

## Digital sovereignty (February 2015)

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It was with interest that ARCEP took stock of the contributions that the French Digital Council, *Conseil national du numérique* (CNNum) received on the issue of digital sovereignty.

Current discussions about this issue are focused on the relevant and central questions surrounding the draft and actual implementation of regulations governing digital content in France, notably with respect to taxation and data privacy.

However, as several contributors pointed out, the primary source of digital sovereignty is electronic communications networks and infrastructures: on the one hand, through the competitiveness of European equipment suppliers and operators and, on the other, the security of these infrastructures and networks. To give an example: it is clear that to ensure effective protection of personal data online, it is vital to ensure the security and resilience of the networks over which these data are relayed. If the ruling aspects of this mission fall first to the Government, the Law assigns ARCEP the responsibility of ensuring that operators meet their obligations with respect to the permanence, quality, availability, security and integrity of electronic communications networks and services.

From a more general standpoint, the obligations contained in national law – particularly with respect to access and interconnection, public safety and security (interception of telecommunications, keeping browser histories, site blocking measures) and protecting end users – are applied to electronic communications operators once they operate electronic communications networks on the national territory, or provide users in France with electronic communications products and services.

To ensure the effectiveness of the applicable regulations, and the equality of competition conditions, the regulator needs to be able to verify that all of the players to which these rules apply are in compliance, including in the case of digital industry players whose business includes providing the public with electronic communications services and operating public networks.

Moreover, if ARCEP does not regulate content, the conditions under which this content is relayed – notably to the points of interconnection and peering between the top internet players' networks – do fall under its purview. Here, when ruling on a process for gathering information on the technical and pricing terms governing interconnection and routing that ARCEP introduced in 2012<sup>1</sup>, the Conseil d'Etat had the opportunity to confirm that the Authority was indeed competent to gather information from internet companies if their business was likely to have a significant impact in France, even if these companies were located abroad (CE, 10 July 2013 No. 360397 and 360398, companies AT&T Global Network Services et al, Lebon T. p. 737).

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<sup>1</sup> Decision No. 2012-0366 on the implementation of a process for gathering information on the technical and pricing terms governing interconnection and routing, amended by Decision No. 2014-0433-RDPI. See also ARCEP's contribution on the topic of net neutrality.

Generally speaking, the legal categories and the regulations that apply to electronic communications need to remain relevant and adapted to the sector's ongoing technological development and changing business models. ARCEP will take an active part in the discussions getting underway at the European level, in the run-up to the latest review of the European framework.