[FR] Legality of the Decree Laying Down the Conditions for Applying "Must-carry" Rules to Terrestrially Broadcast Digital Television on Cable Networks

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The Decree of 31 January 2002 lays down the practical must-carry conditions for terrestrially broadcast digital television on cable networks; this requires carriage of the terrestrially broadcast channels normally received in the area. Called on by the cable operators to cancel this Decree, the Conseil d'Etat rejected all the applications submitted.

Thus the disputed Decree did not violate Article 34 of the Act of 30 September 1986 (that lays down the principle of the obligation to broadcast) by detailing the nature of the services covered by this obligation, as no rule or principle requires this competence to be exercised by the Conseil supérieur de l'audiovisuel (audiovisual regulatory authority CSA). Nor did the Conseil d'Etat believe that the disputed Decree was contrary to the right of ownership of the distributors of services by cable the "must-carry" obligation imposed on them did indeed deprive those that owned the network they exploited of freely disposing of a part of its bandwidth, but such a limitation concerned an activity subjected by law to a scheme of authorisation and had been imposed with a view to the general interest of promoting the development of television services broadcast terrestrially in digital mode and, as a result, greater pluralism in currents of socio-cultural expression.

Nor did the disputed Decree flout the principle of equality it did not create a difference in treatment manifestly out of proportion to the different situations existing between the distributors of television services by cable and by satellite. With regard to the general interest pursued by the legislation, the disputed Decree did not excessively restrict the freedom of enterprise and the freedom of trade and industry. The argument that the Decree violated Community rules on competition was also rejected; it did not place the television services broadcast terrestrially in digital mode in a dominant position that they would be able to abuse in economic terms. Nor were the disputed provisions contrary to the principles of non-discrimination and free circulation since they did not provide that only French operators were authorised to broadcast television services terrestrially in digital mode, nor that only French television services would be broadcast by this means.

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Unfortunately the Act on electronic communications and audiovisual communication services (Telecoms Package, see IRIS 2004-3: 8), adopted on 3 June and currently under examination by the Constitutional Council, will include in the Act of 30 September 1986 the general broadcasting ("must-carry") obligations, thereby rendering the provisions of the Decree criticised before the Conseil d'État totally inapplicable...

Conseil d'État (5 et 4 sous-sections réunies), 26 mars 2004, Stés UPC France, Aform et autres

Conseil d'État (5 and 4 sub-sections combined), 26 March 2004, Sociétés UPC France, Aform et al

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