

TEXT ADOPTED No 310

*'Little law'*

# NATIONAL ASSEMBLY

CONSTITUTION OF 4 OCTOBER 1958

FIFTEENTH LEGISLATURE

EXTRAORDINARY SESSION, 2018-2019

9 July 2019

## DRAFT LAW

*aimed at combating hate content on the Internet,*

ADOPTED BY THE NATIONAL ASSEMBLY

AT THE FIRST READING.

*(Accelerated procedure)*

*The National Assembly has adopted the draft law, the content of which follows:*

See numbers: 1785, 2062 and 1989.

### CHAPTER I

#### **Enhanced obligation to remove online hate content**

*(New division and title)*

#### **Article 1**

I. – Law No 2004-575 of 21 June 2004 on confidence in the digital economy is amended as follows:

1. After Article 6-1, an Article 6-2 is inserted, worded as follows:

*'Article 6-2. – I. – Without prejudice to the provisions of Article 6(I)(2) of this law, operators of online platforms (within the meaning of Article L111-7(I) of the Consumer Code) offering an online public communication service based on connecting multiple parties for the purposes of sharing public content or based on classifying or referencing content by means of computer algorithms, which is offered or placed online by third parties, where this activity on French territory exceeds thresholds determined by decree, shall be required (given the general interest attached to respecting human dignity and combating content published on the internet that condones crimes against humanity, incites acts of terrorism, advocates such acts or incites hatred, violence or discrimination, or insults a person or group of persons on the grounds of origin, race, religion, ethnicity, nationality, sex, sexual orientation, gender identity or disability, whether true or alleged) to render inaccessible, within 24 hours of notification by one or more persons of any content manifestly constituting one of the offences mentioned in paragraph 3 of Article 6(I)(7) of this law and Article 33(3 and 4) of the Law of 29 July 1881 on freedom of the press, or to cease referencing this content, within the same period.*

*If content such as that referred to in paragraph 1 of this point I has been removed, the operators shall replace said content with a message indicating that it has been removed.*

*Deleted illegal content must be preserved for a maximum of one year for the purposes of investigating, identifying and prosecuting criminal offences, exclusively to make information available to the judicial authority.*

*Failure to meet the obligation defined in paragraph 1 of point I of this article shall incur the penalties provided for in Article 6(VI), (1) of this law.*

*Any association referred to in Articles 48-1 to 48-6 of the aforementioned Law of 29 July 1881 may, under the same conditions and subject to the same reservations as those provided for in the same Articles 48-1 to 48-6, exercise the rights recognised for the civil party in respect of the offence mentioned in the penultimate paragraph of point I of this article where the offence relates to content constituting an offence in respect of which the association may exercise the same rights.'*

2. *(new) (Deleted)*

II and III. – *(Deleted)*

IV *(new)*. – In paragraph 3 of Article 6(I)(7) of the aforementioned Law No 2004-575 of 21 June 2004, the words: *'ou identité sexuelle'* are replaced by the words: *'sexuelle, de leur identité de genre'*, resulting in the English meaning: *'...hate towards persons on account of their sex, sexual orientation or identity, or their disability...'*

### **Article 1bis (new)**

Article 6-2 of the aforementioned Law No 2004-575 of 21 June 2004, as worded as a result of Article 1 of this Law, is supplemented by a point II, worded as follows:

‘II. – The 24 hour period mentioned in paragraph 1 of point I of this article shall run from the receipt by the operator of a notification comprising the following elements:

1. If the notifier is a natural person: their surname, other name(s), first name and email address; if the notifier is a legal person: its corporate form, its corporate name and its email address; if the notifier is an administrative authority: its name and email address. These conditions shall be deemed met if the notifier is a registered user of the online public communication service referred to in the same paragraph 1, who is connected at the time of notification, and if the operator has collected the necessary information to identify them;

2. The category in which the disputed content belongs, a description of the content, the reasons for which it must be removed, made inaccessible or dereferenced and, where applicable, the email address(es) to which this content is made accessible.’

### **Article 1ter A (new)**

Paragraph 2 through to the penultimate paragraph of Article 6(I)(5) of the aforementioned Law No 2004-575 of 21 June 2004 shall be replaced by two paragraphs worded as follows:

‘– if the notifier is a natural person: their surname, first name(s) and email address; if the notifier is a legal person: its corporate form, its corporate name and its email address; if the notifier is an administrative authority: its name and email address.

These conditions shall be deemed met if the notifier is a registered user of the online public communication service referred to in the same point 2, who is connected at the time of notification, and if the operator has collected the necessary information to identify them;

– the category in which the disputed content belongs, a description of the content, the reasons for which it must be removed, made inaccessible or dereferenced and, where applicable, the email address(es) to which this content is made accessible;’.

### **Article 1ter B (new)**

After Article 6-2(II) of the aforementioned Law No 2004-575 of 21 June 2004, as worded as a result of Article 1bis of this Law, a point IIbis is inserted, worded as follows:

‘II bis. – When an association that has been declared for at least five years prior to the date of the facts and whose statutory purpose includes the protection of children in the context of their use of online platforms, having been seized of the facts by a minor, notifies content that manifestly constitutes one of the offences mentioned in paragraph 1 of point I of this Article, the operators mentioned in the same paragraph 1 shall acknowledge receipt of the association’s notification without delay and inform it of the follow-up given to the notification and the reasons for their decision under the conditions provided for in Article 6-3(2). The association shall inform the minor and their legal representatives of the notification.

The association shall, where appropriate, challenge any failure to remove or dereference the content, without prejudice to the right of the minor’s legal representatives to act. It shall inform the minor and their legal representatives of the follow-up given to their request. It shall ensure that the data transmitted by the minor, which is necessary for the action to remove or dereference the content mentioned in paragraph 1 of this point IIbis, are preserved.’

### **Article 1ter (new)**

Article 6-2 of the aforementioned Law No 2004-575 of 21 June 2004, as worded as a result of Articles 1, 1bis and 1ter B of this law, is supplemented by a point III as follows:

‘III. – Any party presenting content or activity to the parties mentioned in paragraph 1 of point I of this article as being illegal, within the meaning of the same point I, to have it removed or to halt its dissemination, despite being aware that this information is incorrect, shall incur one year's imprisonment and a fine of EUR 15 000.’

## **CHAPTER II**

### **Duty of cooperation for platform operators in combating hate content online**

*(New division and title)*

## **Article 2**

I. – *(Deleted)*

II. After Article 6-1 of the aforementioned Law No 2004-575 of 21 June 2004, an Article 6-3 is inserted, worded as follows:

‘Article 6-3. – The operators mentioned in paragraph 1 of Article 6-2(I) are obliged to meet the following obligations to combat the online dissemination of content mentioned in the same paragraph 1:

1. *(new)* they shall comply with the recommendations made by the Higher Audiovisual Council for correct application of the obligation mentioned in said paragraph 1 and the obligations mentioned in points 2 to 11 of this article;

2. they shall acknowledge receipt of any notification without delay. They shall inform the notifier and, if the necessary contact details are available, the user at the origin of publication of the notified content, of the date and time of the notification, the follow-up given to the notification and the reasons for their decisions, within 24 hours if they are removing the content, making it inaccessible or ceasing to reference it or, by default, within seven days of receipt of the notification. They shall also remind the user at the origin of the publication that civil and criminal penalties will be incurred for the publication of manifestly illegal content;

3. they shall implement a directly accessible and uniform notification system for users located on French territory that enables any person to notify illegal content (in the user’s language) and informing the notifier(s) of the risks that they incur in the case of improper notification;

4. they shall implement proportionate procedures, human resources and, where appropriate, technological resources to ensure timely processing of notifications received, appropriate examination of the notified contents to prevent the risk of wrongful removal, and compliance with the requirement mentioned in paragraph 1 of Article 6-2(I);

5. *(new)* they shall implement a mechanism whereby:

a) the user at the origin of publication of the notified content that has been removed, made inaccessible or dereferenced, may challenge this decision, should it be taken;

b) the notifying party may challenge any decision not to remove, make inaccessible or cease referencing the notified content;

5. *bis (new)* They shall implement the appropriate resources to prevent the redistribution of content mentioned in paragraph 1 of Article 6-2(I);’.

III. – *(Deleted)*

## **Article 3**

Article 6-3 of the aforementioned Law No 2004-575 of 21 June 2004, as worded as a result of Article 2 of this Law, is supplemented by points 6 to 11, worded as follows:

‘6. They shall provide clear and detailed public information that is easily accessible and visible, to inform their users:

a) regarding the internal and judicial appeal mechanisms (and the deadlines thereof) available to the victims of content mentioned in paragraph 1 of Article 6-2(I) and regarding the parties that are able to guide these victims through these processes. They shall inform notifiers of the risks that they incur in the event of improper notification. They shall also inform users at the origin of published content that has been removed, made inaccessible or dereferenced, regarding the internal and judicial channels available to them;

b) *(new)* regarding the penalties, including judicial sanctions, that their users will incur should they publish the content mentioned in the same Article 6-2;

c) *(new)* regarding the general procedures associated with the mechanism that they have implemented for moderation of this content;

7. *(new)* they shall report on the human and technological resources that they have implemented and the procedures they have adopted to meet the obligations mentioned in paragraph 1 of Article 6-2(I) and in this Article, as well as on the actions and resources that they have implemented and the results obtained in combating and preventing the content mentioned in paragraph 1 of Article 6-2(I). The Higher Audiovisual Council shall specify, by deliberation and respecting business confidentiality, which information is made public under this point 7, and the procedures for, and frequency of, this reporting;

8. *(new)* they shall be required, when registering a minor under the age of 15 for one of their services and, where their service offer involves the processing of personal data, to provide the minor and their parent(s) or guardian(s) with information regarding civic and responsible use of the service and the legal risks incurred in the event of dissemination by the minor of hate content, when obtaining the consent mentioned

in paragraph 2 of Article 45 of Law No 78-17 of 6 January 1978 relating to data processing, files and freedoms;

9. *(new)* they shall promptly inform the competent public authorities of any activities undertaken by users of their services that might contravene the provisions mentioned in paragraph 1 of Article 6-2(I) and of which they have been notified;

10. *(new)* they shall designate a legal representative, a natural person located on French territory, to act as a contact person for the purposes of applying Article 6-2 and this article. This legal representative shall be responsible for receiving requests from the judicial authority, pursuant to Article 6 of this law and requests from the Higher Audiovisual Council, pursuant to Article 17-3 of Law No 86 -1067 of 30 September 1986 on freedom of communication;

11. *(new)* they shall formulate in precise, easily understandable, objective and non-discriminatory terms the general conditions of use of the service that they provide to the public when these relate to the content mentioned in paragraph 1 of Article 6-2(I).’

### **Article 3 bis (new)**

In paragraph 1 of Article 6(IV)(1) of the aforementioned Law No 2004-575 of 21 June 2004, the amount: ‘EUR 75 000’ is replaced by the amount: ‘EUR 250 000’.

## **CHAPTER III**

### **Role of the Higher Audiovisual Council in combating hate content online**

*(New division and title)*

### **Article 4**

I. – After Article 17-2 of Law No 86-1067 of 30 September 1986 on freedom of communication, an Article 17-3 is inserted, worded as follows:

‘*Article 17-3.* – I. – The Higher Audiovisual Council shall ensure that the operators of online platforms mentioned in paragraph 1 of Article 6-2(I) of the same law comply with the provisions of Article 6-3 of Law No 2004-575 of 21 June 2004 on confidence in the digital economy.

If necessary, it shall send the operators mentioned in the same paragraph 1 recommendations, best practices and guidelines for correct implementation of the obligations mentioned in Articles 6-2 and 6-3 of the same law and for offering guidance for victims.

It shall monitor the obligations incumbent upon these operators.

It shall publish an annual assessment of the application of these provisions by the operators of online platforms and their effectiveness.

It shall gather all information necessary from the operators of online platforms mentioned in paragraph 1 of Article 6-2(I) of the aforementioned Law No 2004-575 of 21 June 2004, to monitor fulfilment of their obligations under Article 6-3 of the same law.

II *(new)*. – Should one of the operators referred to in paragraph 1 of Article 6-2(I) of the aforementioned Law No 2004-575 of 21 June 2004 fail in their duty under Article 6-3 of the same law to cooperate in combating online hate content, the Higher Audiovisual Council may initiate a sanctions procedure.

The Higher Audiovisual Council shall base its assessment of the operator’s failings on:

1. its fulfilment of the obligations mentioned in points 2 to 11 of the same Article 6-3;
2. the conditions under which the operator complies with the recommendations of the Higher Audiovisual Council pursuant to point 1 of said Article 6-3. The Higher Audiovisual Council shall assess whether the operator’s behaviour regarding removal of the content brought to its attention or identified on its own initiative is excessive or insufficient.

The Higher Audiovisual Council shall serve the operator with formal notice, setting a deadline, to comply with the obligations mentioned in points 2 to 11 of the same Article 6-3, or with the recommendations that it adopts under point 1 of the same Article 6-3.

Should the operator fail to comply with the notice that it has been served, the Higher Audiovisual Council may, under the conditions provided for in Article 42-7 of this law, issue it with a fine, the amount of which shall take into account the seriousness of the shortcomings and, where applicable, their repetitive nature, but which shall not exceed 4 % of the operator’s total annual turnover for the preceding financial year.

The Higher Audiovisual Council shall make public any formal notices and sanctions that it issues. It may also order that they be published, at the expense of the operator subject to the notice or sanction, in designated publications, newspapers and other media.

The fines mentioned in this point VII shall be recovered as foreign state debts from taxes and property.

III (*new*). – The Higher Audiovisual Council shall encourage the operators of online platforms mentioned in paragraph 1 of Article 6-2(I) of the aforementioned Law No 2004-575 of 21 June 2004 to implement cooperative tools to combat hate content.’

*Ibis A (new)*. – Article 19(1) of Law No 86-1067 of 30 September 1986 on freedom of communication is supplemented by a paragraph worded as follows:

‘ – [gather] from the operators of online platforms referred to in paragraph 1 of Article 6-2(I) of Law No 2004-575 of 21 June 2004 on confidence in the digital economy, all information necessary to monitor fulfilment of the obligations mentioned in Article 6-3 of the same law;’.

*Ibis (new)*. – In paragraph 1 and in the second sentence of Article 42-7(6) of Law No 86-1067 of 30 September 1986 on freedom of communication, after the word: ‘*prévues*’ in the French version, the following words are inserted: ‘*au II de l’article 17-3 ainsi qu’*’, resulting in the English meaning: ‘...[the rapporteur] ...shall, where applicable, propose that the council adopt one of the sanctions provided for in Articles...’.

*Iter (new)*. – Title I, Chapter II, of Law No 2004-575 of 21 June 2004 on confidence in the digital economy is amended as follows:

1. in paragraph 3 of Article 6(I)(7), after the word: ‘*ci-dessus*’ in the French version, the following words are inserted: ‘, *à l’exception des opérateurs mentionnés au premier alinéa du I de l’article 6-2 de la présente loi*,’ resulting in the English meaning: ‘...the persons mentioned above, with the exception of the operators mentioned in paragraph 1 of Article 6-2(I) of this law, must contribute to combating dissemination of the offences...’;

2. Paragraph 3 of Article 6-1 is amended as follows:

a) the first sentence is amended as follows:

– the words: ‘the National Data Protection Authority (CNIL)’ are replaced by the words: ‘the Higher Audiovisual Council’;

– at the end, the words: ‘*dans cette commission*’ are replaced by the words: ‘*au Conseil*’, resulting in the English meaning: ‘...a qualified person designated [within the administrative authority] by the Higher Audiovisual Council for the duration of its mandate in the [Higher Audiovisual] Council...’;

b) the second sentence is deleted.

II. – (*Deleted*)

## **Article 5**

(*Deleted*)

## **CHAPTER IV**

### **Improving efforts to combat the dissemination of online hate content**

(*New division and title*)

## **Article 6**

I. – Article 6(I), (8) of Law No 2004-575 of 21 June 2004 on confidence in the digital economy is amended as follows:

1. the words: ‘, *à défaut, à toute personne mentionnée*’ are deleted, resulting in the English meaning: ‘...the judicial authority may recommend, by referral or request, that any person mentioned in point 2 or point 1 take any appropriate measures to prevent harm...’;

2. (*Deleted*)

II (*new*). – After Article 6-1 of Law No 2004-575 of 21 June 2004 on confidence in the digital economy, an Article 6-4 is inserted, worded as follows:

‘*Article 6-4.* – When a judicial decision that has become final prohibits the total or partial reuse of content constituting one or more of the offences provided for in paragraph 3 of Article 6(I), (7) of this Law or in paragraphs 3 or 4 of Article 33 of the Law of 29 July 1881 on freedom of the press, the administrative authority, seized where appropriate by any interested person, may request that the persons mentioned in Article 6(I), (1) of this Law, and any domain name provider, block access to any site, server or other electronic process giving access to content deemed unlawful by said decision.

Under the same conditions, the administrative authority may also request that any search engine or directory cease referencing email addresses giving access to this content.

Where the content is not blocked or dereferenced pursuant to the first two paragraphs, the judicial authority may be seized, in summary proceedings or on request, to order any measure designed to end access to the content.’

#### CHAPTER IV<sup>BIS</sup>

### **Strengthening the effectiveness of the legal response to publishers of online hate content**

*(New division and title)*

#### **Article 6bis A (new)**

After Article 15-3-1 of the Code of Criminal Procedure, an Article 15-3-2 is inserted, worded as follows:

‘Article 15-3-2. – A district court designated by decree shall have jurisdiction concurrent with that resulting from the application of Articles 43, 52 and 382 of this Code for the investigation, prosecution, examination and judgement of the offences provided for in Article 222-33(III)(6) of the Penal Code, when they are committed under the aggravating circumstance provided for in Article 132-76 of the same code and in Article 222-33-2-2(4) of said Code, when they are committed under the aggravating circumstance provided for in Article 132-76 or 132-77 of the same Code and when they have been the subject of a complaint lodged electronically pursuant to Article 15-3-1 of this Code.’

#### **Article 6bisB (new)**

I. – A paragraph 9bis is inserted after Article 138(9) of the Code of Criminal Procedure, worded as follows:

‘9bis Do not send messages to the victim, directly or indirectly, by any means, including electronically.’

II. – Article 132-45 of the Penal Code is supplemented by a point 26, worded as follows:

‘26. The prohibition on sending messages to the victim, directly or indirectly, by any means, including electronically.’

III. – The last paragraph of Article 131-4-1 of the Penal Code in its wording resulting from Law 2019-222 of 23 March 2019 on programming 2018-2022 and reform for justice is completed by a sentence worded as follows: ‘The court may also subject the convicted person to one or more of the obligations or prohibitions provided for in Articles 132-44 and 132-45.’

#### **Article 6bis C (new)**

Title II of Book II of the Code of Criminal Procedure is amended as follows:

1. After Article 398-1(11), a point 11 is inserted, worded as follows:

‘11bis The offence of refusing to remove a manifestly illegal message provided for by Article 6-2 of Law No 2004-575 of 21 June 2004 on confidence in the digital economy;’

2. The first sentence of paragraph 2 of Article 510 is amended as follows:

a) The second occurrence of the word: ‘third’ is replaced by the word: ‘penultimate’;

b) The following words are added: ‘; this request may be submitted within a period of one month from the appeal declaration’;

3. In Article 512, the word: ‘third’ is replaced by the word ‘penultimate’.

#### CHAPTER IV<sup>TER</sup>

### **Preventing the dissemination of online hate content**

*(New division and title)*

#### **Article 6 bis (new)**

In the last sentence of paragraph 1 of Article L312-9 of the Education Code, after the word: ‘critique’ in the French version, the following words are inserted: ‘, à la lutte contre la diffusion des contenus haineux en ligne’, resulting in the English meaning: ‘It [school and educational training] shall contribute to the development of critical thinking, to combating the dissemination of hate content online and to learning digital citizenship.’

#### **Article 6ter (new)**

In the second sentence of the penultimate paragraph of Article L721-2 of the Education Code, after the word: ‘Information’, the words: ‘, à la lutte contre la diffusion de contenus haineux’ are inserted, resulting in the English meaning: ‘They [teacher training establishments] shall organise awareness-raising sessions in sexual equality, combating discrimination, information handling, combating the dissemination of hate content online and the education of pupils with disabilities...’.

## CHAPTER V

### **Final provisions**

*(New division and title)*

#### **Article 7**

An online hate observatory shall monitor and analyse the development of the content mentioned in Article 1 of this law, in conjunction with the operators, associations and researchers concerned, taking into account the diversity of the public concerned, notably including minors.

#### **Article 8**

*(Deleted)*

#### **Article 9 (new)**

Articles 2 and 3 and Article 4(I) and (*Ibis*) shall enter into force on 1 January 2020. Article 4(*Iter*) shall enter into force on 1 January 2021.

#### **Article 10 (new)**

I. – The Education Code is amended as follows:

1. Article L371-1 is amended as follows:

a) in paragraph 1, the reference: ‘L312-9,’ is deleted;

b) a paragraph is added, worded as follows:

‘Article L312-9 shall apply in its wording resulting from Law No XXXX-XXXX of XXXX aimed at combating hate content on the internet.’;

2. At the end of paragraph 2 of Articles L771-1, L773-1 and L774-1, the reference: ‘Law No 2018-1202 of 22 December 2018 combating manipulation of information’ is replaced by the reference: ‘Law No XXXX-XXXX of XXXX aimed at combating hate content on the internet’.

II. – At the end of paragraph 1 of Article 108 of the aforementioned Law No 86-1067 of 30 September 1986, the reference: ‘Law No 2018-1202 of 22 December 2018 combating manipulation of information’ is replaced by the reference: ‘Law No XXXX-XXXX of XXXX aimed at combating hate content on the internet’.

III. – Title VI of Law No 2004-575 of 21 June 2004 on confidence in the digital economy is amended as follows:

1. Article 57(1) is supplemented by the words: ‘*dans leur rédaction résultant de la loi n° du visant à lutter contre les contenus haineux sur internet*’, resulting in the English meaning: ‘[the articles] shall apply in New Caledonia, French Polynesia and on the islands of Wallis and Futuna in their wording resulting from Law No XXXX-XXXX of XXXX aimed at combating hate content on the internet.’;

2. Article 58 is repealed.

*Debated at a public meeting in Paris on 9 July 2019.*

*The Chair,*

*Signed:* RICHARD FERRAND