[FR] *Conseil d'Etat* Cancels the Conventions of Two Terrestrially Broadcast Digital TV Channels

IRIS 2008-5:1/11

Amélie Blocman
Légipresse

On the basis of two decisions adopted on 5 March 2008, the *Conseil d'Etat* has cancelled the conventions and broadcasting authorisations between the music channels broadcast on digital terrestrial television, Virgin 17 and W9, and the *Conseil Supérieur de l'Audiovisuel* (national audiovisual regulatory authority - CSA) because of the illegality of the definition of the methods for broadcasting audiovisual works and works originally made in the French language. According to the terms of Article 27 of the Act of 30 September 1986, the channels are required to broadcast, "more particularly during peak viewing times, at least 60% of cinematographic and audiovisual works of European origin and 40% originally made in the French language". And according to paragraph 4 of Article 14 of the corresponding implementing decree of 17 January 1990, "for the editors of services broadcast terrestrially in digital mode (...) the conventions and specifications shall lay down peak viewing times according to the nature and scheduling of the service". In the first case, the convention between *Virgin 17* and the CSA laid down peak viewing times as being "between 7 a.m. and midnight", and provided that at least 75% of air time was to be devoted to music programmes, without stating their distribution throughout the day. Although the provisional schedule for programmes provided for non-music programmes were to be spread over the day, they were in fact only broadcast between 6 and 11 p.m. It was for this reason that the channel's competitors had brought the case before the *Conseil d'Etat* , on the grounds that Virgin 17 was no longer a music channel but had become a "mini-generalist" channel, in competition with them for valuable income from advertising. The *Conseil d'Etat* held that the disputed convention left it possible for the broadcaster to only schedule for evening broadcasting those audiovisual works likely to attract a larger audience than music broadcasts. Moreover, the convention used a definition of peak viewing times that was manifestly unsuitable in the light of the rules governing the programme's scheduling, thereby disregarding the provisions of the statute and regulations referred to above. The second case, concerning the channel W9, raised the same question for the *Conseil d'Etat* , which was required to deliberate on the complaint, also brought by competitor channels, concerning amendments made by a codicil dated 15 March 2005 to the convention between the channel and the CSA. Although it retained the definition of peak viewing times (7 a.m. to midnight), the codicil substantially changed the conditions for operating the service by considerably toning down its initial character as a music service. More

© European Audiovisual Observatory (Council of Europe) 2026

particularly, while it retained unchanged the definition of the service and the obligation on the part of the broadcaster to devote the majority of air time to music programmes, the codicil removed the obligation that video music clips constitute at least 50% of the channel's broadcasting, and permitted it to show more than 51 full-length cinematographic works per year, while maintaining a ceiling of 104 broadcasts or repeat broadcasts. Thus the new rules on programming made it possible for the broadcaster to schedule programmes other than music in the evenings, similar to the generalist channel. In the end, the result was the same as for Virgin 17: the channel had become a "mini-generalist" channel while retaining some of its initial advantages. For the same reasons, the *Conseil d'Etat* therefore found that the clause in the convention determining significant viewing times was "manifestly inappropriate in the light of the nature of the programming". A cancellation of the Virgin 17 and MCM conventions was announced, but this will not take effect until 1 July 2008.

Conseil d'Etat (5e et 4e sous-sect.), 5 mars 2008 – Virgin 17 et Conseil d'Etat (5e et 4e sous-sect.), 5 mars 2008 – W9

Conseil d'Etat (5th and 4th sub-sections), 5 March 2008 – Virgin 17, and Conseil d'Etat (5th and 4th sub-sections), 5 March 2008 – W9

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026