new letter, letter g), shall be introduced in 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 6¹, reading as follows:

“Article 6¹. – 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 imposed access obligations 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), items 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 to 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 to electromagnetic compatibility, and of postal services, observing the applicable legal provisions;”.

8¹. Under Article 10 paragraph (2), a new item shall be introduced after item 20, item 20¹, reading as follows:

“20¹. elaborates and adopts technical rules including as regards to the control of the compliance with certain obligations in the field of electronic communications, audiovisual communications, radio equipment and electronic communications 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), item 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;"

9¹. Under Article 10 paragraph (2), item 32 shall be amended and shall read as follows:

"32. develops the regulations necessary for the establishment of communications with the National Unique System for Emergency Calls, including as regards to the transmission of emergency calls onboard vehicles 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 (2¹), reading as follows:

"(2¹) 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."

Article 159. – Under Article 6 of the 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."

Article 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 the 2nd of 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 the 5th of 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 the 4th of 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.

*

The present Emergency Ordinance transposes:

- Directive 2018/1972/EU of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (recast), published in the Official Journal of the European Communities, Series L, no. 321 of 17 December 2018, except for the provisions of Article 2 indents 36 to 40, Article 3 to 11, Article 38 paragraph (2), Article 39 paragraphs (2) and (8), Article 43, Article 44, Article 57 paragraphs (4) and (5) and Article 114;

- the provisions of Article 40, paragraph (8) under Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC, published in the Official Journal of the European Communities, Series L, no. 153 of 22 May 2014;

- the provisions of Article 8 paragraph (8) under Directive 2014/30/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to electromagnetic compatibility, published in the Official Journal of the European Communities, Series L, no.96 of 29 March 2014.

[\[the text of Article no. 160, Paragraph \(3\) of Chapter XIII was repealed on 10 July 2022 by Article no.2, point 256 of Chapter II of Law 198/2022\]](#)

PRIME-MINISTER

EMIL BOC

ANNEX No. 1: Quality of service parameters

Quality-of-service parameters, definitions and measurement methods mentioned at Article 61.

a) For providers ensuring access to a public electronic communications network:

Parameter	Definition	Measurement method
Supply time for initial connection	ETSI EG 202 057	ETSI EG 202 057
Frequency of complaints with respect to 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 interpersonal communications services:

Parameter	Definition	Measurement method
Time required to connect the call	ETSI EG 202 057	ETSI EG 202 057
Frequency of complaints regarding billing correctness	ETSI EG 202 057	ETSI EG 202 057
Interrupted call rate	ETSI EG 202 057	ETSI EG 202 057
Failed call rate	ETSI EG 202 057	ETSI EG 202 057
Probability of failure in connecting the call		
Delays in call signalling		

c) For Internet service providers

Parameter	Definition	Measurement method
Packet delay	ITU-T Y .2617	ITU-T Y .2617
Jitter variation	ITU-T Y .2617	ITU-T Y .2617
Packet loss rate	ITU-T Y .2617	ITU-T Y .2617

ANNEX No. 2

[The text of Annex no.2 was repealed at 10 of July 2022 by Article no.2, point 259, chapter II of the Law no. 198/2002]

ANNEX No. 3: Criteria for the determination of wholesale voice termination rates

- a) the established rates must allow the recovery of costs incurred by an efficient company; the efficient costs shall be assessed on the basis of current costs; the methodology to calculate efficient costs shall be based on a bottom-up modelling approach using long-run incremental traffic-related costs of providing the wholesale voice termination service to third parties;
- b) the relevant incremental costs regarding the voice termination service shall be determined by the difference between the total long-run costs of an operator providing its full range of services and the total long-run costs of that operator not providing a wholesale voice termination service to third parties;
- c) only those traffic-related costs which would be avoided in the absence of a wholesale voice termination service being provided shall be allocated to the relevant termination increment;
- d) the costs related to the network capacity increase should be included to the relevant termination increment only if they are driven by the need to ensure the transmission of additional traffic related to the voice termination calls;
- e) the licence fee and the radio spectrum fee shall be excluded from the mobile voice termination increment;
- f) only those wholesale commercial costs directly related to the provision of voice termination service to third parties shall be included to the relevant termination increment;
- g) all fixed network operators shall be considered to provide voice termination services at the same unit costs as the efficient operator, regardless of their size;
- h) for mobile network operators, the minimum efficient scale shall be set at a market share not below 20%;
- i) the relevant approach for asset depreciation shall be economic depreciation; and
- j) the technology choice of the modelled networks has a prospective dimension, based on an IP core network, taking into account the various technologies likely to be used over the period

of validity of the maximum rate, in the case of fixed networks, calls shall be considered to be exclusively packet switched.

ANNEX IV: Criteria for assessing co-investment offers

a) co-investment offer shall be open in a non-discriminatory manner to any undertaking over the lifetime of the network which is subject to this offer.

The undertaking designated as having significant market power may include in the offer reasonable conditions regarding the financial capacity of any potential undertaking, such as for instance submission of proofs to demonstrate their ability to deliver phased payments according to the deployment plans, the acceptance of a strategic plan on the basis of which medium-term deployment plans are prepared, etc.

b) the co-investment offer shall be available and easily identified on the website of the undertaking designated as having significant market power.

c) the undertaking designated as having significant market power shall provide to any potential bidder that has expressed interest to participate in investments, without undue delay, detailed and complete information regarding the provisions of the co-investment agreement, including its legal form, as well as, if necessary, essential terms of the governance rules of the co-investment vehicle.

d) the undertaking designated as having significant market power shall set in advance the action plan for the elaboration and development of the co-investment participation project and shall also clearly explain them in writing to any potential bidder, respectively shall communicate to all undertakings in a clearly way all the significant milestones of the project without any discrimination.

e) The co-investment offer shall contain terms which favour sustainable competition in the long term in particular:

(i) all undertakings shall be offered fair, reasonable and non-discriminatory conditions for participation in the co-investment agreement in relation with the time they join, including in terms of:

- financial contribution required for the acquisition of certain rights;

- the protection awarded to the co-investors by those rights during the building phase and during the exploitation phase, for example by granting some indefeasible rights of use – IRU for the expected lifetime of the network subject to co-investment;
- the conditions for joining and potentially terminating the co-investment agreement.

In this context, “non-discriminatory terms” does not mean that all the potential co-investors shall be offered exactly the same conditions, including financial ones, but that all the differences regarding the offered terms shall be justified on the basis of the same objective, transparent, non-discriminatory and predictable criteria such as the number of end-user lines committed for.

(ii) the offer shall allow flexibility regarding the value and the timing of the commitment undertaken by each co-investor, for example by means of an agreed percentage, which could be increased, of the total end-user lines in a given area, to which the co-investors have the possibility to commit gradually, and which is set at a certain level enabling the undertaking with limited resources to enter the co-investment at a reasonably minimum scale and to gradually increase their participation while assuring adequate levels of initial commitment; the determination of the financial contribution to be provided by each co-investor needs to reflect the fact that early investors accept greater risks and engage capital sooner.

(iii) imposing an increasing premium over time shall be considered to be justified for co-investment participation made at later stages or for new investors joining after the commencement of the project, to reflect diminishing risks and to counteract any incentive to withhold capital in the earlier stages;

(iv) the co-investment agreement shall allow the assignment of acquired rights to other co-investors or to third parties on condition that the transferee shall assume the fulfilment of all the obligations of the transferor under the agreement;

(v) the co-investors shall grant each other reciprocal rights, according to fair and reasonable conditions on accessing the infrastructure which has been subject of the investment for the purpose of providing services downstream, including to end-users, in accordance with transparent conditions, provided in offer and co-investment agreement, in particular when the co-investors are individually and separately responsible for the installation of certain parts of the network; when a co-investment vehicle is created, it shall provide access to the network to all co-investors, directly or indirectly, on a equivalence of their contributions basis and

according to fair and reasonable conditions, including certain financial conditions that reflect the different levels of risk accepted by the individual co-investors.

f) The co-investment offer shall ensure a sustainable investment likely to meet future needs, by installing new network elements which contribute significantly to the development of very high-capacity networks.

ANNEX 5: Information concerning the exercise of the right of withdrawal

Chapter 1: A. Withdrawal instructions model

(1) Withdrawal right

You have the right to withdraw from this contract within 14 days without giving any reason.

The withdrawal period will expire after 14 days starting from the day – see point 1 of the Filling instructions.

To exercise your right of withdrawal you must inform us – see point 2 of the Filling instructions – regarding your decision to withdraw from the present contract, using an unequivocal statement, for example, a letter sent by post, fax or e-mail. For this purpose, you can use the below withdrawal form template; using it is not mandatory – see point 3 of the Filling instructions.

To meet the withdrawal deadline, it is sufficient to send the communication concerning the exercise of the right of withdrawal before the expiry of the withdrawal period.

(2) The withdrawal consequences

If you withdraw, we shall reimburse to you all payments we received from you, including the costs of delivery, with the exception of the additional costs resulting from your choice of a delivery method other than the least expensive type of standard delivery offered by us, without undue delay and, in any case, no later than 14 days from the date on which we are informed about your decision to withdraw from the contract. We will reimburse you using the same payment method as the one used for the initial transaction, unless you have expressly agreed to another method of reimbursement; in any case, you will not be charged any fees as a result of such reimbursement – see point 4 of the Filling instructions.

See instruction 5 of the Filling instructions.

See instruction 6 of the Filling instructions.

(3) Filling instructions

1. Insert one of the following texts between inverted commas:

- a) For a contract regarding the provision of services: "conclusion of the contract"
- b) For a sale contract: "which you or a third party, other than the transporter, indicated by you, takes physical possession of the products"

2. Insert your name, postal address and, if applicable, your phone number, fax number and e-mail address.

3. In case you offer to the consumer the option to electronically complete and submit the information regarding his/her withdrawal from the contract, insert the following: "Furthermore, you can insert and send electronically (insert the web address) the standard withdrawal form or any other unequivocal statement. If you use this option, we will send you, as soon as possible, on a durable medium, for example, by e-mail, the confirmation of receipt of the withdrawal request.

4. For sale contracts where you have not offered to collect the goods in case of withdrawal, insert the following: " We may postpone the refund until the date we receive the goods or until you have provided us the proof that you have returned the products, whichever is the closest date."

5. If the consumer has received products in connection with the contract, insert the following:

a) insert:

- "We will recover the products"; or

- "Ship the products or hand them directly to us or... [insert the name and, if necessary, the postal address of the person authorized to receive the products] without undue delay and, in any case, no later than 14 days from the date on which you communicated your withdrawal with us. The deadline shall be respected if the products are sent back before the expiry of 14-day period."

b) insert:

- "We shall cover the cost of returning the products".:
 - "You shall cover the direct cost of returning the products."
 - If, in a distance contract, you do not offer to cover the cost of returning the products, and the products, by their nature, cannot be normally returned by post: "You shall cover the direct cost of returning the products,.....lei/[insert the amount]"; or, if the cost of returning the products cannot be calculated reasonably in advance: "You shall cover the direct cost of returning the products. The approximate cost is estimated to maximum.....lei [insert the amount]." Or
 - If, in the case of off-premises contracts, the products, by their nature, cannot be returned in a normal way by post and have been delivered at the consumer's home at the time of the conclusion of the contract: "We shall recover the products and we shall cover the related costs."
- And
- c) insert: "You are responsible only for diminishing the value of the products resulting from manipulation, others than the necessary for determining the nature, quality and functioning of the products."

6. For a contract regarding the provision of services, insert the following: "If you have requested the commencement of the services during the withdrawal period, you owe us an amount proportional to the services provided until you have communicated to us the exercise of the right of withdrawal from this contract, in relation to the full coverage of the contract."

CHAPTER 2: B. Withdrawal draft form template

The present form shall be completed and returned only if you wish to withdraw from the contract.

-To [here you introduce the name, the postal address and, if the necessary, the phone number, fax and email address of the professional]:

- I/we (*) hereby inform you my/our (*) of my withdrawal from the contract for the provision of the following services (*)/sale of the following packages of publicly available electronic communications services and terminal equipment (*)/

- Ordered on (*)/received on (*)

- Name of consumer(s)

- Address of consumer(s)
- Signature of consumer(s) (only if this form is notified on paper)
- Date

.....

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