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FRENCH SPACE LEGISLATION DEVELOPMENT

**THE NEW FRENCH LEGISLATION ON SATELLITE FREQUENCIES
ASSIGNMENTS**

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ABSTRACT

France has modified its Post and Telecommunications Code in order to introduce a clear legal framework dealing with use of satellite frequencies. The 2004 *Loi pour la confiance dans l'économie numérique* (LEN) has defined the procedure to use space frequencies and stipulated sanctions for non compliance with the statute prescriptions.

INTRODUCTION

The fourth title of the *Loi pour la confiance dans l'économie numérique* (LEN)¹ of 21 June 2004² is related to satellite systems. Articles 47, 48 and 49 of the law are modifying the Post and Telecommunications Code in order to create a legal framework for radio-communications satellites frequencies assignments. It might be surprising to find in a document mainly focused on Internet applications a set of rules dealing with the use of space frequencies. Even if satellite technology remains a major tool for the achievement of the information society

since it represents the only means to provide worldwide communications services, the introduction of these articles in the LEN are mainly based on opportunistic reasoning. The LEN was drafted during the announcement of the first satellite constellations systems presented as a way to provide direct voice and broadband application all around the world: Iridium, Globalsat, Teledesic and Skybridge. At that time, the French space industry was supporting these projects. The French government was concerned about the lack of clarity in the national legislation and the possibility for these satellite operators to use the American legislation framework, and thus acting through the Federal Communications Commission (FCC) to fulfil their international obligations derived from the ITU Radio Regulations. The applicable US law gives a complete definition of the role and the missions of FCC concerning ITU coordination procedures. At the same period, the LEN was under elaboration and the French government decided to modify

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¹ Confidence-building legislation on digital economy Loi n° 2004-575 pour la confiance dans l'économie numérique (21 June 2004) - *J.O.R.F* n° 143, 22 June 2004, page 11168.

² Loi n° 2004-575 - *J.O.R.F* n° 143, 22 June 2004, page 11168.

the national legislation in order to clarify the international obligations of France and the procedures concerning satellite frequencies assignment. Since 1997, the French Frequencies Agency (*Agence Nationale des Fréquences - ANFr*) is responsible for frequencies international coordination. This governmental institution has been established as an *établissement public à caractère administratif* and is working under the supervision of the Minister responsible for telecommunications. Neither the 1996 Telecommunications Act establishing the ANFr³ nor the 1996 Decree defining the ANFr missions⁴, explain clearly the role of ANFr in the field of satellite frequencies coordination. The texts only mention that ANFr is the single institution representing France at ITU. The LEN describes the procedure to use space frequencies (I) and the associated sanctions for non compliance with applicable regulations (II).

I. PROCEDURE TO USE SPACE FREQUENCIES

The LEN identifies space systems for which an authorisation is requested (A). It also explains the procedures (B) and associated obligations (C).

A. Systems requesting authorization

According to the LEN, the procedure is applicable to any radio-communications satellite system. Therefore, the scope of the law includes satellites used for: telecommunications (fixed and mobile) including broadcasting, remote sensing, meteorology, navigation, localisation, space exploration and radio-amateur service. It also includes frequencies used for satellite exploitation. However, the law is only relevant for private systems. The procedure is not applicable to frequencies used for fulfilling the needs of a

governmental administration such as: civil aviation administration, Ministry of defence, Ministry of Interior, meteorology administration, maritime navigation administration and Ministry of research. Furthermore, the law is not applicable when France is proceeding to international coordination for the benefit of an international organisation such as Eutelsat before its privatisation or the European Space Agency.

The LEN adds that persons having asked the government or ANFr to proceed to international coordination before the entry into force of the LEN have to respect the new procedure in order to maintain their rights.

B. Authorisation procedure

First, any request for space frequencies assignment has to be sent to ANFr. If the request is compatible with the National Frequencies Board or with the international obligations of France, ANFr starts, in the name of France, the international coordination procedure as described in the Radio Regulations.

Second, frequencies assignment cannot be exploited without the prior authorisation of the Minister responsible for telecommunications. Authorisation is given after consultations with the Audiovisual Regulatory Authority (*Conseil Supérieur de l'Audiovisuel - CSA*) if the frequencies are to be used for broadcasting and with the Telecommunications Regulatory Authority (*Autorité de Régulation des Télécommunications - ART*) if the frequencies are to be used for voice, data, Internet and other multimedia services. The person requesting authorisation has to prove his/her capacity to control the whole system stations in order to react in case of harmful interferences and must pay royalties to ANFr corresponding to work done for the international coordination.

³ Loi n° 96-659 de réglementation des télécommunications (26 juillet 1996).

⁴ Décret n° 96-1178 (27 December 1996).

The law lists four motives for refusing the authorisation: 1) protection of public order; 2) incompatibility of the request with international French radio-communications obligations, existing or planned services or other requests that ensure a better use of frequencies spectrum; 3) potential interferences with existing systems coordinated at ITU by France; 4) sanction given to the requesting person dealing with a previous satellite frequency use (exploitation without respecting the associated obligations or impossibility to prevent or stop harmful interferences). Furthermore, the authorisation is null and void if the frequencies used are incompatible with future coordination agreements.

Authorisation may only be given to the requesting party rather than to somebody making a request for a third party. However, the latter may transfer the rights and obligations derived from it after consent of ANFr. The corresponding provisions allow for in orbit satellite resale.

This authorisation procedure does not exclude the frequency user from requesting other specific authorisations dealing with electronic communication services and networks provision (1997 Telecommunications Act as amended in 2004) or audiovisual services provision (1986 Audiovisual Act).

A future decree will be adopted in order to clarify authorisation durations, condition for authorisation modification, suspension and nullification.

C. Obligations associated to the authorisation

The authorisation holder has to respect several obligations in order to avoid or to stop harmful interferences. First, he/she has to respect technical specifications associated with the frequency used as

mentioned in the Radio Regulations. Second, he/she has to ensure a permanent control over the signal of each radio station including the ground ones. Third, he/she has to support ANFr's actions to respect French international obligations in the field of radiofrequencies. To this end, in case of harmful interference, the holder must stop any transmission upon request of the ministry of telecommunications. These obligations are applicable to the whole network including stations located abroad or belonging to third persons as soon as they are within the scope of the authorisation.

II. SANCTIONS IN CASE OF VIOLATION OF THE PROCEDURE AND OF THE ASSOCIATED OBLIGATIONS

In case of violation of the authorisation procedure or of the associated obligations, the law imposes administrative sanctions (A) and criminal sanctions (B).

A. Administrative sanctions

In case of non-respect of the authorisation procedure, the Ministry responsible for telecommunications asks the authorisation holder to comply with it within a determined delay. If the holder does not react, the Minister may pronounce one of the sanctions listed in the law. The Minister can decide the complete or partial suspension of the authorisation, for one month or more. It can also decide the reduction of its duration, within a one-year limit or its withdrawal. If the violation does not constitute a penal infringement, the holder may be submitted to a pecuniary sanction. The amount is proportionate to the importance of the violation and to the benefits deduced from it by the holder. However, the sanction cannot exceed 3% of the turnover and 5% in case of violation repeat. If it's not possible to calculate the turnover, the amount cannot exceed 150 000 euros and 375 000 euros in case of

violation repeat. The Minister responsible for telecommunications provides clear motives for any sanctions levelled in such cases. The sanctioned party is notified and the decision is published in the official journal. The holder can make an appeal to the *Conseil d'Etat* against the decision of the Minister. The Minister can also decide to stop ITU international coordination procedure.

B. Criminal sanctions

The law prescribes criminal sanctions in two different circumstances: first, when a frequency associated to a satellite system coordinated by France at ITU is used without having obtained the necessary authorisation from the Minister responsible for telecommunications and, second, when the frequency is used in violation of a

decision confirming the suspension or withdrawal of the authorisation or noting its nullity. Sanctions are first applicable to individuals. They can be punished of six months imprisonment and of a 75 000 euros fine. Legal persons can also be asked to pay a 375 000 euros fine on the basis of French general criminal law. Other sanctions may be levied: definitive or temporary (five years) closing of the establishments used for the violation; definitive or temporary (five years) exclusion from public markets procedure; confiscation of the material used for the violation or of the result of the violation; publication of the sanction in the print and audiovisual medias. Officials from the Ministry responsible for telecommunications and from ANFr have sufficient authority to search for, and register, violation of the obligations.