



ADMINISTRATIVE BOARD

DECISION

August 18, 2008

no. 9

REGISTERED

With the Ministry of Justice of RM
no. **604** September **09, 2008**,
Minister
_____ **V. PÎRLOG**

On approving the Regulations on Control Procedure in Electronic Communications

For the purpose of implementing the provisions of Art. 10 section (3) of the Electronic Communications Act no. 241-XVI of November 15, 2007 (Official Gazette of the Republic of Moldova, 2008, no. 51-54, art.155), the Administrative Board

Hereby DECIDES:

To approve the Regulations on Control Procedure in Electronic Communications (attached);

Chairman of the Administrative Board

Sergiu SÎTNIC

Board Member

Iurie URSU

Regulations on Control Procedure in Electronic Communications

I. GENERAL PROVISIONS

1. These Regulations set forth the procedure of exercising control and other measures thereof in electronic communications.
2. The control in electronic communications shall be an activity exercised by the National Regulatory Agency for Electronic Communications and Information Technology (ANRCETI) (hereinafter the Agency), for the purpose of carrying out its functions subject to the Law on Electronic Communications no. 241-XVI of November 15, 2007.
3. The control shall aim at ensuring the implementation of strategies of electronic communications sector development and the surveillance over compliance by electronic communications network and/or service provider with the legislation in force.
4. The control shall be exercised with the view of protecting competition and end-users' rights, under transparent, objective and fair conditions.
5. The control concerns legal and/or natural persons subject to the provisions of the legal and normative acts in the field of electronic communications.
6. The terms used for the purpose of these Regulations shall be defined as follows:

Control – a total of measures directed at verification of compliance by electronic communications network and/or service providers with the legislation in force and exercised by a specialist or a group of specialists by visiting the said providers or by inviting representatives to the Agency;

Planned control – control scheduled in advance to be exercised on electronic communications network and/or service providers, pursuant to the provisions of the legislation in force, at an established periodicity, but not more frequent than once a year;

Unplanned control - control, which does not fit the concept "planned control";

Repeated control – control meant to verify the fulfilment of prescriptions to remedy the shortcomings detected in the previous control reports (planned or unplanned), being considered as a constituent of the previous control;

Control order – a document, signed by the Director or one of Deputy Directors of the Agency, authorising a specialist or a group of specialists to exercise control;

Control subject-matter – a checklist of actions to be fulfilled by the specialist or group of specialists when exercising control;

Surveillance – a total of actions to be fulfilled by a specialist or group of specialists, by continuously or periodically analysing specific information (statistical, results of control exercised on other providers of electronic communications networks and or services related to the activity of the given provider, written evidence of witnesses etc.) or proof, describing with certain probability the deviations of the provider from the legislation in force, without interfering with his activity. Where an inadmissible probability of deviation is detected, the Agency may begin control of the given provider.

II. CONTROL PROCEDURE

7. The Agency, within the competence, set by the legislation in force, shall exercise control on:

- 1) compliance with laws, other normative documents and regulations governing the activity in electronic communications, except controls mentioned in art.7 section (3) sub-section i) of the Law on Electronic Communications no. 241-XVI dated November 15, 2007;
- 2) Compliance with the general authorisation or license conditions;
- 3) Compliance with the principles, obligations, and rules of interconnection and access;
- 4) Fulfilment of obligations imposed on providers with significant market power on a relevant market;
- 5) Fulfilment of the conditions regarding contributions due to the Universal Service Fund;
- 6) Fulfilment of the obligations imposed on providers with regard to Universal service;
- 7) Compliance with the requirements of regulatory documents in terms of the use of numbering resources;
- 8) Quality of electronic communications services, their compliance with the general authorisation or license conditions;
- 9) Payment of license issuance fees;
- 10) Payment of regulatory and monitoring fees;
- 11) Observance of end-users' rights;
- 12) Compliance with the provisions of normative documents governing the consideration of complaints;
- 13) Compliance with the provisions of normative documents in case of special and justified reasons;
- 14) Compliance with the provisions of normative documents in case of an investigation targeted at considering a request for license issuance;
- 15) Fulfilment of Agency decisions;
- 16) Compliance with the regulations approved by the Agency with reference to user's rights protection;
- 17) Authorised provision of electronic communications networks and/or services;
- 18) Possession of a license for the use of limited resources (radio channels, radio frequencies, numbering resources) as a condition for the provision of electronic communications networks and/or services;

- 19) Compliance by electronic communications networks and/or service providers with the obligations set in art. 20 section (2) and (3) of the Law on Electronic Communications no. 241-XVI dated November 15, 2007, (except sub-section c) of section (3) art. 20, due to enter in force on January 01, 2010);
- 20) Transparency of both tariffs and conditions of using public electronic communications services;
- 21) Plausibility of the information provided in the notification and in the form of abstract network or service description, presented as part of notification;
- 22) Observance of the procedures set by the Agency when conceding the right to use radio frequencies;
- 23) Ensuring free emergency calls;
- 24) Fulfilment of obligations imposed by the Agency with reference to ensuring number portability;
- 25) Ensuring personal data protection;
- 26) Degree of maintaining the security and integrity of public electronic communications services.

8. Control actions shall consist in verification of legal and natural persons' activity, which is subject to the provisions of legal and normative acts documents in the field of electronic communications, for the purpose of determining the degree of compliance with the clauses contained in those documents.

9. The controls can be: planned, unplanned, and where necessary, repeated.

10. Planned controls shall be directed at providers of electronic communications networks and/or services, selected on basis of the criteria of supposed prejudice that could be caused as a result of their non-compliance with the provisions of the legislation in force, in the order of its decrease.

11. The unplanned control shall be conducted after instructions have been given in this respect by the director or one of the deputy directors, in cases where the following is available:

- 1) Veridical information, obtained during surveillance activity, allowing to consider that the actions of electronic communications networks and/or service providers contain elements of an administrative contravention;
- 2) Obligatory requirements that control shall be exercised more frequently than once a year in order to verify compliance with the technological process at its different stages;
- 3) A requirement from law enforcement bodies;
- 4) Special and justified reasons or petitions.

12. The number of unplanned controls, regardless of their purpose, shall not exceed 50% of the number of planned controls. The economic entity shall be notified on the unplanned action on the day it begins.

13. The control action shall be exercised by one specialist or a group of specialists from the Agency, empowered by an order in this respect. The control (planned or unplanned) shall last for a maximum of working 3 days. In exceptional circumstances, the Agency Administration may extend this term.

14. The control actions shall be exercised responsibly and objectively, according to the subject matter proposed for control. Electronic communications networks and/or service providers may be subject to controls according to one and the same subject matter once a year at maximum.

15. The upcoming planned control action shall be announced at least 3 days in advance, through a notification sent to the electronic communications networks and/or service provider by fax or by phone.

16. No notification shall be sent about an upcoming unplanned control.

17. The specialist or group of specialists, authorised to exercise control, shall present to the person under control his permit and order on control, complemented with the control subject matter.

18. The control shall be exercised in the presence of the administrator representing the person under control, whose function is confirmed by means of an Excerpt from the State Register of Enterprises and Organisations issued by the State Registration Chamber. Where the administrator is missing, another person in charge, duly authorised, shall be present throughout the control action.

19. Upon finalising a control action the controlling specialist shall draw up a Control Report, where all the relevant information and conclusions pertaining to the control action shall be registered, including eventual administrative contraventions.

20. The Control Report shall be made in two copies, signed on both sides. The person under control shall conform by signature his cognisance of the Control Report, even if in disagreement with the facts contained in the contents. Refusal of the person under control to sign the Control Report shall be mentioned in the document.

21. One copy of the Control Report shall be kept by the person under control, or if absent or unwilling to keep it, shall be posted by a registered letter with advice of delivery, within a maximum of 7 days from the date it was drawn up. The other copy of the control Report, with the relevant materials attached shall be presented to the Director of Monitoring and Control Division. (MCD).

22. The Director of MCD, after duly analysing the documents, shall submit the Control Report, the complementing documents and his proposals to the Agency Director, or one of the Deputy Directors.

23. Following the instructions of the Director or one of the Directors, who examined the control Report, the MCD Director, depending on the detected shortcomings, shall set terms for their elimination, which fact shall be notified to the person under control by means of a letter of advice, posted directly or via registered mail with advice of delivery.

24. Proceeding from the control action and the letter of advice, the person under control shall remedy the detected shortcomings, within the timeframe set in the letter of advice.

25. Within 3 working days from the expiry of the prescribed term, the person subject to a control procedure shall inform the Agency, by a registered letter with confirmation of receipt, about the actions taken to eliminate the breaches, including commentaries to that effect, if appropriate.

26. Should the person under control fail to present to the Agency, within the established timeframe, information with reference to the measure he took to eliminate shortcomings, or should the presented information be incomplete, evasive or ungrounded, the MCD Director shall address a proposal to the Agency Director to order repeated control.

27. Upon finalising a repeated control action, the controlling specialist shall draw up report to contain the relevant information and conclusions pertaining to the control action.

28. The Repeated Control Report, complemented with due proposals made by the Director of MCD shall be presented to the Director or one of Deputy directors for an appropriate decision to be adopted, pursuant to the legislation in force.

29. If the shortcomings have been eliminated or if no shortcomings have been detected as a result of control actions, the Director or one of the Deputy Directors shall advise conclusion of the control action and the Control Report shall be placed on file.