[FR] Government Bill on Confidence in the Digital Economy Submitted and the CSA's Opinion

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Nicole Fontaine, the Minister for Industry, submitted her Bill on confidence in the digital economy to the Council of Ministers on 14 January. The purpose of this text is to lay down specific rules that more particularly clarify the obligations of Internet service providers and the extent of protection for users. It is divided in to four main sections: the responsibility of technical providers in respect of the content they pass on, transposition of Directive 2000/31/EC on e-commerce, provisions concerning encryption and computer crime, and satellite systems.

If the Bill is passed as it stands, the responsibility of Internet site hosts in respect of the content they host could only be invoked, in either civil or criminal terms, if they had actual knowledge of an unlawful activity or information and refrained from taking prompt action to withdraw the information or block access to it. Hosts Légipresse and access providers would not be subject to a general obligation to supervise the information they pass on or store, or to actively seek out facts that would reveal unlawful activities. As regards connection data, however, they would be required to hold and keep data allowing the identification of any person concerned.

As regards spamming, the Bill includes a general scheme in the Post and Telecommunications Code that would prohibit canvassing any person who had not expressed consent in advance to receiving such electronic messages. There would be exceptions to this principle, including the case of addressees who supplied address details directly on the occasion of a sale, that of addressees who had had the opportunity to object to such use of their address details, and where canvassing refers exclusively to goods or services similar to those previously provided.

Furthermore, on-line information to consumers would be reinforced by the compulsory indication of the identity of persons making sales offers by electronic means (name, address, listing in the Register of Commerce and Companies, company capital). The electronic contract would be included in the Civil Code, with new articles (Article 1369-1 et seq.) setting out the conditions for forming a contract concluded in this way. More particularly, a contract would be deemed accepted by an exchange of confirmations and notices of receipt. Penalties for computer crime would become stiffer; sentences for attacks on computer systems

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would be almost doubled, and new articles (Articles 230-1 et seq.) would be added to the Code of Criminal Procedure (concerning the decryption of encrypted data in the context of an investigation. Lastly, the use of encryption would be liberalised, as would the supply and import from Member States of the European Union of means of encryption with the sole function of authenticating data or checking its integrity.

The Minister of Culture asked the CSA for its opinion on the Bill, and this was submitted on 17 December 2002. In its report, recalling that the convergence of services and networks should encourage the legislator to incline towards technological neutrality and therefore towards equality of treatment between audiovisual communication services with similar content accessible on different supports, the CSA regrets that the Bill does not include a more radical reworking of the Act of 30 September 1986. It also feels it is necessary for the new Act to define clearly the criteria for classifying television and sound broadcasts and their corresponding legal schemes, whatever the support used by the service. For public on-line communication, it should be possible to apply this definition equally to the full simultaneous broadcasting of radio and television services already broadcast on other supports and to the broadcasting of original services that the general public assimilate to such services.

The Bill will be submitted to the National Assembly in February, and then to the Senate.

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