[FR] *Conseil d'Etat*'s Opinion on Ceasing Analog Broadcasting

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On 23 May the *Conseil d'Etat* delivered its opinion on the way analog broadcasting is to cease. The French audiovisual regulatory authority (*Conseil Supérieur de l'Audiovisuel* - CSA) had put the matter to the *Conseil d'Etat* as the highest administrative jurisdiction in the country to determine whether it could amend or revoke a current authorisation for terrestrial broadcasting in order to carry out the necessary reorganisation of frequencies for the introduction of terrestrially-broadcast digital television (TDT). The reply from the *Conseil d'Etat* is clear - only the legislator may authorise and organise the early ceasing of services broadcast in analog mode. It explained that, while the CSA could, by means of unilateral decisions, amend authorisations for the use of radio-electric frequencies in order to ensure the development of television networks, this did not lawfully extend to allowing it to stop services broadcast in analog mode, even in areas of limited reception, even if they were to be partly or totally replaced by services broadcast in digital mode, for which different technical and economic conditions and capacities for use applied. It also recalled that Article 127 of the Act of 9 July 2004 on electronic communications and audiovisual communication services and Articles 26 and 30-III of the Act of 30 September 1986 guaranteed the maintenance of the communication service in analog mode for holders of authorisations. Furthermore, the *Conseil d'Etat* pointed out that while it was for the legislator to take the necessary action to organise the end of analog broadcasting, it was obliged to take proper account of the rights of both service editors and viewers. In regard to the former, the law would permit the reconsideration of current authorisations, making their holders responsible for any changes in frequency and the cost resulting from their contractual relationships with service distributors. In regard to viewers, the *Conseil d'Etat* felt that it was for the legislator to make the necessary arrangements to maintain the freedom of audiovisual communication and to uphold the principle of the continuity of the public service. The *Conseil d'Etat* also pointed out that in order to ensure nationwide digital coverage, other replacement procedures, particularly using satellite, should be guaranteed in order to cover less definite areas. These services must be accessible at a reasonable cost. The *Conseil d'Etat* indeed referred to "arrangements for modulated financial support" for those viewers who needed it. In the light of these recommendations, the Government is sending to the *Conseil d'Etat*, to the CSA and to the Regulatory Authority for Electronic Communications and Postal Services the bill on modernising audiovisual

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broadcasting and the television of the future, amending the Freedom of Communication Act of 30 September 1986.

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Opinion of the Conseil d'Etat of 23 May 2006

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