N° 195

SENATE

ORDINARY SESSION OF 2002-2003

Annex to the minutes of proceedings of the sitting of 4 March 2003

DRAFT ACT

ADOPTED BY THE NATIONAL ASSEMBLY,

on **confidence** *in the* **digital economy**,

SENT BY

THE PRIME MINISTER

TO

THE PRESIDENT OF THE SENATE

(*Forwarded to the Economic Affairs and Planning Committee, subject to the possible formation of a special committee under the conditions specified by the Rules of Procedure).*

The National Assembly has adopted a draft act with the following content:

See numbers:

National Assembly (**12**th legislative term) : **528**, **608**, **612** and Adopted Texts **89**

TITLE I

FREEDOM OF ON-LINE COMMUNICATION

CHAPTER I A

Networks

[New division and title]

Article 1 A *(new)*

I. - Article L. 1511-6 of the Local and Regional Authority Code is repealed.

II. - Title II of Book IV of the first part of the same Code is supplemented by a Chapter V entitled: « Local telecommunications services and networks » consisting of an Article L. 1425-1 worded as follows:

« *Art. L. 1425-1.* - I. - Local and regional authorities, or public establishments ensuring local cooperation and having benefited from a transfer of responsibility to this end, may, after having carried out a public consultation intended to identify the plans and needs of operators, undertakings and the general public, and also the infrastructures and actors present in their territories, establish and operate telecommunications networks open to the public, pursuant to numbers 3 and 15 of Article L. 32 of the Postal and Telecommunications Code, and also acquire the rights to use these networks. The involvement of these authorities must encourage cost-effective investments and promote the shared use of infrastructures.

Local and regional authorities and public establishments ensuring local cooperation may provide telecommunications services to the public only after having carried out consultation identifying a lack of private initiatives able to meet the needs of the population and undertakings.

Local and regional authorities and public establishments ensuring local cooperation which intend to carry out the activities indicated in the above two subparagraphs shall be required to send the Telecommunications Regulatory Authority a description of their plans and their terms of implementation. The Telecommunications Regulatory Authority may, within one month of receiving this information, issue a public opinion on the plan and its terms, particularly with regard to ensuring healthy and fair competition in the local telecommunications market.

II. - In the context of carrying out their activities as telecommunications operators, pursuant to number 15 of Article L. 32 of the Postal and Telecommunications Code, local and regional authorities and public establishments ensuring local cooperation shall be subject to all the rights and obligations governing the activity of telecommunications operators, pursuant to the said Code.

The establishment and operation of telecommunications networks under the present Article shall be recorded in separate accounts detailing the expenditure and income relating to these activities. Effective legal separation between these activities and the office responsible for granting rights of way intended to allow the establishment of telecommunications networks open to the public shall be guaranteed.

III. - Local and regional authorities, the relevant public establishments ensuring local cooperation or the operators of networks established or acquired pursuant to the present Article may refer, under the conditions established in Article L. 36-8 of the Postal and Telecommunications Code, to the Telecommunications Regulatory Authority, any disputes relating to the technical and tariff conditions for the establishment, availability and sharing of the infrastructures indicated in the first subparagraph of I.

Local and regional authorities, public establishments ensuring local cooperation or operators of networks established or acquired pursuant to the present Article shall be

required to send to the Telecommunications Regulatory Authority, at its request, the technical and tariff conditions indicated in the above subparagraph and also the accounts detailing the expenditure and income relating to the activities which they shall carry out pursuant to the present Article.

IV. - The network infrastructures intended, in areas not served by any mobile telephony operator, to ensure coverage in accordance with a geographical plan approved by the Telecommunications Regulatory Authority shall be made available to operators holding an operating authorisation according to the technical and tariff conditions established by a Council of State decree.

V. - The provisions of the present Article shall not apply to audiovisual communication services and to telecommunications services offered to the public over networks established or operated pursuant to Act No 1067 of 30 September 1986 on the freedom of communication. »

Article 1 B *(new)*

I. - Article L. 32 of the Postal and Telecommunications Code is supplemented by a number 17 worded as follows:

« 17. Local roaming.

A local roaming service is defined as that provided by a mobile radiocommunications operator to another mobile radiocommunications operator in order to allow, in an area not covered by any second-generation mobile telephony operator, the customers of the latter to use the network of the former. »

II. - The eighth subparagraph *(e)* of I of Article L. 33-1 of the same Code is supplemented by the words: « or local roaming ».

III. - When local and regional authorities apply Article L. 1425-1 of the Local and Regional Authority Code in terms of second-generation mobile radiocommunications, the areas, including the town centres or main transport routes, which they have identified as not being covered by any mobile radiocommunications operator, shall be covered, in respect of second-generation mobile telephony, by one of the operators responsible for providing a local roaming service.

These areas shall be identified through a series of measurements made by the departments, in accordance with the methodology defined by the Telecommunications Regulatory Authority. They shall be mapped with the number of relay sites to be financed and their provisional location being indicated. This map shall be sent by the regional prefects to the Telecommunications Regulatory Authority within three months of the publication of the present Act.

The Telecommunications Regulatory Authority, after consulting the operators and local and regional authorities, shall divide between the operators the areas indicated in the above subparagraph, under objective, transparent and non-discriminatory conditions. It shall draw up the provisional timetable for construction of the masts and installation of the electronic radiocommunications equipment, based on the

departmental plans submitted to this Authority. The Telecommunications Regulatory Authority shall publish the amounts of the financial commitments of the operators. It shall notify this division and timetable to the Minister for Telecommunications and to the Minister for Regional Development within six months of the publication of the present Act. All the construction work shall be completed two years after receipt of the provisional timetable by the relevant Ministers.

By way of derogation from the rule laid down in the first subparagraph, the second-generation mobile telephony coverage in some of the areas indicated shall be ensured, if all the mobile radiocommunications operators agree to this, by sharing the infrastructures intended to support the telecommunications networks and created by the local and regional authorities pursuant to Article L. 1425-1 of the Local and Regional Authority Code.

IV. - The mobile radiocommunications operator to which the Telecommunications Regulatory Authority assigns the provision of the local roaming service in an area indicated in III shall conclude local roaming agreements with all the other operators and also agreements for the provision of the infrastructures intended to support the telecommunications networks with the local and regional authorities which own these.

V. - An agreement for the provision of the infrastructures intended to support the telecommunications networks indicated in III shall be concluded on a private law basis between the operator operating these infrastructures and the local or regional authority which owns these, in accordance with the provisions of Article L. 1425-1 of the Local and Regional Authority Code.

This agreement shall determine, in particular, the maintenance and servicing conditions of these infrastructures.

Any disputes shall be referred to the Telecommunications Regulatory Authority under the conditions specified in Article L. 36-8 of the Postal and Telecommunications Code.

VI. – After Article L. 34-8 of the Postal and Telecommunications Code, an Article L. 34-8-1 is inserted, worded as follows:

« *Art. L. 34-8-1.* - The local roaming service shall be provided under objective, transparent and non-discriminatory conditions.

This service shall be subject to a private law agreement between second-generation mobile radiocommunications operators. This agreement shall determine the technical and financial conditions for the provision of the local roaming service. It shall be communicated to the Telecommunications Regulatory Authority.

To guarantee equal competition conditions or the interoperability of services, the Telecommunications Regulatory Authority may, further to an opinion from the Competition Council, request the amendment of local roaming agreements already concluded.

Disputes relating to the conclusion or implementation of the local roaming agreement shall be submitted to the Telecommunications Regulatory Authority in accordance with Article L. 36-8. »

VII. - The third subparagraph (number 2) of Article L. 36-6 of the same Code is supplemented by the words: « , and under the technical and financial conditions for the local roaming, in accordance with Article L. 34-8-1 ».

VIII. – After number 2 of II of Article L. 36-8 of the same Code, a number 2 *a* is inserted, worded as follows:

« 2.*a.* The conclusion or implementation of the local roaming agreement specified in Article L. 34-8-1 and of the agreement for the provision of the infrastructures intended to support the telecommunications networks, concluded between the operator and the local or regional authority which owns these pursuant to Article L. 1425-1 of the Local and Regional Authority Code; ».

IX. – In the area where it provides a local roaming service, the mobile radio communications operator shall provide at least the following services: sending and receiving of telephone calls, emergency calls, access to voice messaging, sending and receiving of short alphanumeric messages.

CHAPTER I

On-line public communication

Article 1

Article 2 of Act No 1067 of 30 September 1986 on the freedom of communication is supplemented by a subparagraph worded as follows:

« On-line public communication is defined as any audiovisual communication sent following an individual request made using a telecommunications process. »

CHAPTER II

Technical service-providers

Article 2

I. - Article 17 of the aforementioned Act No 1067 of 30 September 1986 is supplemented by a subparagraph worded as follows:

« The provisions of the present Article shall not apply to the services indicated in Chapter VI of Title II. »

II. - Article 43-11 of the same Act becomes Article 43-16.

III. - Chapter VI of Title II of the same Act is worded as follows:

« CHAPTER VI

Provisions relating to on-line public communication services

Art. 43-7. - Persons whose activity involves offering access to on-line public communication services shall be required to inform their subscribers of the existence of any technical means allowing access to certain services to be restricted or allowing these to be selected and to offer them at least one of these means.

Art. 43-8. - Persons who provide the public, even free of charge, through on-line public communication services, with the direct and permanent storage of signals, written documents, images, sounds or messages of any kind supplied by recipients of these services may be held civilly liable for the distribution of information or activities only if, at the time when they effectively became aware of the illegal nature of these, or of facts and circumstances revealing this illegal nature, they did not act promptly to withdraw this data or make access to this impossible.

The act, committed by anyone, of wrongfully indicating an apparent illegality for the purposes of obtaining the withdrawal of data or of making access to this impossible shall constitute an interference with the freedom of expression, employment, association, assembly or demonstration pursuant to the first subparagraph of Article 431-1 of the Criminal Code.

Art. 43-9. - The persons designated in Article 43-8 may be held criminally liable only if, with full knowledge of the facts, they did not act promptly to end the distribution of information or an activity where they could not have been unaware of the illegal nature of this.

Art. 43-9-1 (new). - An optional notification procedure intended to bring the existence of disputed facts to the attention of the persons designated in Article 43-8 is established. Knowledge of the disputed facts shall be deemed to have been acquired by these persons when the following information is notified to them:

- the date of notification;

- if the notifier is a natural person: his full name, profession, address, nationality, date and place of birth; if the notifier is a legal person: its form, company name, registered office and the body which legally represents it;

- the name and address of the recipient or, if this is a legal person, its company name and registered office;

- the description of the disputed facts and their precise location;

- the reasons why the content must be withdrawn, including an indication of the legal provisions and the proof of the facts;

- a copy of the correspondence sent to the author or publisher of the disputed information or activities requesting their interruption, withdrawal or amendment, or proof that the author or publisher could not be contacted.

Art. 43-10. - The persons indicated in Articles 43-7 and 43-8 are not producers within the meaning of Article 93-3 of Act No 652 of 29 July 1982 on audiovisual communication.

Art. 43-11. - The persons indicated in Articles 43-7 and 43-8 are not subject to a general obligation to monitor the information which they transmit or store nor to a general obligation to search for facts or circumstances revealing illegal activities.

However, the persons indicated in Article 43-8 shall use state-of-the-art means to prevent the distribution of data constituting the offences indicated in the fifth and eighth subparagraphs of Article 24 of the Act of 29 July 1881 on freedom of the press and in Article 227-23 of the Criminal Code.

Art. 43-12. - The judicial authority may order, through urgent proceedings, any person indicated in Articles 43-7 and 43-8 to adopt any measures able to put a stop to damage caused by the content of an on-line public communication service, such as those aimed at ending the storage of this content or, failing this, ending access to this.

Art. 43-13. – The persons indicated in Articles 43-7 and 43-8 shall be required to check, hold and retain data able to allow the identification of anyone who has contributed to the creation of any of the content of the services for which they are the service-providers.

They shall also be required to provide persons publishing an on-line public communication service with the technical means allowing the latter to comply with the identification conditions specified in Article 43-14.

The judicial authority may require the communication to the service-providers indicated in Articles 43-7 and 43-8 of the data indicated in the first subparagraph.

The provisions of Articles 226-17, 226-21 and 226-22 of the Criminal Code shall apply to the processing of this data.

A Council of State decree, adopted following an opinion from the National commission for information technology and civil liberties, shall define the data indicated in the first subparagraph and shall determine the period and terms of its retention.

Art. 43-14. - I. - Persons whose activity involves publishing an on-line public communication service shall provide the public with the following:

a) In the case of natural persons, their full name, address and telephone number;

b) In the case of legal persons, their company name or business name and their registered office, their telephone number and, in the case of undertakings subject to the formalities of registration in the trade and companies' register or the trades

register, their registration number, their share capital and the address of their registered office;

c) The name of the director or co-director of the publication and, if applicable, that of the person responsible for the editing within the meaning of Article 93-2 of the aforementioned Act No 652 of 29 July 1982;

d) The personal name, company name or business name and address and telephone number of the service-provider indicated in Article 43-8.

II. - Persons publishing, on a non-professional basis, an on-line public communication service may provide the public, in order to preserve their anonymity, only with the personal name, company name or business name and address of the service-provider indicated in Article 43-8, subject to having communicated to the latter the personal identification details specified in I.

Service-providers shall be subject to professional secrecy under the conditions specified in Articles 226-13 and 226-14 of the Criminal Code with regard to everything relating to the disclosure of these personal identification details or any information allowing the person concerned to be identified, except where legal provisions to the contrary have been established by contract.

Art. 43-14-1 (new). - Any person named or designated in an on-line public communication service using a written means of distributing ideas, provided to the general public or to categories of the public, shall have a right of reply, without prejudice to the requests for correction or deletion of the message which this person may send to the service where this message is accessible to the public.

The request to exercise the right of reply must be submitted at the latest within three months of the date when the message justifying this request ceases to be made available to the public.

In the event of refusal of the request or a lack of response by its recipient within eight days of receipt of this, the requester may take action against the director of the publication by submitting an urgent application to the presiding judge of the regional court. The latter may order, if necessary subject to a coercive penalty, that the reply shall be made available to the public.

A Council of State decree shall establish the terms of implementation of the present Article. »

IV *(new).* - After Article 79-6 of the same Act, two Articles 79-7 and 79-8 are inserted, worded as follows:

« *Art. 79-7.* - The failure by a natural person or a de jure or de facto director of a legal person pursuing one of the activities defined in Articles 43-7 and 43-8 to retain the information details referred to in Article 43-13 or to comply with the request from a judicial authority to communicate these details shall be punished by a fine of € 3 750.

Legal persons may be held criminally liable for these offences under the conditions specified in Article 121-2 of the Criminal Code. They shall incur a fine according to the terms specified by Article 131-38 of the same Code.

Art. 79-8. - Any natural person or any de jure or de facto director of a legal person pursuing the activity defined in Article 43-14 who apparently has not complied with the requirements of this Article shall be punished by a fine of € 3 750.

Legal persons may be held criminally liable for this offence under the conditions specified in Article 121-2 of the Criminal Code. They shall incur a fine according to the terms specified by Article 131-38 of the same Code. »

V *(new)*. - In the last subparagraph of I of Article 26 of the same Act, the reference: « 43-11 » is replaced by the reference: « 43-16 ».

The same replacement is made in the first subparagraph of Article 33-1, in the last subparagraph of I of Article 44, in Article 44-1 and in the second subparagraph of I of Article 53 of the same Act.

VI *(new)*. - The last subparagraph of I of Article 6 of Act No 652 of 29 July 1982 on audiovisual communication is deleted.

Article 3

I. - After the fifth subparagraph of Article L. 332-1 of the Intellectual Property Code, two subparagraphs are inserted, worded as follows:

« 4. The suspension, by any means, of the content of an on-line public communication service infringing any copyrights, including by ordering the storage of this content to be ended or, failing this, access to this to be ended. In this case, the period specified in Article L. 332-2 shall be reduced to fifteen days.

The presiding judge of the regional court may, in accordance with the same formal requirements, order the measures specified in numbers 1 to 4 at the request of holders of similar rights defined in Book II. »

II. - In the second paragraph of Article L. 335-6 of the same Code, after the words: « and its publication in full or by means of extracts in newspapers », the words: « or on on-line public communication services » are inserted.

Article 4

I. - Article L. 32-3-3 of the Postal and Telecommunications Code becomes Article L. 32-5 of which it forms I.

II. - After Article L. 32-3-2 of the same Code, Articles L. 32-3-3 and L. 32-3-4 are inserted, worded as follows:

« *Art. L. 32-3-3*. – Any person pursuing an activity of transmitting content over a telecommunications network or of providing access to a telecommunications network may be held civilly or criminally liable for this content only in the cases

where this person is the source of the disputed transmission request or selects the recipient of the transmission or selects or amends the content forming the subject of the transmission.

Art. L. 32-3-4. - Any person pursuing, with the sole aim of making their subsequent transmission more efficient, an activity of automatic, intermediate and temporary storage of content which a service-provider transmits may be held civilly or criminally liable for this content only in one of the following cases:

1. Where this person has amended this content, has not complied with its access conditions and the usual rules concerning its updating or has blocked the legal and normal use of the technology used to obtain the data;

2. Where this person has not acted promptly to withdraw the content which it has stored or to make access to this impossible as soon as it has effectively become aware either that the content transmitted initially has been withdrawn from the network or that access to the content transmitted initially has been made impossible or that the judicial authorities have ordered the content transmitted initially to be withdrawn from the network or for access to this to be made impossible. »

III. - Article L. 32-5 of the same Code is supplemented by a II worded as follows:

« II. - Without prejudice to their automatic application in Mayotte pursuant to number 8 of I of Article 3 of Act No 616 of 11 July 2001 on Mayotte, Articles L. 32-3-3 and L. 32-3-4 shall apply in New Caledonia, French Polynesia, Wallis and Futuna and the French Southern and Antarctic Lands. »

Article 5

I. - The title of Section 6 of Chapter II of Title I of Book II of the Postal and Telecommunications Code is worded as follows: « Dialling and addressing ».

II. - After Article L. 34-10 of the same Code, an Article L. 34-11 is inserted, worded as follows:

« *Art. L. 34-11.* - I. - The Minister for Telecommunications shall appoint, following a public consultation, the bodies responsible for assigning and managing domain names within the first-level domains of the addressing system using Internet domains and corresponding to the national territory. The fulfilment of this task shall not confer on the bodies thus appointed any intellectual property rights over the domain names.

A domain name shall be assigned by these bodies in the public interest, according to non-discriminatory rules which have been made public and which ensure compliance, by the requester, with intellectual property rights.

In the event of the cessation of activity of these bodies, the State shall have a right to use the database of domain names which they managed.

The Minister for Telecommunications shall ensure compliance by these bodies with

the principles set out in the second subparagraph. The Minister may cancel the appointment of a body, after having allowed the latter to present its observations, in the event of the latter's disregard for the provisions of the present Article. The decision by the Minister for Telecommunications relating to the appointment or cancellation of appointment of a body may be the subject of an appeal before the Council of State. Each body shall send the Minister for Telecommunications an annual activity report.

The assignment and management of the addresses attached to each first-level domain shall be the responsibility of a single body.

A Council of State decree shall specify, as necessary, the conditions of application of the present Article.

II. - Without prejudice to their automatic application in Mayotte pursuant to number 8 of I of Article 3 of the aforementioned Act No 616 of 11 July 2001, the provisions of I shall apply in Wallis and Futuna and in the French Southern and Antarctic Lands.

The bodies responsible for assigning domain names in New Caledonia and French Polynesia shall not hold any intellectual property rights over these names. »

CHAPTER III

Regulation of communication

[New division and title]

Article 5 *a (new)*

I. – At the end of the fourth subparagraph (number 3) of Article 42-1 of the aforementioned Act No 1067 of 30 September 1986, the words: « , if the failure does not constitute a criminal offence » are deleted.

II. – After the first subparagraph of Article 42-2 of the same Act, two subparagraphs are inserted, worded as follows:

« Where the failure constitutes a criminal offence, the amount of the financial penalty may not exceed that specified for the criminal fine.

Where the Higher Council for the Audiovisual Sector has ordered a financial penalty which has become final before the criminal judge has made a final ruling on the same facts or on related facts, the latter may order that the financial penalty be charged to the fine which he orders. »

Article 5 *b (new)*

Article 42-4 of the aforementioned Act No 1067 of 30 September 1986 is amended as follows:

1. In the first sentence, the words: « holders of an authorisation to operate an audiovisual communication service » are replaced by the words: « producers of audio or television broadcasting services »;

2. After the first sentence, two sentences are inserted, worded as follows:

« The Higher Council for the Audiovisual Sector shall ask the interested party to submit its observations to the Council within two clear days from receipt of this request. The decision shall then be made without the procedure specified in Article 42-7 being implemented. »;

3. The last sentence is supplemented by the words: « under the conditions established in Article 42-2 ».

Article 5 *c (new)*

At the end of Article 48-2 of the aforementioned Act No 1067 of 30 September 1986, the words: « and provided that the failure does not constitute a criminal offence » are deleted.

TITLE II

ELECTRONIC COMMERCE

CHAPTER I

General principles

Article 6

Electronic commerce is defined as the activity through which a person, acting in a professional capacity, undertakes to ensure, in return for payment, the successful completion of a supply of goods or provision of services, after having received the order for this at a distance and by electronic means.

The person pursuing this activity shall be held liable not only for the operations carried out by electronic means but, more generally, for all the intermediate operations leading to the final satisfaction of the order.

The above subparagraph shall take effect one year after the publication of this present Act.

A person shall be regarded as being established in France within the meaning of the present Chapter when he is installed there in a stable and durable manner in order to effectively pursue his activity, whatever the location of the registered office in the event of a legal person.

Article 7

I A *(new)*. – The activity defined in Article 6, when this is carried out by persons established in France, shall be freely pursued in the national territory in accordance with the acts and regulations in force.

The following are excluded from the provisions of the above subparagraph:

1. Legally authorised games involving money, including in the form of betting and lotteries;

2. Activities of representation and assistance in court;

3. Activities of notaries pursued in application of the provisions of Article 1 of Order No 2590 of 2 November 1945 on the rules governing the notarial profession.

I. – The activity defined in Article 6, when this is carried out by persons established in a Member State of the European Community other than France shall be freely pursued in the national territory, to the exclusion of the activities indicated in numbers 1 to 3 of I A and subject to compliance with:

1. The provisions on free establishment and on the free provision of services within the European Community in the area of insurance, specified in Articles L. 361-1 to L. 364-1 of the Insurance Code;

2. The provisions on the advertising and canvassing of undertakings for collective investment in transferable securities, specified in Article L. 214-12 of the Monetary and Financial Code;

3. The provisions on anti-competitive practices and on economic concentration, specified in Titles II and III of Book IV of the Commercial Code;

4. The provisions on the prohibition or authorisation of unsolicited advertising sent by electronic mail;

5. The provisions of the General Tax Code;

6. The rights protected by the Intellectual Property Code.

II. – The activity defined in Article 6 shall be subject to the law of the Member State in whose territory the person pursuing this activity is established, subject to the common intent of this person and of the person for whom the goods or services are intended.

The application of the above subparagraph may not have the effect of:

1. Depriving a consumer having his habitual residence in the national territory of the protection afforded to him by the essential provisions of French law on contractual obligations, in accordance with the international commitments signed by France. Within the meaning of the present Article, the provisions on contractual obligations include the provisions applicable to the elements of the contract, including those defining the rights of the consumer, which have a decisive influence on the decision to contract;

2. Derogating from the essential procedural rules specified by French law for contracts creating or transferring rights over immovable property situated in the national territory;

3. Derogating from the rules determining the law applicable to insurance contracts for risks situated in the territory of one or more States party to the Agreement on the European Economic Area and for the commitments made in these, specified in Articles L. 181-1 to L. 183-2 of the Insurance Code.

Article 8

Under the conditions specified by a Council of State decree, measures restricting, on an individual basis, the free pursuit of their activity by the persons indicated in Articles 6 and 7 may be adopted by the administrative authority when these are necessary to maintain public order and safety, to protect minors, to protect public health, to preserve the interests of national defence or to protect natural persons who are consumers or investors, other than investors belonging to a restricted circle defined in Article L. 411-2 of the Monetary and Financial Code.

Article 9

Without prejudice to the other information obligations specified by the legislative and regulatory texts in force, any person pursuing the activity defined in Article 6 shall be required to ensure, for those to whom the supply of goods or provision of services is intended, easy, direct and permanent access to the following information:

1. In the case of a natural person, his full name and, in the case of a legal person, its business name;

2. The address where this person is established, his electronic mail address and also his telephone number;

3. If this person is subject to the formalities of registration in the trade and companies' register or the trades register, its registration number, share capital and the address of its registered office;

4. The names and versions of the software used to carry out transactions and to guarantee the confidentiality of the personal information circulating on the network and also an indication of the availability of their source code.

The provisions of the present Article shall apply to any person participating directly in the transaction, a list of which shall be established, as necessary, by decree. The same decree shall specify the other information which is compulsory and may adapt the application of the present Article in the event of it being technically impossible to comply with the specified information obligations.

Offences against the provisions of the present Article shall be investigated and recorded under the conditions established by the first, third and fourth subparagraphs of Article L. 450-1 and Articles L. 450-2, L. 450-3, L. 450-4, L. 450-7, L. 450-8, L. 470-1 and L. 470-5 of the Commercial Code.

CHAPTER II

Advertising by electronic means

Article 10

After Article 43-14-1 of the aforementioned Act No 1067 of 30 September 1986, an Article 43-15 is inserted, worded as follows:

« *Art 43-15.* – Any advertising, in any form whatsoever, accessible through an on-line public communication service, must be clearly identifiable as such. It must clear identify the natural or legal person on whose behalf this is carried out.

The above subparagraph shall apply without prejudice to the provisions punishing misleading advertising specified in Article L. 121-1 of the Consumer Code. »

Article 11

After Article L. 121-15 of the Consumer Code, Articles L. 121-15-1, L. 121-15-2 and L. 121-15-3 are inserted, worded as follows:

« *Art. L. 121-15-1.* – Advertising, and in particular promotional offers such as discounts, bonuses or gifts and also competitions or promotional games, sent by electronic mail, must be clearly and unequivocally identifiable as such on their receipt by the recipient or, in the event of a technical impossibility, in the body of the message.

Art. L. 121-15-2. – Without prejudice to the provisions punishing misleading advertising specified in Article L. 121-1, the conditions to which the possibility of benefiting from promotional offers and participating in competitions or promotional games are subject, when these offers, competitions or games are offered by electronic means, must be clearly specified and easily accessible.

Art. L. 121-15-3. – Articles L. 121-15-1 and L. 121-15-2 shall also apply to advertising, offers, competitions or games intended for professionals.

Offences against the provisions of Articles L. 121-15-1 and L. 121-15-2 shall be liable to the penalties specified in Article L. 121-6. They shall be investigated and recorded under the conditions specified in Article L. 121-2. Articles L. 121-3 and L. 121-4 shall also apply. »

Article 12

I. – Article L. 33-4-1 of the Postal and Telecommunications Code is worded as follows:

« *Art. L. 33-4-1.* – Direct canvassing, in particular advertising, by means of automatic calling machines and fax machines using, in any manner whatsoever, the details of any person who has not given their prior consent to receiving such calls is prohibited.

Direct canvassing, particularly advertising, by means of electronic mail using, in any manner whatsoever, the details of a natural or legal person not registered in the trade and companies' register and who has not given their prior consent to receiving such electronic mail is prohibited.

Consent is defined as any voluntary, specific and informed statement of desire through which the person concerned accepts that personal data relating to them may be processed.

This prohibition does not apply to the transmission of information using means of automated distribution when this directly involves the protection of persons or the security of the territory, and particularly the management or prevention of natural, industrial or health risks, and is carried out on the initiative of public or private persons responsible for dealing with these risks.

By derogation from the provisions of the first subparagraph, direct canvassing by electronic mail is authorised if the electronic details of the recipient have been obtained directly from the recipient, in accordance with the provisions of the aforementioned Act No 17 of 6 January 1978, during a sale or provision of services, if the direct canvassing concerns similar products or services from the same commercial entity to those provided by the same commercial entity and if the recipient is expressly and unambiguously offered the possibility of simply refusing, without any costs except for those linked to the sending of the refusal, to allow the use of his electronic details when these are obtained and whenever a canvassing electronic mail is sent to him.

It is prohibited in all cases to send, for the purposes of direct canvassing, messages by means of automatic calling machines, fax machines and electronic mail without indicating a valid address to which the recipient may practically send a request aimed at stopping these communications. It is also prohibited to conceal the identity of the person on whose behalf the communication is sent, particularly by indicating a subject unrelated to the product or service offered.

The National commission for information technology and civil liberties shall accept, by all means, including by electronic mail, complaints relating to non-compliance with the provisions of the present Article. It shall use the powers attributed to it by Article 21 of the aforementioned Act No 17 of 6 January 1978 in order to end any offending behaviour.

Offences against the provisions of the present Article shall be investigated and recorded under the conditions established by the first, third and fourth subparagraphs of Article L. 450-1 and by Articles L. 450-2, L. 450-3, L. 450-4, L. 450-7, L. 450-8, L. 470-1 and L. 470-5 of the Commercial Code.

A Council of State decree shall specify, where necessary, the conditions of application of the present Article, particularly with regard to the different technologies used. »

II. – Article L. 121-20-5 of the Consumer Code is worded as follows:

« *Art. L. 121-20-5.* – The provisions of Article L. 33-4-1 of the Postal and Telecommunications Code, reproduced below, shall apply:

«*Art. L. 33-4-1.* - Direct canvassing, in particular advertising, by means of automatic calling machines and fax machines using, in any manner whatsoever, the details of any person who has not given their prior consent to receiving such calls is prohibited.

Direct canvassing, particularly advertising, by means of electronic mail using, in any manner whatsoever, the details of a natural or legal person not registered in the trade and companies' register and who has not given their prior consent to receiving such electronic mail is prohibited.

Consent is defined as any voluntary, specific and informed statement of desire through which the person concerned accepts that personal data relating to them may be processed.

This prohibition does not apply to the transmission of information using means of automated distribution when this directly involves the protection of persons or the security of the territory, and particularly the management or prevention of natural, industrial or health risks, and is carried out on the initiative of public or private persons responsible for dealing with these risks.

By derogation from the provisions of the first subparagraph, direct canvassing by electronic mail is authorised if the electronic details of the recipient have been obtained directly from the recipient, in accordance with the provisions of the aforementioned Act No 17 of 6 January 1978, during a sale or provision of services, if the direct canvassing concerns similar products or services from the same commercial entity to those provided by the same commercial entity and if the recipient is expressly and unambiguously offered the possibility of simply refusing, without any costs except for those linked to the sending of the refusal, to allow the use of his electronic details when these are obtained and whenever a canvassing electronic mail is sent to him.

It is prohibited in all cases to send, for the purposes of direct canvassing, messages by means of automatic calling machines, fax machines and electronic mail without indicating a valid address to which the recipient may practically send a request aimed at stopping these communications. It is also prohibited to conceal the identity of the person on whose behalf the communication is sent, particularly by indicating a subject unrelated to the product or service offered.

The National commission for information technology and civil liberties shall accept, by all means, including by electronic mail, complaints relating to non-compliance with the provisions of the present Article. It shall use the powers attributed to it by Article 21 of the aforementioned Act No 17 of 6 January 1978 in order to end any offending behaviour.

Offences against the provisions of the present Article shall be investigated and recorded under the conditions established by the first, third and fourth subparagraphs of Article L. 450-1 and by Articles L. 450-2, L. 450-3, L. 450-4, L. 450-7, L. 450-8, L. 470-1 and L. 470-5 of the Commercial Code.

A Council of State decree shall specify, where necessary, the conditions of application of the present Article, particularly with regard to the different technologies used. »»

III *(new)*. – After number 10 of Article L. 32 of the Postal and Telecommunications Code, a number 10 *a* is inserted, worded as follows:

« 10. *a.* Electronic mail.

Electronic mail is defined as any message in the form of a text, voice, sound or image sent by a public communications network which may be stored in the network or in the terminal equipment of the recipient until the latter recovers this; ».

IV *(new)*. – The provisions of I and II shall enter into force on 31 October 2003. Until this date, the information on clients or prospects which has been honestly obtained may be used in order to offer the latter the opportunity to express their consent to future direct canvassing operations.

Article 13

Article L. 121-20-4 of the Consumer Code is supplemented by a subparagraph worded as follows:

« The provisions of Articles L. 121-18 and L. 121-19 shall apply, however, to contracts concluded by electronic means when their object is the provision of the services indicated in number 2. »

CHAPTER III

Obligations signed electronically

Article 14

I. – After Article 1108 of the Civil Code, Articles 1108-1 and 1108-2 are inserted, worded as follows:

« *Art. 1108-1*. – When a written document is required to make a legal act valid, this may be established and kept electronically under the conditions specified in Articles 1316-1 and 1316-4 and, when an officially recorded document is required, under the conditions specified in the second subparagraph of Article 1317.

When a text handwritten by the person accepting the obligation is required, the latter may attach this electronically if the conditions of this attachment are such as to guarantee that the text can originate only from this person.

Art. 1108-2. – An exception is made to the provisions of Article 1108-1 for:

l. Private documents relating to family law and successions;

2. Documents subject to authorisation or approval by the judicial authority;

3. Private documents relating to civil or commercial personal sureties or valuable securities, except where they are concluded by a person for the purposes of his profession. »

II. – After Chapter VI of Title III of Book III of the same Code, a Chapter VII is inserted, worded as follows:

« CHAPTER VII

Electronic contracts

Art. 1369-1. – Anyone who offers, in a professional capacity and by electronic means, to supply goods or provide services shall send the applicable contractual conditions in a way which ensures their conservation and reproduction. The originator of the offer shall be bound by his proposal while he allows this to remain accessible by electronic means.

The offer shall also indicate:

1. The various stages to be followed in order to conclude the contract by electronic means;

2. The technical means allowing the user, before the conclusion of the contract, to identify the errors made in entering the data and to correct these;

3. The languages proposed for the conclusion of the contract;

4. If applicable, the methods of archiving the contract by the originator of the offer and the conditions of access to the archived contract;

5. The means of consulting, by electronic means, the professional and commercial rules to which the originator of the offer intends, if applicable, to submit.

Art. 1369-2. – The contract proposed by electronic means shall be concluded when the recipient of the offer, after having had the opportunity to check the details of his order and its total price, and also to correct any errors, confirms this by indicating his acceptance.

The originator of the offer must acknowledge receipt immediately, by electronic means, of the order sent to him.

The order, confirmation of acceptance of the offer and the acknowledgement of receipt shall be regarded as received when the parties to which they are sent can access these.

Art. 1369-3. – An exception is made to the obligations indicated in numbers 1 to 5 of Article 1369-1 and in the first two subparagraphs of Article 1369-2 for contracts to supply goods or provide services which are concluded exclusively by the exchange of

electronic mail.

A derogation may also be made from the provisions of Article 1369-2 and numbers 1 to 5 of Article 1369-1 in agreements concluded between professionals. »

Article 15

Under the conditions laid down in Article 38 of the Constitution, the government is authorised to adapt, by order, the legislative provisions subordinating the conclusion, validity or effects of certain contracts to formalities other than those indicated in Article 1108-1 of the Civil Code, in order to allow these to be accomplished by electronic means.

The order specified in the above subparagraph shall be adopted in the year following the publication of the present Act.

A draft ratification act shall be submitted to Parliament within six months of the publication of the order.

Article 16

After Article L. 134-1 of the Consumer Code, an Article L. 134-2 is inserted, worded as follows:

« *Art. L. 134-2.* – When the contract is concluded by electronic means and when it concerns a sum equal to or greater than an amount established by decree, the professional contracting party shall ensure that the written document recording this is retained for a period specified by this same decree and shall guarantee access to this at all times for its co-contracting party if the latter makes this request. »

TITLE III

SECURITY IN THE DIGITAL ECONOMY

CHAPTER I

Cryptology services and means

Article 17

A means of cryptology is defined as any hardware or software designed or modified to convert data, whether this involves information or signals, using secret agreements, or to carry out the reverse operation with or without a secret agreement. These means of cryptology are mainly intended to guarantee security in the storage or transmission of data, by allowing their confidentiality or authentication or the control of their integrity to be ensured.

A cryptology service is defined as any operation involving the use, on behalf of another person, of any means of cryptology.

Section 1

Use, supply, transfer, import and export of means of cryptology

Article 18

I. – The use of means of cryptology shall be unrestricted.

II. – The supply, transfer from or to a Member State of the European Community, import and export of means of cryptology whose sole cryptographic function is an authentication or integrity control function, particularly for the purposes of electronic signature, shall be unrestricted.

III. – The supply, transfer from a Member State of the European Community or import of a means of cryptology not solely fulfilling authentication or integrity control functions shall be subject to a prior declaration to the Prime Minister, except in the cases specified in *b* of the present III. The supplier or person transferring or importing the means of cryptology shall provide the Prime Minister with a description of the technical characteristics of this and also the source code of the software used. A Council of State decree shall establish:

a) The conditions under which these declarations shall be signed and the conditions under which and periods within which the Prime Minister may request communication of the characteristics of the means and also the nature of these characteristics;

b) The categories of means whose technical characteristics or conditions of use are such that, with regard to the interests of national defence and the domestic or foreign security of the State, their supply, transfer from a Member State of the European Community or import may be exempt from any prior formality.

IV. – The transfer to a Member State of the European Community or export of a means of cryptology not solely fulfilling authentication or integrity control functions shall be subject to authorisation by the Prime Minister, except in the cases specified in *b* of the present IV. A Council of State decree shall establish:

a) The periods within which the Prime Minister shall rule on the authorisation requests;

b) The categories of means whose technical characteristics or conditions of use are such that, with regard to the interests of national defence and the domestic or foreign security of the State, where their transfer to a Member State of the European Community or their export may be subject to the declaration scheme and to the information obligations specified in I, are exempt from any prior formality.

Section 2

Provision of cryptology services

Article 19

I. – The provision of cryptology services must be declared to the Prime Minister under the conditions defined by decree. This decree may provide for exceptions to the declaration obligation for services whose technical characteristics or conditions of provision are such that, with regard to the interests of national defence and the domestic or foreign security of the State, this provision may be exempt from any prior formality.

II. – Persons pursuing this activity shall be subject to professional secrecy under the conditions specified in Articles 226-13 and 226-14 of the Criminal Code.

Article 20

Except for the purpose of proving that they have not committed any act of deliberate tortious intent or negligence, the persons providing cryptology services for the purposes of confidentiality shall be liable, in respect of these services and notwithstanding any contractual stipulation to the contrary, for the damage caused to persons entrusting them with the management of their secret agreements in the event of a breach of the integrity, confidentiality or availability of the data converted using these agreements.

In the event of such a dispute, the person claiming to have suffered such damage must, however, establish the material existence of the specific and corroborative facts forming the basis of his action.

Article 21

Except for the purpose of proving that they have not committed any act of deliberate tortious intent or negligence, electronic certification service-providers shall be liable for the damage caused to persons who have reasonably trusted in the certificates presented by them as being qualified under the conditions established by a Council of State decree when:

1. The information contained in the certificate, on the date of its issue, was incorrect;

2. The data required so that the certificate could be regarded as qualified was incomplete;

3. The service-providers have not:

- either verified that the signatory, at the moment of issue of the certificate, held the signature-creation-data corresponding to the data, allowing this signature to be verified, provided or identified in the certificate;

- or verified, in the case where the service-provider provides the signature-creation and verification data, that this data was complementary;

4. The service-providers have not had the revocation of the certificate registered and made this information available to third parties.

Service-providers shall not be liable for the damage caused by the use of a certificate exceeding the limits established for its use or the value of the transactions for which it may be used, provided that these limits have been clearly brought to the attention of users in the certificate.

They must provide evidence of a sufficient financial guarantee, specifically allocated to the payment of sums which they may owe to people having reasonably trusted in the qualified certificates which they issue, or an insurance covering the financial consequences of their professional civil liability. In the absence of such a financial guarantee or insurance, the certificates issued by the service-provider shall necessarily contain a text indicating this absence.

Section 3

Administrative penalties

Article 22

When a supplier of a means of cryptology, even free of charge, does not comply with the obligations to which he is subject pursuant to Article 18, the Prime Minister may, after having allowed the interested person to present his observations, order a ban on the supply of the means of cryptology concerned.

The ban on supply shall apply throughout the national territory. It shall include an obligation to recall, from commercial distributors, the means of cryptology whose supply is banned and also to recall the hardware forming the means of cryptology whose supply is banned and which has been acquired in return for payment, directly or through commercial distributors, prior to the Prime Minister's decision. The means of cryptology concerned may be supplied again as soon as the obligations previously not complied with have been met, under the conditions specified in Article 18.

Section 4

Criminal provisions

Article 23

I. – Without prejudice to the application of the Customs Code:

1. The fact of not complying with the declaration obligation specified in Article 18 in the event of supply, transfer, import or export of a means of cryptology or the refusal to comply with the obligation of communication to the administrative authority specified by this same article shall be punished by one year's imprisonment and a fine of € 15 000;

2. The fact of exporting a means of cryptology or transferring this to a Member State of the European Community without having previously obtained the authorisation indicated in Article 18 or doing this not in accordance with the conditions of this

authorisation, when this authorisation is required, shall be punished by two years' imprisonment and a fine of € 30 000.

II. – The fact of selling or hiring a means of cryptology subject to an administrative ban on its supply pursuant to Article 22 shall be punished by two years' imprisonment and a fine of € 30 000.

III. – The fact of providing cryptology services intended to fulfil confidentiality functions without having complied with the declaration obligation specified in Article 19 shall be punished by two years' imprisonment and a fine of € 30 000.

IV. – Natural persons guilty of one of the offences specified in the present Article shall also incur the following additional penalties:

1. A ban, according to the terms specified by Article 131-19 of the Criminal Code and for a maximum period of five years, on issuing cheques other than those allowing the withdrawal of funds by the drawer from the drawee or those which are certified;

2. Confiscation, according to the terms specified by Article 131-21 of the Criminal Code, of the item which has been used or was intended to be used to commit the offence or the item which is the product of this except for items which may be returned;

3. A ban, according to the terms specified by Article 131-27 of the Criminal Code and for a maximum period of five years, on carrying out a public function or pursuing the professional or social activity in the pursuit or on the occasion of the pursuit of which the offence was committed;

4. Closure, under the conditions specified by Article 131-33 of the Criminal Code and for a maximum period of five years, of the establishments or one or more of the establishments of the undertaking which have been used to commit the offences charged;

5. Exclusion, under the conditions specified by Article 131-34 of the Criminal Code and for a maximum period of five years, from public contracts.

V. – Legal persons shall be criminally liable, under the conditions specified by Article 121-2 of the Criminal Code, for the offences specified in the present Article. The penalties incurred by legal persons shall be:

1. The fine according to the terms specified by Article 131-38 of the Criminal Code;

2. The penalties indicated in Article 131-39 of the Criminal Code.

Article 24

In addition to the senior law-enforcement officers and police officers acting in accordance with the provisions of the Code of Criminal Procedure and, in their area of responsibility, the customs officers acting in accordance with the provisions of the

Customs Code, the officers authorised for this purpose by the Prime Minister and sworn under the conditions established by a Council of State decree may investigate and record, in reports, offences against the provisions of Articles 18, 19 and 22 of the present Act and texts adopted in application thereof.

The officers authorised by the Prime Minister indicated in the above subparagraph may access the premises, land or means of transport used for professional purposes with a view to investigating and recording the offences, ask for the communication of all professional documents and make copies thereof and gather, by summons or in situ, any information and evidence. These officers may access these premises only during their hours of opening when they are open to the public and, in other cases, only between 8.00 a.m. and 8.00 p.m. They may not access premises used as a home by the interested persons.

The public prosecutor shall be informed in advance of the operations envisaged in order to investigate offences. He may oppose these operations. The reports shall be sent to him within five days of their production. A copy of these shall also be sent to the interested person.

The authorised officers may, in the same places and under the same time conditions, seize the means of cryptology indicated in Article 17 by permission of the court given through an order of the presiding judge of the regional court, or a judge delegated by him, to which the case has previously been referred by the public prosecutor. The request must include all the information such as to justify the seizure. This shall be carried out under the authority and control of the judge who authorised this.

The hardware and software seized shall be immediately inventoried. The inventory shall be attached to the report drawn up at the premises. The originals of the report and inventory shall be sent, within five days of their production, to the judge who ordered the seizure. They shall be filed in the case-file.

The presiding judge of the regional court or the judge delegated by him may, at any time, on his own initiative or at the request of the interested person, order the lifting of the seizure.

The fact of refusing to provide any information or documents or of blocking the progress of the inquiries indicated in the present Article shall be punished by six months' imprisonment and a fine of € 7 500.

Article 25

After Article 132-76 of the Criminal Code, an Article 132-77 is inserted, worded as follows:

« *Art. 132-77.* – When a means of cryptology pursuant to Article 17 of Act No … of … on confidence in the digital economy has been used to prepare or commit a felony or misdemeanour, or to facilitate the preparation or committal thereof, the maximum custodial sentence incurred shall be determined as follows:

1. This sentence shall be increased to life imprisonment when the offence is punishable by thirty years' imprisonment;

2. This sentence shall be increased to thirty years' imprisonment when the offence is punishable by twenty years' imprisonment;

3. This sentence shall be increased to twenty years' imprisonment when the offence is punishable by fifteen years' imprisonment;

4. This sentence shall be increased to fifteen years' imprisonment when the offence is punishable by ten years' imprisonment;

5. This sentence shall be increased to ten years' imprisonment when the offence is punishable by seven years' imprisonment;

6. This sentence shall be increased to seven years' imprisonment when the offence is punishable by five years' imprisonment;

7. This sentence shall be doubled when the offence is punishable by a maximum of three years' imprisonment.

The provisions of the present Article shall not, however, apply to the accomplice in an offence punished by more than fifteen years' imprisonment or the perpetrator of or accomplice in an offence punished by a penalty less than or equal to fifteen years' imprisonment who, at the request of the judicial or administrative authorities, has provided them with the decrypted version of the encrypted messages and with the secret agreements needed for the decryption. »

Article 26

I. – Article 31 of Act No 1062 of 15 November 2001 on everyday security is repealed.

II. – After Article 11 of Act No 646 of 10 July 1991 on the secrecy of correspondence sent by means of telecommunications, an Article 11-1 is re-established, worded as follows:

« *Art. 11-1.* – Persons who provide cryptology services intended to fulfil a confidentiality function are required to provide the officers authorised under the conditions specified in Article 4, at their request, with the agreements allowing the decryption of the data converted using the services which they have provided. The authorised officers may ask the aforementioned service-providers to themselves apply these agreements, except where the latter prove that they are unable to comply with these requests.

The fact of not complying, under these conditions, with the requests of the authorised authorities shall be punished by two years' imprisonment and a fine of € 30 000.

A Council of State decree shall specify the procedures according to which this

obligation shall be applied and also the conditions under which the financial cost of this application shall be covered by the State. »

III. – After Article 434-15-1 of the Criminal Code, an Article 434-15-2 is re-established, worded as follows:

« *Art. 434-15-2.* – The fact, with regard to anyone having knowledge of the secret decryption agreement of a means of cryptology which may have been used to prepare, facilitate or commit a felony or misdemeanour, of refusing to provide this agreement to the judicial authorities or to apply this, at the requests of these authorities issued pursuant to Titles II and III of Book I of the Code of Criminal Procedure, shall be punished by three years' imprisonment and a fine of € 45 000.

If this refusal is indicated where the provision or application of the agreement would have allowed the committal of a felony or misdemeanour to be avoided or the effects of this to be limited, the penalty shall be increased to five years' imprisonment and a fine of € 75 000. »

Section 5

Use of state means to decrypt encrypted data

Article 27

I. – Article 30 of the aforementioned Act No 1062 of 15 November 2001 is repealed.

II. – After Article 230 of the Code of Criminal Procedure, a Title IV is re-established, worded as follows:

« TITLE IV

COMMON PROVISIONS

SOLE CHAPTER

Decryption of encrypted data needed to reveal the truth

Art. 230-1. – Without prejudice to the provisions of Articles 60, 77-1 and 156, when it appears that data seized or obtained during the inquiry or investigation has been subject to conversion operations preventing the decrypted information which this contains from being accessed or understood, the public prosecutor or the investigating or trial court to which the case has been referred may appoint any qualified natural or legal person to carry out the technical operations allowing the decrypted version of this information to be obtained and also, in the case where a means of cryptology has been used, the secret decryption agreement to be obtained, if this seems necessary.

Except where registered in a list specified in Article 157, the persons thus appointed

shall take a written oath on their honour and in all conscience to provide their assistance to the courts.

If the penalty incurred is equal to or greater than two years' imprisonment and if the needs of the inquiry or investigation demand this, the public prosecutor or the investigating or trial court to which the case has been referred may order the use of state means, subject to national defence secrecy, according to the terms specified in the present Chapter.

Art. 230-2. – When the public prosecutor or the investigating or trial court to which the case has been referred decides to use, for the operations indicated in Article 230-1, state means covered by national defence secrecy, the written request must be sent to the national law-enforcement service responsible for combating organised crime linked to information technologies, together with the physical medium containing the data to be decrypted or a copy of this. This request shall establish the period within which the decryption operations must be carried out. This period may be extended under the same formal conditions. At any time, the requesting judicial authority may order the interruption of the specified operations.

The law-enforcement service to which the request has been sent shall immediately send this request and also, if applicable, the interruption orders to a technical body subject to national defence secrecy and appointed by decree. Data protected under national defence secrecy may be communicated only under the conditions specified by Act No 567 of 8 July 1998 establishing a Consultative commission on national defence secrecy.

Art. 230-3. – On completion of the operations, as soon as it appears that these operations are technically impossible, on the expiry of the period specified or on receipt of the interruption order from the judicial authority, the results obtained and the documents received shall be returned by the person responsible within the technical body to the law-enforcement service which sent it the request. Subject to the obligations arising from national defence secrecy, the results shall be accompanied by technical information useful for understanding and using the results and also by a declaration signed by the responsible person within the technical body certifying the genuineness of the results sent.

These documents shall be immediately sent to the judicial authority by the national law-enforcement service responsible for combating organised crime linked to information technologies.

The information thus obtained shall form the subject of a receipt report and shall be filed in the case-file.

Art. 230-4. – The legal decisions adopted in application of the present Chapter shall not be judicial in nature and shall not be open to appeal.

Art. 230-5. – Without prejudice to the obligations arising from national defence secrecy, officers receiving a request pursuant to the provisions of the present Chapter shall be obliged to provide their assistance to the courts. »

Section 6

Sundry provisions

Article 28

The provisions of the present Chapter shall not prevent the application of the Decree of 18 April 1939 establishing the rules governing weaponry, arms and munitions to those means of cryptology which are specifically designed or modified to carry, use or operate arms or support or use the armed forces and to those specifically designed or modified on behalf of the Ministry of Defence with a view to protecting national defence secrets.

Article 29

I. – Article 28 of Act No 1170 of 29 December 1990 on the regulation of telecommunications is repealed from the entry into force of the present Chapter.

II. – The authorisations and declarations of supply, import and export of means of cryptology issued or made in accordance with the provisions of Article 28 of the aforementioned Act No 1170 of 29 December 1990 and its implementing texts shall retain their effects until the expiry of the duration specified in these. The approvals issued to bodies responsible for managing, on behalf of others, the secret agreements of means of cryptology allowing confidentiality functions to be fulfilled shall be valid, for these means, as a declaration pursuant to Article 19.

CHAPTER II

Fight against cybercrime

Article 30

Article 56 of the Code of Criminal Procedure is amended as follows:

1. In the first subparagraph, after the word: « documents », the words: « , computer data » are inserted and, after the word: « documents », the word: « , information » is inserted;

2. In the second subparagraph, the words: « or documents » are replaced by the words: « , documents or computer data »;

3. The fifth subparagraph is replaced by three subparagraphs worded as follows:

« The computer data needed to reveal the truth shall be seized through an order for the administration by the court of either the physical medium of these data or a copy made in the presence of the persons attending the search.

If a copy is made, the permanent erasure, from the physical medium whose administration by the court has not been ordered, of the computer data whose

holding or use is illegal or dangerous for the safety of people or property may be carried out on the instructions of the public prosecutor.

With the agreement of the public prosecutor, the senior law-enforcement officer shall continue the seizure only of the items, documents and computer data useful for revealing the truth. »

Article 31

In Article 94 of the Code of Criminal Procedure, after the words: « items », the words: « or computer data » are inserted.

Article 32

Article 97 of the Code of Criminal Procedure is amended as follows:

1. In the first subparagraph, after the words: « documents », the words: « or computer data » are inserted;

2. In the second subparagraph, the words: « the items and documents » are replaced by the words « the items, documents or computer data »;

3. In the third subparagraph, the words: « and documents » are replaced by the words: « , documents and computer data »;

4. In the fifth subparagraph, after the word: « documents », the words: « or computer data » are inserted;

5. After the second subparagraph, two subparagraphs are inserted worded as follows:

The computer data needed to reveal the truth shall be seized through an order for the administration by the court of either the physical medium of these data or a copy made in the presence of the persons attending the search.

If a copy is made, within this procedure, the permanent erasure, from the physical medium whose administration by the court has not been ordered, of the computer data whose holding or use is illegal or dangerous for the safety of people or property may be carried out on the order of the investigating judge. »

Article 33

I. – Article 323-1 of the Criminal Code is amended as follows:

1. In the first subparagraph, the words: « one year » are replaced by the words: « two years » and the sum: « € 15 000 » is replaced by the sum: « € 30 000 »;

2. In the second subparagraph, the words: « two years » are replaced by the words: « three years » and the sum: « € 30 000 » is replaced by the sum: « € 45 000 ».

II. – In Article 323-2 of the same Code, the words: « three years » are replaced by the words: « five years » and the sum: « € 45 000 » is replaced by the sum: « € 75 000 ».

III. – In Article 323-3 of the same Code, the words: « three years » are replaced by the words: « five years » and the sum: « € 45 000 » is replaced by the sum : « € 75 000 ».

Article 34

I. – After Article 323-3 of the Criminal Code, an Article 323-3-1 is inserted, worded as follows:

« *Art. 323-3-1.* – The act of holding, offering, transferring or providing an item of equipment, instrument, computer program or any data designed or specially adapted to commit the acts specified by Articles 323-1 to 323-3 shall be punished by the penalties specified respectively for the offence itself or for the offence with the severest punishment.

The provisions of the present Article shall not apply when the holding, offering, transfer and provision of the instrument, computer program or any data is justified by the needs of scientific and technical research or the protection and security of electronic communications networks and information systems and where these are used by public or private bodies having made a prior declaration to the Prime Minister according to the terms specified by the provisions of III of Article 18 of Act No … of … on confidence in the digital economy. »

II. – In Articles 323-4 and 323-7 of the same Code, the words: « Articles 323-1 to 323-3 » are replaced by the words: « Articles 323-1 to 323-3-1 ».

TITLE IV

SATELLITE SYSTEMS

Article 35

Article L. 32 of the Postal and Telecommunications Code is supplemented by a number 16 worded as follows:

« 16. Satellite system.

A satellite system is defined as any set of terrestrial and space stations which are intended to provide space radiocommunications and include one or more artificial satellites of the Earth. »

Article 36

I. – Book II of the Postal and Telecommunications Code is supplemented by a Title VIII worded as follows:

« TITLE VIII

FREQUENCY ASSIGNMENTS FOR SATELLITE SYSTEMS

Art. L. 97-2. - I. - 1. Any frequency assignment request for a satellite system shall be sent to the National Frequency Agency.

Except where the requested assignment does not comply with the national frequency band assignment table or with the stipulations of the instruments of the International Telecommunications Union, the National Frequency Agency shall declare, on behalf of France, the corresponding frequency assignment to the International Telecommunications Union and shall commence the procedure specified by the radiocommunications regulation.

2. The use of a frequency assigned to a satellite system, declared by France to the International Telecommunications Union, shall be subject to authorisation by the Minister for Telecommunications, following an opinion from the authorities assigning the radio frequencies concerned.

The granting of the authorisation shall be subject to proof by the requester of his capacity to control the transmission of all the radio stations, including the terrestrial stations, using the assigned frequency and to pay the National Frequency Agency a fee corresponding to the costs of processing the file declared to the International Telecommunications Union.

The authorisation may be refused in the following cases:

1. To safeguard public order, the needs of defence or those of public security;

2. When the request is not compatible with either the commitments made by France in the area of radiocommunications or with the existing or anticipated uses of the frequency bands or with other authorisation requests allowing improved management of the frequency spectrum;

3. When the request has effects on the rights attached to the frequency assignments previously declared by France to the International Telecommunications Union;

4. When the requester has been subject to one of the penalties specified in III of the present Article or in Article L. 97-3.

The authorisation shall lapse if the use proves incompatible with coordination agreements concluded after the issue of the authorisation.

II. – The holder of an authorisation must comply with the technical specifications notified by France to the International Telecommunications Union and also, if applicable, with the coordination agreements concluded with other Member States of the International Telecommunications Union or with other operators of frequency assignments declared by France to the International Telecommunications Union, including agreements concluded after the issue of the authorisation.

The holder must permanently ensure the control of the transmission of all the radio stations, including the terrestrial stations, using the assigned frequency.

The holder of the authorisation must provide his assistance to the administration in implementing the provisions of the radiocommunications regulation.

At the request of the Minister for Telecommunications, the holder of the authorisation shall ensure that all prejudicial interference caused by the satellite system having been authorised is stopped in the cases specified by the radiocommunications regulation.

The obligations imposed by the present Article on the holder of the authorisation shall also apply to the radio stations covered by the authorisation which are held, installed or used by third parties or which are situated outside France.

The authorisation shall be granted on a personal basis and may not be assigned to a third party. It may be transferred only with the agreement of the administrative authority.

III. – When the holder of the authorisation specified in I does not comply with the obligations imposed on him by the legislative or regulatory texts, the Minister for Telecommunications shall send him notice to comply with these within a specified period.

If the holder does not comply with the notice sent to him, the Minister for Telecommunications may order against him one of the penalties specified in number 2 of Article L. 36-11. The procedure specified in numbers 2 and 4 of Article L. 36-11 shall apply. He may also decide to interrupt the procedure commenced by France with the International Telecommunications Union.

IV. – Obtaining the authorisation specified in I does not give exemption, where applicable, from the other authorisations specified by the laws and regulations in force, particularly those specified in Title I of the present Book and those relating to the provision of audio or television broadcasting services in the French territory specified by the aforementioned Act No 1067 of 30 September 1986.

V. – The present Article shall not apply:

1. When the assigned frequency is used by an administration for its own needs in a frequency band which it has been assigned pursuant to Article 21 of the aforementioned Act No 1067 of 30 September 1986;

2. When France has acted before the International Telecommunications Union, in its capacity as the notifying administration, on behalf of a group of Member States of the International Telecommunications Union.

VI. - A Council of State decree shall establish the terms of application of the present Article. It shall specify in particular:

1. The procedure according to which the authorisations shall be issued or withdrawn and according to which their expiry shall be noted;

2. The duration and conditions of amendment and renewal of the authorisation;

3. The conditions for commissioning the satellite system;

4. The terms of establishment and recovery of the fee specified in the second subparagraph of 2 of I.

Art. L. 97-3. – The fact of using a frequency assigned to a satellite system declared by France to the International Telecommunications Union without the authorisation specified in Article L. 97-2 or of continuing this use in breach of a suspension or withdrawal decision or the recording of the expiry of this authorisation shall be punished by six months' imprisonment and a fine of € 75 000.

Legal persons may be held criminally liable under the conditions specified by Article 121-2 of the Criminal Code for the offences defined in the present Article. The penalties incurred by legal persons shall be:

1. The fine according to the terms specified by Article 131-38 of the Criminal Code;

2. The penalties specified in numbers 4, 5, 8 and 9 of Article 131-39 of the same Code.

Officials and officers of the telecommunications administration and the National Frequency Agency indicated in Article L. 40 may investigate and record these offences under the conditions established in said article.

Art. L. 97-4. – Without prejudice to their automatic application in Mayotte pursuant to number 8 of I of Article 3 of Act No 616 of 11 July 2001 on Mayotte, Articles L. 97-2 and L. 97-3 shall apply in New Caledonia, French Polynesia, Wallis and Futuna and the French Southern and Antarctic Lands. »

II. - In I of Article L. 97-1 of the same Code, after the fourth subparagraph, a subparagraph is inserted, worded as follows:

« It shall investigate, on behalf of the State, the authorisation requests presented pursuant to Article L. 97-2. »

Article 37

Persons having asked the State or the National Frequency Agency to declare to the International Telecommunications Union a frequency assigned prior to the publication of the present Act shall, if they wish to retain the rights to use this assigned frequency, request the authorisation specified in Article L. 97-2 of the Postal and Telecommunications Code within a period of one year from the date of publication of the decree specified in VI of Article L. 97-2.

TITLE IV *A*

DEVELOPMENT OF INFORMATION TECHNOLOGIES AND COMMUNICATION

[New division and title]

Article 37 *a (new)*

The third subparagraph of number 2 of II of Article L. 35-3 of the Postal and Telecommunications Code is worded as follows:

« The share in the net costs which must be borne by each operator shall be calculated in proportion to its turnover in the telecommunications market, excluding the turnover made from the interconnection services covered by the agreements defined in I of Article L. 34-8 and other services provided on behalf of third-party operators. »

TITLE V

FINAL PROVISIONS

Article 38

I. – The provisions of Articles 1 to 3, 6 to 10, 14 and 17 to 37 shall apply in New Caledonia, French Polynesia and Wallis and Futuna.

The provisions of Article 3 and of Articles 6 to 9, 14 and 17 to 37 shall apply in the French Southern and Antarctic Lands.

In addition to the provisions of I of Article 12, Articles 23 to 27 and 30 to 37, which shall automatically apply in this community, Articles 1 to 3, 6 to 10, 14, 17 to 22, 28 and 29 shall apply in Mayotte.

II. - The references to the regional court appearing in the articles made applicable by the above subparagraphs shall be replaced by references to the court of first instance. Similarly, the references to codes or acts which do not apply locally shall be replaced by references to the corresponding provisions applying locally.

Deliberated in a public sitting, in Paris, on 26 February 2003.

The President,

Signed: JEAN-LOUIS DEBRÉ.

** Date received : 08-Apr-2003
End of Standstill Period :09-Jul-2003
Notification Number : 2003/127/F