[FR] Constitutional Council Publishes its Decision on the Act on Confidence in the Digital Economy

IRIS 2004-7:1/18

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On 10 June the Constitutional Council published its decision on the provisions of the Act on Confidence in the Digital Economy (LCEN) which had been referred to it three weeks earlier (see IRIS 2004-6: 11). The first dispute concerned e-mail, defined in Article 1(IV) of the Act as "any message in the form of text, voice, sound or image sent via a public communication network and stored in a network server or in the addressee's hardware until it is recovered by the addressee". The Council held that this provision merely defined a technical process and could not affect the legal scheme covering private correspondence, contrary to the claims of the Members of Parliament who had referred the matter. Therefore there was no foundation for the claim that such a definition would infringe respect for privacy. The Constitutional Council was also asked to look into the provisions concerning the liability of technical service providers (Art. 6(1), (2) and (3)). These excluded civil and criminal liability on the part of hosts in two cases no knowledge of the disputed content or of its unlawful nature, and withdrawal of such content. The Council held that these provisions could not impose liability on the host merely because it had not withdrawn information reported by a third party as being unlawful; for liability to be imposed it was also necessary for the unlawful nature of the reported information to be manifest or for a judge to have ordered its withdrawal. Subject to interpretation in this way, the Council felt that the criticised provisions merely drew the necessary consequences of the unconditional and specific prescriptions contained in Article 14 of the Directive of 8 June 2000 on e-commerce and could not be claimed to be unconstitutional. Lastly, concerning the scheme for prescription of remedies for on-line communication (Art. 6(V)), the applicants felt that these provisions flouted the principle of equality before the law as they provided for the period during which the right to reply on-line could be exercised and for calculation of the deadline for prescription starting on the date on which the message ceased to be available on-line for messages communicated exclusively on-line, whereas for other messages this period started on the date of first publication. The Council, in view of the different conditions for receiving a communication as a written document and as an on-line document, held that the legislator was entitled to make non-identical arrangements for the prescription of remedies for these two types of press infringement. However, in this specific case the choice made did indeed flout the principle of equality. The law made provision for civil and criminal action during periods of time that were manifestly too different depending on the medium used

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and the disputed provisions were therefore invalidated. The same applies to the starting point for the period of time for exercising the right to reply provided for in Article 6(IV). Subject to this reservation and these censures, the Council has therefore validated the LCEN; the 58 articles it contains will therefore form the foundation for legislation on the Internet in France (e-commerce, advertising by electronic means, obligations incumbent on editors of on-line content, technical service providers, electronic voting, etc). After eighteen months of discussion and more than two years after the deadline for transposing the Directive on ecommerce into national legislation, the Act finally came into force on 23 June.

Décision n° 2004-496 DC du 10 juin 2004

http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=CSCL0407405S

Decision no. 2004-496 DC of 10 June 2004

Loi n° 2004-575 du 21 juin 2004 pour la confiance dans l'économie numérique, JO du 22 juin 2004

http://www.legifrance.gouv.fr/WAspad/UnTexteDeJorf?numjo=ECOX0200175L

Act No. 2004-575 of 21 June 2004 on confidence in the digital economy, published in the Journal Officiel of 22 June 2004

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