Draft Law strengthening compliance with the principles of the Republic

**Article 19**

Chapter II of Title I of Law No 2004-575 of 21 June 2004 on Confidence in the Digital Economy is amended as follows:

1. At the beginning of Article 6(I)(8), the words: ‘The judicial authority may prescribe as an interim measure or on request to any person referred to in 2 or, failing that, to any person mentioned in 1,’ shall be replaced by the following: ‘The president of the court, acting in accordance with the expedited procedure on the merits, may prescribe any person likely to contribute to it’;

2. After Article 6-2 as amended by Law No 2020-1266 of 19 October 2020 aimed at regulating the commercial exploitation of the image of children under sixteen years of age on online platforms, Articles 6-3 and 6-4 are inserted as follows:

‘*Article 6-4.* — When an enforceable court decision has ordered any measure to prevent access to an online public communication service whose content falls within the offences provided for in Article 6(I)(7), the administrative authority, should it be called upon by any concerned person, may request any person likely to contribute to it, and for a period not exceeding that remaining to run for the measures ordered by this judicial decision, to prevent access to any online public communication service incorporating the content of the site in full or substantially.

‘Under the same conditions, the administrative authority may also request any operator of a search engine, directory or other reference service to terminate the referencing of web addresses giving access to such online communication services to the public.

‘The administrative authority shall keep up to date a list of the online communication services referred to in the first paragraph of this Article, which have been the subject of a request for blocking access pursuant to the same first paragraph, as well as of web addresses giving access to such services, and shall make that list available to advertisers, their agents and the services referred to in Article 299(II)(2) of the General Tax Code. These services shall be included in this list for the remainder of the duration of the measures ordered by the judicial authority.

‘Where such services have not been blocked or deferred in accordance with this Article, the president of the court, acting in accordance with the expedited procedure on the merits, may prescribe any measure intended to terminate access to the contents of those services.’

**Article 19 *bis (new)***

I. – Chapter II of Title I of Law No 2004-575 of 21 June 2004 on Confidence in the Digital Economy is amended as follows:

1. Article 6(I)(7)(4) is amended as follows:

*a)* The first sentence shall be supplemented by the words: ‘and make public the means they devote to the fight against the illicit activities referred to in the third paragraph of this point 7’;

*b)* After the same first sentence, the following sentence shall be inserted: ‘These obligations shall not apply to the operators referred to in the first paragraph of Article 6-5 in order to combat the dissemination of the content referred to in the same first paragraph.’;

*c)*  The second sentence is amended as follows:

– at the beginning, the word: ‘They’ shall be replaced by the words: ‘The persons referred to in 1 and 2’;

*–* the words: ‘, on the one hand,’ are deleted;

– the words: ‘of the previous subparagraph’ are replaced by the words: ‘in the same third subparagraph’;

– after the word: ‘services’, the ending is deleted;

2. After Article 6-2 as amended by the above-mentioned Law No 2020-1266 of 19 October 2020, Article 6-5 is inserted worded as follows:

‘*Article 6-5.* – The operators of online platforms defined in Article L111-7 of the Consumer Code which offer an online communication service to the public based on the classification, referencing or sharing of content placed online by third parties and whose activity in the French territory exceeds a threshold of the number of connections determined by decree, whether or not they are established in French territory, shall contribute to the fight against the public dissemination of content contrary to the provisions mentioned in Article 6(I)(7)(3) of this Law as well as in Article 24 *bis* and in the third and fourth subparagraphs of Article 33 of the Law of 29 July 1881 on freedom of the press. In this regard:

‘1. They shall implement proportionate human and technological procedures and means that will enable them:

‘*a)* To inform, as soon as possible, the legal or administrative authorities of the actions they have taken as a result of the injunctions issued by those authorities concerning the contents referred to in the first subparagraph of this Article;

‘*b)* To promptly confirm the safe receipt of requests from legal or administrative authorities for the communication of the data at their disposal to enable the identification of users who have uploaded the content referred to in the same first paragraph, and to inform those authorities as soon as possible of the follow-up to such requests;

‘*c)* To temporarily retain content that has been reported to them as contrary to the provisions referred to in the first subparagraph and which they have withdrawn or made inaccessible, for the purpose of making them available to the legal authorities for the purposes of investigation, identification and prosecution of criminal offences; the duration and the conditions for the retention of this content shall be defined by decree in the Council of State, following the opinion of the

National Commission on Information Technology and Freedoms;

‘2. They shall designate a single point of contact, a natural person responsible for communicating with the public authorities for the implementation of the provisions of this article, to whom, in particular, all applications submitted by the High Council for Audiovisual Matters pursuant to Article 62 of Law No. 86-1067 of 30 September 1986 on freedom of communication may be sent by electronic means. This single point of contact shall, in particular, be responsible for receiving applications addressed to the operator by the legal authorities in accordance with the procedure laid down in Article 6(II) of this Law, with the purpose of ensuring their prompt processing;

‘3. They shall make available to the public, in an easily accessible manner, the general conditions of use of the service they offer; they shall include therein provisions prohibiting the online publication of the content referred to in the first subparagraph of this Article; they shall describe therein in clear and precise terms their moderation arrangements aimed at detecting, where appropriate, identifying and processing such content, detailing the procedures and the human or automated means used for this purpose and the measures they implement affecting the availability, visibility and accessibility of such content; they shall indicate therein the measures they are implementing with regard to users who have made this content available online, as well as the domestic and legal remedies available to such users;

‘4. They shall inform the public of the means used and the measures adopted to combat dissemination, to users located in French territory, of the content referred to in the first paragraph by the publication, in accordance with the procedures and at intervals laid down by the High Council for Audiovisual Matters, of information and of quantified indicators, defined by the latter, relating in particular to the processing of injunctions or requests for information from legal or administrative authorities, the notifications received and the selection of internal remedies, as well as, where applicable, the criteria for selecting trusted third parties whose notifications are given priority treatment and the cooperation terms with these third parties;

‘5. They shall implement an easily accessible and easy-to-use procedure which will allow any person to report, by electronic means, any content considered to be contrary to the provisions mentioned in the first paragraph, to clearly specify its location and the reasons for which it is believed that this content should be considered illegal, and to provide the information allowing contact and reporting the penalties incurred in the event of an improper notification;

‘6. They shall implement proportionate human and technological procedures and means which allow them:

‘*a)* To promptly confirm the safe receipt of notifications relating to the contents referred to in the first paragraph, subject to the information necessary to contact the author;

‘*b)* To ensure the appropriate analysis of these notifications in a timely manner;

‘*c)* To inform the author of the action taken therein and of the domestic and legal remedies available, subject to having the necessary information to contact them;

‘*d)* If it is decided to remove content or render it inaccessible on grounds of disregard of the provisions referred to in the first paragraph, to inform the user at the origin of its publication, subject to having the necessary information to contact them:

‘– indicating the reasons behind the decision;

‘– specifying whether this decision was made by means of an automated tool;

‘– informing them of the domestic and legal remedies available to them;

‘– and reporting that civil and criminal sanctions are incurred for the publication of illegal content;

‘7. They shall implement internal remedial means which allow:

‘*a)* The author of a notification of content referred to in the first paragraph to challenge the decision made by the operator in response to that notification;

‘*b)* The user who is the originator of the publication of content which has been the subject of a decision referred to in 6(d) to challenge that decision;

‘*c)* The user who has been the subject of a decision referred to in 8*(a)* or *(b)* to challenge that decision.

They shall ensure that these systems are easily accessible and easy to use and that they allow the appropriate and prompt processing of appeals, which is not based solely on the use of automated means, informing the user without delay of the decision adopted and cancelling without delay the measures relating to the content in question or the user implemented by the operator when the appeal leads it to consider that the contested decision was not justified;

‘8. When deciding to implement such procedures, they shall set out in their conditions of use, in clear and precise terms, the procedures leading to:

‘*a)* The suspension or, in the most serious cases, termination of the account of users who have repeatedly uploaded content contrary to the provisions referred to in the first paragraph of this Article;

‘*b)* The suspension of access to the notification mechanism of users who have repeatedly submitted manifestly unfounded notifications relating to the contents referred to in the same first subparagraph.

‘ When such procedures are implemented, a case-by-case analysis aimed at objectively characterising the existence of the conduct referred to i *a* or *b* of this 8 shall be implemented and will take into account, in particular:

‘– the amount of illegal content referred to in the first paragraph of this Article or the number of manifestly unfounded notifications originating from the user in the past year, both in absolute terms and in proportion to the total amount of content or number of notifications that he or she was responsible for;

‘– and the seriousness and consequences of these abuses.

‘When implemented, these procedures provide that the measures referred to in 8(a) and (b) shall be proportionate, in their nature, to the seriousness of the conduct in question and, in the case of a suspension, that it shall be pronounced for a reasonable period of time. The user shall be given a warning and information on the domestic and legal remedies available;

‘9. The operators mentioned in the first paragraph of this Article, with activities in the French territory that exceed the limit of number of connections determined by decree and which are higher than those mentioned in the same first paragraph shall:

‘a) Conduct an assessment, on an annual basis, of the systemic risks associated with the operation and use of their services with regard to the dissemination of the content referred to in the first paragraph and in relation to infringements of fundamental rights, including freedom of expression. This assessment shall take into account the characteristics of these services, in particular their effects on the viral spread or mass dissemination of the above-mentioned content;

‘(b) Implement reasonable, effective and proportionate measures, in particular with regard to the characteristics of their services and the scale and severity of the risks identified at the end of the assessment referred to in 9(a), aimed at mitigating the risks of the dissemination of such content, which may, in particular, relate to the procedures and the human and technological means used to detect, identify and treat such content, while preventing the risks of unjustified elimination under the applicable law and their terms of use;

‘(c) Report to the public, in accordance with the procedures and intervals established by the High Council for Audiovisual Matters, the assessment of these systemic risks and the implemented risk mitigation measures;

‘10. The operators mentioned in the first paragraph shall report to the High Council for Audiovisual Matters on the procedures and the means used for the application of this Article, under the conditions laid down in Article 62 of Law No. 86-1067 of 30 September 1986 referred to above.’

II. — Law No 86-1067 of 30 September 1986 on freedom of communication is amended as follows:

1. In the third subparagraph of Article 19(I)(1), the words: ‘as well as video-sharing platforms’ are replaced by the words: ‘, video-sharing platforms as well as the online platform operators referred to in Article 62’;

2. In the first paragraph of Article 42-7, the reference: ‘and 48-3’ shall be replaced by the references: ‘, 48-3 and 62’;

3. Title IV is supplemented by a Chapter III, which reads as follows:

*‘CHAPTER III*

***‘Provisions applicable to online platforms to combat hate content***

*‘Article 62.* – I. – The High Council for Audiovisual Matters shall ensure that the online platform operators referred to in the first paragraph of Article 6-5 of Law No. 2004-575 of 21 June 2004 on confidence in the digital economy comply with the provisions of the same Article 6-5, taking into account, regarding each of the services they offer, the characteristics of the service and the adequacy of the means used by the operator with respect to, in particular, the extent and severity of the risks of dissemination thereon of the content referred to in the first paragraph of said Article 6-5 and the risks of unjustified elimination under applicable law and its terms of use. It shall provide these platform operators with guidelines for the application of the same Article 6-5.

‘It shall collect from such operators, under the conditions laid down in Article 19 of this Law, the information necessary to monitor their obligations. As such, the operators mentioned in Article 6-5(9) of Law No. 2004-575 of 21 June 2004 above provide access to the principles of operation of the automated tools used to meet these obligations, to the parameters used by these tools, the methods and data used for the evaluation and improvement of their performance, and to any other information or data enabling it to evaluate their effectiveness, in accordance with the provisions relating to the protection of personal data. In compliance with these provisions, the High Council for Audiovisual Matters may send proportionate requests for access, through dedicated programming interfaces, to any data relevant to assess their effectiveness. In compliance with these provisions and for the same purposes, the High Council for Audiovisual Matters may implement proportionate methods for the automated collection of publicly accessible data in order to access the necessary data.

‘It shall define the information and quantified indicators that these operators are required to publish in accordance with Article 6-5(4), as well as the modalities and intervals of this publication.

‘It shall publish on an annual basis a review of the application of the provisions of Article 6-5.

‘II. — The High Council for Audiovisual Matters may urge operators to comply, via the submission of a formal notice and within the time frame established by it, with the provisions of Article 6-5 of Law No. 2004-575 of 21 June 2004 referred to above.

‘In the event the operator fails to comply with the notice received, the High Council for Audiovisual Matters may, under the conditions laid down in Article 42-7 of this Law, issue a fine, the amount of which shall take into account the seriousness of the non-compliance and, where appropriate, its repeated nature, not exceeding EUR 20 million or 6 % of the total annual turnover of the preceding year, whichever is higher. In case the same breach has been the subject, in another State, of a financial penalty calculated on the same basis, the amount of that penalty shall be taken into account to determine the penalty imposed under this paragraph.

‘By way of derogation from the second paragraph of this II, in the event of refusal to disclose the information requested by the regulator under the second paragraph of I or in the event of communication of false or misleading information, the amount of the penalty imposed may not exceed 1 % of the total annual worldwide turnover of the preceding financial year.

‘The High Council for Audiovisual Matters may make the notices and sanctions imposed public. It shall determine, in its decision, the details of such publication, which shall be proportionate to the seriousness of the breach. It may also order the insertion of its decision in designated publications, newspapers and media at the expense of the operators subject to the formal notice or sanction.

‘Fines are collected as non-tax and non-property debts owed to the State.’;

4° After the word: ‘resulting’, the end of the first subparagraph of Article 108 reads as follows: ‘from Law No  of strengthening compliance with the principles of the Republic.’

III. — The provisions of this Article shall apply until 31 December 2023.