

## TITLE I

### **ONLINE PROTECTION OF MINORS**

#### Section 1

#### **Strengthening the powers of the regulatory authority for audiovisual and digital communication in relation to the online protection of minors**

##### **Article 1**

I. – Article 10 of Law No 2004-575 of 21 June 2004 on confidence in the digital economy is worded as follows:

“ Article 10. – I. – The Regulatory Authority for Audiovisual and Digital Communication shall ensure that pornographic content made available to the public by an online public communication service cannot be accessed by minors and, consequently, that persons whose activity is to publish such an online public communication service first verify the age of their users.

“ To that end, it shall establish and publish, after consulting the French Data Protection Authority, a framework determining the technical characteristics applicable to age-verification systems set up for access to online public communication services which make pornographic content available to the public, with regard to the reliability of the age verification of users and respect of their privacy.

“ II. – (Deleted)”

II (new). – The Regulatory Authority for Audiovisual and Digital Communication shall establish and publish the framework referred to in Article 10 of the aforementioned Law No 2004-575 of 21 June 2004, in its wording resulting from this Law, within 6 months after the promulgation of this Law.

##### **Article 2**

I. – After Article 10 of Law No 2004-575 of 21 June 2004 on confidence in the digital economy, Article 10-1 is inserted as follows:

“ Article 10-1. – I. – When a person whose activity is to publish an online public communication service enabling access to pornographic content does not implement an age verification system in accordance with the technical characteristics of the framework referred to in Article 10, the Regulatory Authority for Audiovisual and Digital Communication shall submit its observations by a letter stating the reasons, delivered by any means appropriate to establish the date of receipt. The addressee of that letter has 15 days to submit his observations in return.

“At the end of that period, the Regulatory Authority for Audiovisual and Digital Communication may, where appropriate after consulting the President of the French Data Protection Authority, give formal notice to the person whose activity is to publish an online public communication service enabling access to pornographic content to comply, within 15 days, with the technical characteristics of the framework referred to in the same Article 10. This formal notice may be accompanied by an injunction to take any measure to prevent minors from accessing the offending content. The Regulatory Authority for Audiovisual and Digital Communication shall make this formal notice public.

“ I a (new). – When the person whose activity is to publish an online public communication service enabling access to pornographic content does not comply with the formal notice on expiry of the period of 15 days referred to in the second paragraph of I of this Article, the Regulatory Authority for Audiovisual and Digital Communication may, after consulting the chairman of the French Data Protection Authority, impose a financial penalty under the conditions laid down in Article 42-7 of Law No 86-1067 of 30 September 1986 on freedom of communication.

“ The amount of the penalty shall take into account the nature, gravity and duration of the breach, as well as the benefits derived from that breach and the previous breaches.

“ When the person whose activity is to publish an online public communication service allowing access to pornographic content has implemented an age verification system which does not comply with the framework referred to in Article 10 of this Law, the penalty so imposed may not exceed EUR 75,000 or 1% of the worldwide turnover excluding taxes in the preceding financial year, whichever is greater. This maximum shall be increased to EUR 150,000 or 2% of the worldwide turnover excluding taxes if the infringement is repeated within 5 years from the date on which the first penalty decision became final.

“ When the person whose activity is to publish an online public communication service allowing access to pornographic content has not implemented any age verification system or has merely made a declaration of majority, the penalty so imposed may not exceed EUR 250,000 or 4% of the worldwide turnover excluding taxes in the preceding financial year, whichever is greater. This maximum shall be increased to EUR 500,000 or 6% of the worldwide turnover excluding taxes if the infringement is repeated within 5 years from the date on which the first penalty decision became final.

“ Financial penalties are collected in the same way as State debts other than taxes and duties.

“ II. – Without prejudice to the initiation of the procedure provided for in Ia, where the Regulatory Authority for Audiovisual and Digital Communication

finds that failure by the person whose activity is to publish an online public communication service concerned to comply with the formal notice referred to in I enables minors to access pornographic content in breach of article 227-24 of the Criminal Code, the Regulatory Authority for Audiovisual and Digital Communication may notify Internet access service providers or providers of domain name resolution systems defined in II of Article 12 of this Law, by any means capable of establishing the date of receipt, of the electronic addresses of online public communication services that have been the subject of the procedure described in I of this Article, as well as those of services that reproduce the same content, in full or in a substantial manner, and that have the same access methods. These persons must then block access to these addresses within 48 hours. However, if the person publishing the online public communication service does not make available the information referred to in Article 1-1 of this Law, the Regulatory Authority for Audiovisual and Digital Communication may proceed with the notification provided for in this II without having implemented the procedure provided for in I.

“ Users of online public communication services to which access is prevented shall be directed to an information page of the Regulatory Authority for Audiovisual and Digital Communication indicating the reasons for the blocking measure.

“ The Regulatory Authority for Audiovisual and Digital Communication may also notify the e-mail addresses of these online public communication services as well as those of services which include the same content, in full or substantially and which have the same means of access, to search engines or directories, which have a period of 5 days in order to discontinue the referencing of the online public communication service.

“ A copy of the notifications sent to internet access service providers, providers of domain name resolution systems and search engines or directories shall be sent simultaneously to the person whose activity is to publish the online public communication service concerned.

“ The measures provided for in this II shall be imposed for a maximum period of 24 months. Their necessity shall be reassessed, either automatically or on request, at least every 12 months. When the facts referred to in the first subparagraph of I are no longer constituted, the Regulatory Authority for Audiovisual and Digital Communication shall immediately notify the addressees of the notifications provided for in this II of the lifting of these measures.

“ The Regulatory Authority for Audiovisual and Digital Communication shall make public every year an activity report on the conditions under which it operates and the results of its activity, which shall specify in particular the number of injunction decisions and the follow-up thereto, as well as the number of e-mail addresses which have been the subject of a blocking of access or delisting measure. This report shall be submitted to the Government and Parliament.

“ III. – Without prejudice to Articles L. 521-1 and L. 521-2 of the Code of Administrative Justice, the persons referred to in I and II of this Article may apply to the President of the Administrative Court or to the magistrate delegated by the latter for the annulment of the measures referred to in the same I and II within 5 days of their receipt.

“ The legality of the notification shall be decided within 1 month of the referral. The hearing is public.

“ Judgements rendered pursuant to the first two subparagraphs of this III may be appealed within 10 days of their notification. In this case, the appellate jurisdiction shall decide within 3 months of its referral.

“ IV. – For any failure to comply with the obligations laid down in II of this Article, the Regulatory Authority for Audiovisual and Digital Communication may, under the conditions laid down in Article 42-7 of Law No 86-1067 of 30 September 1986 cited above, impose a financial penalty.

“ However, no penalty may be imposed where, on grounds of force majeure or de facto impossibility which are not attributable to him, the person concerned is unable to comply with the obligation imposed on him or when the procedure provided for in III of this Article has been initiated, as long as it has not been the subject of a final decision.

“ The amount of the penalty shall take into account the nature, gravity and duration of the breach, as well as the benefits derived from that breach and the previous breaches.

“ For failure to comply with the obligations laid down in II, the amount of the penalty may not exceed the sum of EUR 75,000 or a sum equivalent to 1% of the worldwide turnover excluding taxes, whichever is greater. This maximum shall be increased to EUR 150,000 or 2% of the worldwide turnover excluding taxes if the infringement is repeated within 5 years from the date on which the first penalty decision became final.

“ Financial penalties are collected in the same way as State debts other than taxes and duties.

“ V. – The agents of the Regulatory Authority for Audiovisual and Digital Communication may, if they have been specially authorised for this purpose by the authority and sworn under the conditions laid down in Article 19(2) of Law No 86-1067 of 30 September 1986 cited above, find by minutes that an online public communication service making available to the public pornographic content does not implement an age verification system in accordance with the technical characteristics of the framework referred to in Article 10 of this Law or allows minors to have access to pornographic content.

“ VI. – The conditions for the application of this Article shall be specified by decree of the Council of State.”

II (new). – Article 23 of Law No 2020-936 of 30 July 2020 to protect victims of domestic violence is repealed.

### **Article 2a (new)**

After Article 6-5 of the aforementioned Law No 2004-575 of 21 June 2004, an Article 6-8 is inserted, worded as follows:

“ Article 6-8. – I. – In the event of failure to comply with the formal notice provided for in Article 6-7 II, the Regulatory Authority for Audiovisual and Digital Communication may ask the software application stores to prevent the download of the software application in question. They have 48 hours to comply with this request.

“ II. – In the event of failure to comply with the formal notice provided for in Article 10-1(I) and in the event that the publisher of the online communication service concerned gives access to pornographic content by means of a software application or publishes applications which reproduce that content, in whole or substantially and in accordance with the same conditions of access, the Regulatory Authority for Audiovisual and Digital Communication may ask the software application stores to prevent the downloading of the software applications in question. They have 48 hours to comply with this request.

“ III. –The measures provided for in I and II of this Article shall be requested for a maximum period of 24 months. Their necessity shall be reassessed, either automatically or on request, at least every 12 months. When the facts justifying the requests provided for in the same I and II are no longer constituted, the Regulatory Authority for Audiovisual and Digital Communication shall notify the addressees of the requests without delay of the lifting of the measures.

“ IV. – Failure by a software application store to comply with the obligations laid down in I to III of this Article shall be punishable by a fine not exceeding 1% of its worldwide turnover for the preceding financial year.

“ V. – A decree of the Council of State, issued after consultation with the Regulatory Authority for Audiovisual and Digital Communication, determines the terms and conditions for the application of this article.”

## **Section 2**

### **Penalisation for failure to comply within 24 hours with a request from the administrative authority to remove child pornography content**

### **Article 3**

Law No 2004-575 of 21 June 2004 is amended as follows:

(1) A (new) Article 6-2 becomes Article 6-5;

(1) Article 6-2 is reinstated as follows:

“ Article 6-2. – I. – If a hosting service provider has never been the subject of a request under Article 6-1 for the removal of an image or representation of minors of a pornographic nature falling within the scope of Article 227-23 of the Criminal Code, the administrative authority referred to in Article 6-1 of this Law shall provide that person with information on the procedures and time limits applicable, at least 12 hours before issuing the request for withdrawal.

“ II. – If the person referred to in I of this Article cannot comply with a request for withdrawal on grounds of force majeure or de facto impossibility which are not attributable to him, including for objectively justifiable technical or operational reasons, he shall inform the administrative authority which issued the request for withdrawal without undue delay.

“ The period referred to in the second subparagraph of Article 6-1 shall begin to run as soon as the grounds referred to in the first subparagraph of this II have ceased to exist.

“ If the person mentioned in I cannot comply with a request for withdrawal, on the grounds that the latter contains manifest errors or does not contain sufficient information to enable its execution, he shall inform the administrative authority which issued the request for withdrawal without undue delay and shall request the necessary clarifications.

“ The period specified in the second subparagraph of Article 6-1 shall begin to run as soon as the hosting service provider has received the necessary clarifications.

“ III. — When a hosting service provider removes an image or representation of minors of a pornographic nature falling within the scope of Article 227-23 of the Criminal Code, it shall inform the content provider thereof as soon as possible, specifying the reasons which led to the removal of the image or representation, the possibility of requesting the transmission of a copy of the removal order and the rights at its disposal to challenge the request for withdrawal before the competent administrative jurisdiction.

“ At the request of the content provider, the hosting service provider shall send a copy of the removal order.

“ The obligations laid down in the first two subparagraphs of this III shall not apply when the competent authority which issued the request for withdrawal decides that it is necessary and proportionate not to disclose information in order not to impede the proper conduct of the prevention, detection, investigation and prosecution of the perpetrators of the offence referred to in Article 227-23 of the Criminal Code.

“ In such cases, the competent authority shall inform the hosting service provider of its decision specifying its duration, which shall be as long as necessary but not exceeding 6 weeks from that decision, and the hosting service provider shall not disclose any information on the removal of the content to the hosting service provider.

“ That competent authority may extend this period by a further period of 6 weeks, when non-disclosure continues to be justified. In such cases, it shall inform the hosting service provider accordingly.”;

(2) After Article 6-2, Articles 6-2-1 and 6-2-2 are inserted as follows:

“ Article 6-2-1. – I. – The failure of hosting service providers to remove images or representations of minors of a pornographic nature covered by Article 227-23 of the Criminal Code within 24 hours of receipt of the request for removal provided for in Article 6-1 of this Law shall be punishable by 1 year’s imprisonment and a fine of EUR 250,000.

“ When the infringement defined in the first subparagraph of this Article is habitually committed by a legal person, the amount of the fine may be increased to 4% of its worldwide turnover excluding taxes from the preceding financial year.

“ II. – Legal persons declared criminally liable, under the conditions laid down in Article 121-2 of the Criminal Code, for the offences defined in I of this Article shall, in addition to the fine in accordance with the procedures laid down in Article 131-38 of the Criminal Code, incur the penalties provided for in (2) and (9) of Article 131-39 of this Code. The ban provided for in the same Article 131-39(2) shall be imposed for a maximum of 5 years and shall relate to the professional activity during which or on the occasion of which the offence was committed.

“ Article 6-2-2. – I – Without prejudice to Articles L. 521-1 and L. 521-2 of the Code of Administrative Justice, hosting service providers and content providers concerned by an application pursuant to Article 6-1 of this Law for the removal of an image or a representation of minors of a pornographic nature falling within the scope of Article 227-23 of the Criminal Code and the qualified personality referred to in Article 6-1 of this Law may request the President of the Administrative Court or the magistrate delegated by him for the cancellation of this request, within 48 hours of receipt or, in the case of the content provider, of the moment when it is informed by the hosting service provider of the removal of the content.

“ II. – A decision shall be taken on the legality of the removal injection within 72 hours of the referral. The hearing is public.

“ III. – Judgements on the legality of the decision pursuant to I of this Article may be appealed within 10 days of their notification. In this case, the appellate jurisdiction shall decide within one month of its referral.

“ IV. — The terms and conditions for the application of this Article shall be specified by decree of the Council of State.”

## TITLE II

### **PROTECTING CITIZENS IN THE DIGITAL ENVIRONMENT**

#### **Article 4A** *(new)*

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

“ Article 1-3. – Persons whose activity is to publish an online public communication service making pornographic content available to the public shall display, before any access to content simulating the commission of a crime or an offence referred to in the second subparagraph of this Article, a message warning the user of the illegality of the conduct thus represented. This message is clear, legible, unique and understandable.

“ The first subparagraph shall apply to the offences provided for in Section 3 of Chapter II and in Section 5(2) of Chapter VII of Title II of Book II of the Criminal Code.

“ The simulated commission of a crime or offence shall be assessed on the basis of the title of the content as well as the keywords, expressions or other entries referring to the said content.

“ Any breach of this obligation shall be punished by the penalties provided for in Article 1-2 of this Law.

“ Any content which is not the subject of a warning message in violation of this Article shall be unlawful within the meaning of Article 3(h) of Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC.”

#### **Article 4B** *(new)*

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



“ Article 6-1-1 A. – Hosting service providers as defined Article 6(I)(2) of this Law shall act expeditiously to remove any pornographic content reported by a person represented in that content as being disseminated in breach of the assignment of rights agreement, or to make access to it impossible, provided that such report is notified in accordance with Article 16 of Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC.”

## **Article 4**

I. – Law No 86-1067 of 30 September 1986 referred to above is amended as follows:

(1) A (new) In the first sentence of the first subparagraph of Article 33-1(III), after the reference: “43-5”, shall be inserted the words: “or referred to in the second subparagraph of Article 43-2”;

(1) B (new) Article 33-3- is supplemented by a III worded as follows:

“ III. – By way of derogation from I and II, on-demand audiovisual media services falling within the competence of France pursuant to Articles 43-4 and 43-5 or referred to in the second subparagraph of Article 43-2 may be broadcast without prior formality.”;

(1) C (new) In the first subparagraph of Article 42, after the word: “audiovisual”, shall be inserted the words: “, persons whose activity is to offer access to public communication services online”;

(1) After the same first subparagraph, a subparagraph shall be inserted as follows:

“ Publishers and distributors of audiovisual communication services, satellite network operators and technical service providers which such persons use may be given formal notice to comply with the obligations imposed by the provisions adopted on the basis of Article 215 of the Treaty on the Functioning of the European Union concerning the prohibition of the broadcast of audiovisual communication services content.”;

(2) The first subparagraph of Article 42-10 is amended as follows:

(a) in the first sentence, after the word: “law”, shall be inserted the words: “or European regulation adopted on the basis of Article 215 of the Treaty on the Functioning of the European Union concerning the prohibition of the broadcast of content of audiovisual communication services”.

(b) (new) In the second sentence, after the word: "satellite", shall be inserted the words: “, by a person whose activity is to offer access to public communication services online” after the word: “Television”, shall

be inserted the words: “or an on-demand audiovisual media service” and, after the word: “ France”, shall be inserted the words: “or referred to in the second subparagraph of Article 43-2”;

(3) (new) Article 43-2 is supplemented by a subparagraph worded as follows:

“ Articles 1, 15, 42, 42-1, 42-7 and 42-10 of this Law shall apply to on-demand audiovisual media services broadcast in France and not under the jurisdiction of another Member State of the European Union, another State party to the Agreement on the European Economic Area or another State party to the European Convention of 5 May 1989 on Transfrontier Television.”;

(4) (new) In II of Article 43-7, after the word: “sense”, shall be inserted the words: “of the first subparagraph”.

II. — Article 11 of aforementioned Law No 2004-575 of 21 June 2004 reads as follows:

“ Article 11. – I. – The Regulatory Authority for Audiovisual and Digital Communication may give formal notice to any person mentioned in I of Article 1-1 of this Law to remove the content or to stop the broadcast of content which contravenes the provisions adopted on the basis of Article 215 of the Treaty on the Functioning of the European Union concerning the prohibition of the dissemination of content from the persons subject to the sanctions. The person receiving the formal notice has a period of 72 hours to submit his observations.

“ II. — Upon expiry of that period and in the event of non-performance, the authority may notify internet access service providers or providers of domain name resolution systems as defined in Article 12(II) of this Law of the list of e-mail addresses of online public communication services hosting or broadcasting content from the persons who have been the subject of the notice, so that they may prevent access to these addresses within a period set by the Regulatory Authority for Audiovisual and Digital Communication. However, in the absence of any identification elements of the persons referred to in Article 1-1(I), the authority may make such notification without first requesting the removal or cessation of the distribution of the content under the conditions laid down in the same I.

“ The authority may also notify search engines or directories of electronic addresses whose contents contravene I of this Article, which shall take all appropriate measures to stop their referencing.

“ III. – The authority may act on its own initiative or at the request of the Public Prosecutor or any natural or legal person.

“ IV. – In the event of failure to comply with the obligation to remove the content or to cease the broadcast of the content referred to in I of this

Article, the authority may impose a pecuniary penalty against the person responsible for the infringement, under the conditions laid down in Article 42-7 of Law No 86-1067 of 30 September 1986 on freedom of communication, the amount of which, determined on the basis of the seriousness of the infringement, may not exceed 4% of the turnover excluding taxes achieved during the last financial year calculated over a period of 12 months or, in the absence of turnover, EUR 250,000. This maximum shall be increased to 6% if the infringement is repeated within 5 years from the date on which the first penalty decision became final or, in the absence of turnover, to EUR 500,000. Failure to comply with the obligation to prevent access to notified addresses or to take any useful measure intended to stop the referencing of the online public communication service pursuant to the second paragraph of II of this Article may be penalised under the same conditions. In the latter case, the fine may not exceed 1% of the turnover excluding taxes in the last financial year calculated over a period of 12 months or, in the absence of turnover, EUR 75,000. This maximum shall be increased to 2% if the infringement is repeated within 5 years from the date on which the first penalty decision became final or, in the absence of turnover, to EUR 150,000.

“ Where an administrative fine is imposed on the same person pursuant to this Article and a criminal fine pursuant to Article 459 of the Customs Code on the basis of the same facts, the total amount of the fines imposed shall not exceed the highest legal maximum of the penalties incurred.

“ V (new). – The terms and conditions for the application of this Article shall be specified by decree of the Council of State.”

## **Article 5**

I. – The Criminal Code is amended as follows:

(1) Article 131-35-1 is reinstated as follows:

“ Article 131-35-1. – I. – For the offences referred to in II of this Article, the court may further order the suspension of the account(s) for access to one or more online services used to commit the offence, including if such services have not constituted the sole or principal means of committing the offence. This subparagraph shall apply to accounts for access to online platform services as defined in Article 6(I)(4) of Law No 2004-575 of 21 June 2004 on confidence in the digital economy, online social networking services and video-sharing platform services within the meaning of Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828.

“ The suspension shall be for a maximum period of 6 months; this period is extended to one year when the person is a repeat offender.

“ The additional penalty referred to in the first subparagraph of this I and the name of the access account used to commit the offence shall be served on the service providers concerned. From the date of notification and for the duration of execution of the additional penalty, the latter shall block the suspended account(s) and implement, within the limits provided for in Article 46 of Law No 78-17 of 6 January 1978 relating to information technology, files and freedoms, measures to block any other accounts providing access to their service, if any, held by the convicted person and preventing the creation of new accounts by the same person.

“ The failure of the provider to block the suspended account is punishable by a fine of EUR 75,000.

“ For the enforcement of the additional penalty referred to in the first subparagraph of this I, and by way of exemption from the third subparagraph of Article 702-1 of the Code of Criminal Procedure, the first application for an extension of that penalty may be brought by the sentenced person before the competent jurisdiction after a period of three months after the initial conviction decision.

“ II. – The offences for which this additional penalty is incurred are:

“(1) The offences provided for in Articles 222-33, 222-33-2, 222-33-2-1, 222-33-2-2, 222-33-2-3 and the second subparagraph of Article 222-33-3;

“(2) The offences provided for in Articles 225-4-13, 225-5, 225-6 and 225-10;

“(2)a (new) The offences provided for in Articles 226-1 to 226-2-1, 226-4-1, 226-8 and 226-8-1;

“(3) The offences provided for in Articles 227-4-2 and 227-22 to 227-24;

“(3)a (new) The offences provided for in Articles 223-1-1, 226-10, 226-21, 226-22, 413-13 and 413-14;

“(3)b (new) The offences provided for in Articles 312-10 to 312-12;

“(3)c (new) The offences of provocation provided for in Articles 211-2, 223-13, 227-18 to 227-21, 412-8 and the second subparagraph of Article 431-6;

“(4) The offence provided for in Article 421-2-5;

“(4)a (new) The offences provided for in Articles 431-1, 433-3 and 433-3-1;

“(5) The offences provided for in the fifth, seventh and eighth subparagraphs of Article 24 and Article 24a of the Law of 29 July 1881 on Freedom of the Press.”

(2) (new) Article 131-6 is amended as follows:

a) After (12), a (12)a shall be inserted as follows:

“(12)a The prohibition, for a period of not more than 6 months, on the use of an account providing access to one or more online platform services as defined in Article 6(I)(4) of Law No 2004-575 of 21 June 2004 on confidence in the digital economy, online social media services and video-sharing platform services within the meaning of Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828; this (12)a applies when the offence was committed by using an online service, including if it was not the sole or principal means of committing the offence;”

(b) in the last subparagraph, after the reference: “(12)”, the reference is inserted: “(12)a”;

(3) (new) After (13) of Article 132-45, a (13)a shall be inserted as follows:

“(13)a When the offence was committed by using an online service, including if it has not been the sole or principal means of committing the offence, refrain from using an account for access to certain online services designated by the sentencing court or by the sentencing judge; this (13)a shall apply to online platform services as defined in Article 6 Article 6(I)(4) of Law No 2004-575 of 21 June 2004 for confidence in the digital economy, online social networking services and video sharing platform services within the meaning of Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828;”.

II (new). – After (19) of Article 41-2 of the Code of Criminal Procedure, a (20) shall be inserted as follows:

“(20) Not to use, for a period not exceeding 6 months, an access account for one or more online platform services as defined in Article 6(I)(4) of Law No 2004-575 of 21 June 2004 on confidence in the digital economy, online social networking services and video-sharing platform services within the meaning of Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828.”

### **Article 5a (new)**

After Section 4 of Chapter II of Title II of Book II of the Criminal Code, a section 4a is inserted as follows:

“ Section 4a

## “ Contempt online

“ Article 222-33-1-2. – I. – Except in the cases provided for in Articles 222-17 to 222-18-1, 222-33-1 and 222-33-2 to 222-33-2-3 of this Code and in the third and fourth subparagraphs of Article 33 of the Law of 29 July 1881 on freedom of the press, it is punishable by a fine of EUR 3,750 and one year’s imprisonment, to broadcast online any content which violates the dignity of a person or is abusive, degrading or humiliating, or creates an intimidating, hostile or offensive situation.

“ Any content transmitted by means of an online platform service as defined in Article 6(I)(4) of Law No 2004-575 of 21 June 2004 on confidence in the digital economy, an online social networking service or a video-sharing platform service within the meaning of Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 shall be considered to be broadcast online within the meaning of this Article.

“ Persons convicted of the offence provided for in this Article shall also be liable to the following additional penalties:

“(1) The probationary sentence provided for in (1), (4), (5) or (7) of Article 131-5-1 of this Code;

“(2) The prohibition on the use of an online service account provided for in (12)a of Article 131-6; this prohibition shall be for a period of not more than 6 months.

“ II. – In respect of the offence provided for in I of this Article, public proceedings may be extinguished, under the conditions laid down in Articles 495-17 to 495-25 of the Code of Criminal Procedure, by payment of a fixed fine of EUR 300. The amount of the reduced fixed fine is EUR 250 and the amount of the increased fixed fine is EUR 600.

“ Article 222-33-1-3. – I. – The offence defined in Article 222-33-1-2 shall be punishable by a fine of EUR 7,500 and one year’s imprisonment when committed:

“(1) By a person who abuses the authority conferred by his duties;

“(2) On a minor;

“(3) On a person whose particular vulnerability due to age, illness, disability, physical or mental impairment or pregnancy is apparent or known to the perpetrator;

“(4) On a person whose particular vulnerability or dependence resulting from the precariousness of his economic or social situation is apparent or known to the perpetrator;

“(5) By several persons acting as perpetrator or accomplice;

“(6) Because of the actual or assumed sexual orientation or gender identity of the victim;

“(7) By a person who commits the same offence as a repeat offender under the conditions laid down in the second paragraph of Article 132-11.

“ II. - In respect of the offence provided for in I of this Article, including in the case of repeated offences, public proceedings may be extinguished, under the conditions laid down in Articles 495-17 to 495-25 of the Code of Criminal Procedure, by the payment of a fixed fine of EUR 600. The amount of the reduced fixed fine is EUR 500 and the amount of the increased fixed fine is EUR 1,200.”

## **Article 6**

Article 12 of aforementioned Law No 2004-575 of 21 June 2004 reads as follows:

“ Article 12. - I. - When one of its specially designated and authorised agents finds that an online public communication service manifestly carries out operations constituting the offences referred to in Articles 226-4-1, 226-18 and 323-1 of the Criminal Code and Article L. 163-4 of the Monetary and Financial Code, the administrative authority shall give formal notice to the person whose activity is to publish the online public communication service in question, provided that it has made available the information referred to in Article 1-1 of this Law, to cease the operations constituting the offence established. It shall also inform him of the precautionary measure referred to in the second paragraph of this I taken against him and invite him to submit his observations within 5 days.

“ At the same time, the administrative authority shall notify the electronic address of the service concerned to internet browser providers within the meaning of Article 2(11) of Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828, for the purposes of implementing precautionary measures.

“ The person receiving a notification shall take without delay, as a precautionary measure, any useful measure consisting of displaying a message warning the user of the risk of harm incurred in the event of accessing this address. This message is clear, legible, unique and easy to understand and allows users to access the official website of the Public

Interest Group for the national scheme to assist victims of malicious cyber activities.

“ This precautionary measure shall be implemented for a period of 7 days.

“ When the administrative authority, where appropriate, after having taken cognizance of observations of the person whose activity is to publish the online public communication service in question, considers that the finding referred to in the first subparagraph of this I is no longer valid, it shall without delay ask the persons to whom a notification is addressed to terminate the precautionary measures immediately.

“ II. - When the person whose activity is to publish the online communication service in question has not made available the information referred to in Article 1-1 of this Law, when the information does not allow that person to be contacted or when at the end of the period mentioned in the first subparagraph of I of this Article, where appropriate after that person has submitted his comments, it appears that the finding referred to in the same first subparagraph is still valid, the administrative authority may, by a reasoned decision, direct internet browser providers within the meaning of Article 2(11) of Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828, providers of Internet access services or providers of domain name resolution systems to take, without delay, any appropriate measures to prevent access to the address of this service for a maximum period of three months. The decision of the administrative authority shall designate which provider is responsible for preventing access to the address of this service, depending on the order issued and the nature of the proposed measure.

“ Users of online public communication services to whom access is prevented pursuant to the measures referred to in the first subparagraph of this II shall be directed to an information page of the competent administrative authority indicating the reasons for the blocking measure.

“At the end of the period prescribed in the first subparagraph, the measure intended to prevent access to the address of the service may be extended by not more than 6 months with the approval of the qualified person referred to in III. An additional period of 6 months may be prescribed under the same procedure.

“ The administrative authority shall draw up a list of the addresses of online public communication services to which access has been prevented and shall verify, as the expiry of the period prescribed in the third paragraph of this II approaches, whether these same addresses are still active and, if so, whether the finding of infringement is still valid.

“ For the purposes of the first subparagraph of this II, a domain name resolution system provider shall mean any person providing a service



enabling the translation of a domain name into a unique number identifying a device connected to the internet.

“ Decisions taken pursuant to the first two subparagraphs of this II shall be notified by the administrative authority, subject to the reservation referred to in the first subparagraph of I, to the person whose activity is to publish the online public communication service in question.

“ The authority may also notify search engines or directories of electronic addresses whose contents the same I, which shall take all appropriate measures to stop their referencing.

“ The administrative authority may at any time request the persons referred to in the first subparagraph of this II to terminate the measures referred to in the same first subparagraph when it appears that the finding on which they were based is no longer valid. Where appropriate, it shall inform the qualified person mentioned in III of its decision.

“ III. - The administrative authority shall forward without delay the requests referred to in I and II of this Article, as well as the e-mail addresses of the online communication services concerned, to a qualified person appointed within it by the French Data Protection Authority for the duration of his term of office within the committee. The qualified person shall ensure that the measures are justified the and conditions for establishing, updating, communicating and using the list of e-mail addresses concerned are met. It may refer the matter to the College of the French Data Protection Authority when the issue warrants it. It may at any time direct the administrative authority to terminate the measures it has taken on the basis of the same I and II.

“ When the person whose activity is to publish the online communication service in question lodges an administrative appeal with the qualified official, the blocking shall be suspended for the time of the investigation of this appeal by the qualified official.

“ The qualified official shall make public every year an activity report, appended to the public report provided for in Article 8 of Law No 78-17 of 6 January 1978 on data processing, data files and individual liberties, which contains elements relating in particular to:

“(1) The number and reasons for the precautionary measures requested pursuant to I of this Article;

“(2) The number, reasons and nature of the measures requested pursuant to II of this Article;

“(3) The number of addresses of online public communication services concerned;

“(4) The number and nature of the recommendations made to the administrative authority;

“(5) (new) The number of administrative appeals lodged with it and the average time limits for the investigation of these appeals;

“(6) (new) The resources required to improve the conditions in which it is exercised.

“ IV. – Any failure to comply with the obligations laid down in this Article by the person receiving a notification or an order from the administrative authority shall be punished by the penalties provided for in Article 6(IV)(3).

“ V. – The procedures for the application of this Article, in particular the designation of the competent administrative authority and the content and presentation of the warning message, shall be specified by decree in the Council of State after consulting the French Data Protection Authority.”

### TITLE III

## **STRENGTHENING TRUST AND COMPETITION IN THE DATA ECONOMY**

### CHAPTER I

## **Unfair commercial practices between companies in the cloud computing market**

### **Article 7**

Section 2 of Chapter II of Title IV of Book IV of the Commercial Code is supplemented by Article L. 442-12 drafted as follows:

“ Article L. 442-12. – I. – For the purposes of this Article, the following definitions shall apply:

“(1) “Cloud computing service”: a digital service that enables on-demand administration and remote wide-area access to a flexible and variable set of computing resources that can be shared, including when these resources are distributed in different locations;

“(2) “Cloud computing credit”: a temporary benefit granted by a cloud computing service provider to its users, usable on its various services, in the form of an amount of credits offered or a quantity of services offered.

“ II. – A cloud service provider may grant a cloud computing credit to a person engaged in production, distribution or service activities only for a limited period of time which may not exceed one year, including if the grant of that credit is renewed.

“ The grant of a cloud computing credit may not be subject to a condition of exclusivity of any kind whatsoever of the beneficiary vis-à-vis the provider of this credit.

“ The terms and conditions for the application of this II shall be specified by decree of the Council of State.

“ III. – Any provider of cloud computing services shall be prohibited from charging, in the context of contracts concluded by it with a person engaged in production, distribution or service activities, fees for the transfer of data to that person’s infrastructure or to those made available, directly or indirectly, by another provider.

“ Charges relating to a change of provider of cloud computing services, other than those referred to in the first subparagraph of this III, shall be authorised until the date referred to in Article 36(II) of Law No. on securing and regulating the digital space, provided that the billing is limited to the actual costs directly related to this change and is communicated transparently to users.

“ In the event of disagreement on the invoicing of the charges referred to in the second subparagraph of this III, disputes may be referred to the Electronic Communications, Postal and Print Media Distribution Regulatory Authority under the conditions laid down in Article L. 36-8 of the Postal and Electronic Communications Code.

“ IV. – Any conclusion of a contract in breach of II and III of this Article shall be punishable by an administrative fine, the amount of which may not exceed EUR 200,000 for a natural person and EUR 1 million for a legal person. The maximum fine incurred shall be increased to Euros 400,000 for a natural person and Euros 2 million for a legal person, if the infringement is repeated within two years of the date on which the first penalty decision became final.

“ V (new). – It is prohibited for any person to make the sale of a product or service subject to the concurrent conclusion of a contract for the provision of cloud computing services provided that it constitutes an unfair commercial practice within the meaning of Article L. 121-1 of the Consumer Code.”

## CHAPTER II

### **Interoperability of cloud computing services**

#### **Article 9**

I. – The Electronic Communications, Postal and Print Media Distribution Regulatory Authority shall specify the rules and procedures for implementing the requirements referred to in Article 8(II), in particular by issuing interoperability and portability specifications.

When drawing up these specifications, the authority referred to in the first subparagraph of this I shall take into account the specificities of cloud computing services infrastructure, platforms and software. For this purpose, it may ask one or more standardisation organisations to make proposals to it. It shall also ensure that these specifications are properly coordinated with those which may be issued by the competent authorities of the other Member States of the European Union or included in the European codes of conduct for cloud computing services.

II. – Cloud computing service providers shall comply with the obligations referred to in Article 8(II) specified, where appropriate, by the decisions of the authority referred to in I of this Article.

They shall publish and regularly update a technical reference offer for interoperability specifying the conditions for compliance of their services with the obligations referred to in Article 8(II).

III. – Cloud computing service providers whose services correspond to flexible and variable IT resources limited to infrastructure elements such as servers, networks and virtual resources necessary for the operation of the infrastructure, without providing access to the services, software and operating applications that are stored, processed or deployed on these infrastructure elements, shall take the measures within their power to facilitate functional equivalence in the use of the destination service, when it covers the same type of functionalities.

IV. – The conditions of application of this Article, the deadline for specifying the rules and procedures for the implementation of the requirements referred to in Article 8(II) and the deadline for the compliance of cloud computing service providers with these rules shall be specified by decree after consulting the Electronic Communications, Postal and Print Media Distribution Regulatory Authority.

## **Article 10**

I. –The Electronic Communications, Postal and Print Media Distribution Regulatory Authority may, in a manner proportionate to the requirements related to the performance of its tasks, and on the basis of a reasoned decision:

(1) Collect from natural or legal persons providing cloud computing services the information or documents necessary to ensure compliance by such persons with the obligations referred to in Article 8(II) and Article 9(II) and (III);

(2) Carry out surveys among these same people.

These surveys shall be carried out in accordance with the conditions laid down in Article L. 32-4(II) to (IV) and Article L. 32-5 of the Postal and Electronic Communications Code.

The Authority shall ensure that information collected pursuant to this Article is not disclosed when it is protected by a secret referred to in Articles L. 311-5 to L. 311-8 of the Code of Relations between the Public and the Administration.

II. – In the event of disagreement over the conditions of the implementation of the obligations referred to Article 8(II) and Article 9(II) and (III) of this Law, disputes may be referred to the Electronic Communications, Postal and Print Media Distribution Regulatory Authority under the conditions laid down in Article L. 36-8 of the Postal and Electronic Communications Code.

Its decision shall be reasoned and shall specify the fair conditions, technical and financial, for the implementation of the obligations referred to in Article 8(II) and in Article 9(II) and (III) of this Law.

III. – The Electronic Communications, Postal and Print Media Distribution Regulatory Authority may, either on its own initiative or at the request of the Minister for Digital Affairs, a professional organisation, an authorised user association or any natural or legal person concerned, penalise failures to comply with the obligations referred to in Article 8(II) and Article 9(II) and (III) that it finds from a provider of cloud computing services.

This power to sanction shall be exercised under the conditions laid down in Article L. 36-11 of the Postal and Electronic Communications Code. By way of exemption from the tenth to twelfth subparagraphs of Article L. 36-11(III), the restricted formation of the authority referred to in Article L. 130 of the same Code may impose a pecuniary penalty on the cloud computing services provider in question, the amount of which is proportionate to the seriousness of the infringement and the benefits derived therefrom, but may not exceed 3% of the worldwide turnover excluding taxes for the last financial year for which accounts have been closed. This rate may be increased to 5% if the infringement is repeated within 5 years from the date on which the first penalty decision became final.

IV (new). – The President of the Electronic Communications, Postal and Print Media Distribution Regulatory Authority refers the matter to the Competition Authority of abuses of dominant position and practices hindering the free exercise of competition of which he may become aware in the cloud computing sector. This referral shall be made under the conditions laid down in Article L. 36-10 of the Postal and Electronic Communications Code.

## CHAPTER IIA A

## **Protecting strategic and sensitive data in the cloud computing market**

*(New division)*

### **Article 10a A (new)**

I. – Cloud computing service providers shall take all necessary technical and organisational measures to prevent any direct or indirect access, through any natural or legal person, from a third State, not authorised by public authorities to data subject to secrets protected by law under Articles L. 311-5 and L. 311-6 of the Code of Relations between the Public and the Administration, to the personal health data referred to in Article L. 1111-8 of the Public Health Code, as well as to data necessary for the fulfilment of the essential tasks of the State, in particular the safeguarding of national security, the maintenance of public order and the protection of the health and life of persons.

II. – In the event of recourse to a commercial offer on the cloud computing market for the hosting or processing of the data referred to in I of this Article, public authorities shall ensure that the cloud computing service provider complies with the obligations referred to in the same I and that its registered office, central administration or principal place of business is established in the territory of a Member State of the European Union.

The public authorities shall also ensure that the capital and voting rights in the company of the selected service provider are not, directly or indirectly, individually owned at more than 24% and collectively owned at more than 39% by third parties having their registered office, central administration or principal place of business outside the European Union.

These third parties may not, individually or collectively, by virtue of a contract or articles of association, have the right of veto or designate a majority of the members of the administrative, management or supervisory bodies of the service provider.

## **CHAPTER IIA**

### **Transparency in the cloud computing market**

*(New division)*

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

Cloud computing providers and their intermediaries shall make the following information available on their website and keep it up to date:

(1) Information on the physical location of the entire IT infrastructure deployed for the processing of the data of their individual services;

(2) The existence of a risk of government access to the data of the user of the cloud computing service;

(3) A description of the technical, legal and organisational measures adopted by the cloud computing provider to prevent governmental access to data where such transfer or access would create a conflict with EU law or the national law of the Member State concerned.

The websites referred to in this Article shall be mentioned in the contractual agreements relating to all data processing services offered by cloud computing providers and their intermediaries.

## TITLE VIII

### **ADAPTATIONS TO NATIONAL LAW**

#### CHAPTER I

#### **Measures to adapt Law No. 2004-575 of 21 June 2004 on confidence in the digital economy**

#### **Article 22**

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

(1) After Article 1, Articles 1-1 and 1-2 shall be inserted as follows:

“ Article 1-1. – I. – Persons whose activity is to publish an online public communication service shall make available to the public, in an open standard:

“(1) In the case of natural persons, their surnames, forenames, address and telephone number and, if they are subject to registration formalities in the Commercial and Companies Register or in the National Register of Companies as a business in the trades and crafts sector, the registration number;

“(2) In the case of legal entities, their name or company name and their registered office, telephone number and, in the case of companies subject to registration formalities in the Commercial and Companies Register or in the National Register of Companies as a business in the trades and crafts sector, their registration number, their share capital and the address of their registered office;

“(3) The name of the director or co-director of the publication and, where applicable, of the editor, within the meaning of Article 93-2 of Law No 82-652 of 29 July 1982 on audiovisual communication;

“(4) The name, corporate name or business name and address and telephone number of the hosting service provider;

“(5) (new) Where applicable, the name, corporate name or business name and address of natural or legal persons who provide, even free of charge, the storage of data processed directly by them in connection with the publication of the service.

“ II. – Persons publishing a non-professional online public communication service may, in order to preserve their anonymity, make available to the public only the name, corporate name or business name and address of the hosting service provider, provided that they have communicated to this provider the personal identification details referred to in I of this Article.

“ Hosting service providers shall be subject to professional secrecy under the conditions laid down in Articles 226-13 and 226-14 of the Criminal Code, in respect of all matters relating to the disclosure of such personal identification details or any information identifying the person concerned. This professional secrecy is not enforceable against the judicial authority.

“ III. – Any person named or identified in an online public communication service shall have the right to reply, without prejudice to any requests for correction or deletion of the message that they may address to the service.

“ The request for the exercise of the right of reply shall be addressed to the publication director or, where the non-professional publishing person has retained anonymity, to the hosting service provider who shall forward it without delay to the publication director. It shall be submitted no later than 3 months from the date on which the message justifying the request is made available to the public.

“ The publication director is obliged to add the responses of any named or designated person in the online public communication service within 3 days of receipt, or be liable to a fine of EUR 3,750, without prejudice to any other penalties and damages arising from the Article.

“ The conditions for including the response are those laid down in Article 13 of the Law of 29 July 1881 on freedom of the press. The answer is free.

“ A decree of the Council of State shall establish the conditions for application of this III.

“ IV. – Chapters IV and V of the aforementioned Law of 29 July 1881 apply to online public communication services and the prescriptive right acquired under the conditions laid down in Article 65 of the same Law.

“ Article 1-2. – One year’s imprisonment and a fine of EUR 75,000 shall be imposed on a natural person or the de jure or de facto director of a legal



person whose activity is to publish an online public communication service, for failure to comply with Article 1-1(I) and (II) of this Law.

“ Legal persons may be held criminally liable for breaches of the same I and II, under the conditions laid down in Article 121-2 of the Criminal Code. They shall be liable to a fine, in accordance with the procedures laid down in Article 131-38 of the same Code, as well as the penalties referred to in Article 131-39(2) and (9) of the said Code. The ban mentioned in the same Article 131-39(2) shall be imposed for a maximum of 5 years and shall relate to the professional activity during which or on the occasion of which the offence was committed.”

(2) The title of Chapter II of Title I reads as follows: “ Providers of intermediary services”;

(3) At the beginning of the same Chapter II, a section 1 is added, entitled: “ Definitions and obligations relating to providers of intermediary services”, which includes Articles 5 to 6;

(4) Article 5-1 is inserted after Article 5 as follows:

“ Article 5-1. – I. – “Information society services” means the services defined in Article 1(1)(b) of Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and rules on information society services.

“ II. – “Intermediate services” means information society services as defined in Article 3(g) of Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC (Digital Services Regulation).”;

(5) Article 6 is worded as follows:

“ Article 6. – I. – 1. “Internet access service” means a simple transport service as defined in Article 3(g)(i) of Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC (Digital Services Regulation), the activity of which is to provide access to online public communication services;

“2. “Hosting services” means the services defined in the same Article 3(g) (iii) of the same Regulation;

“3. “Online search engine” means a service defined in said Article 3(j) of said Regulation;

“4. “Online platform” means a service defined in the same Article 3(i) of the same Regulation;

“5. “Online social networking service” means a service defined in Article 2(7) of Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Regulation);

“6 (new). “Software application store” means a service defined in Article 2(14) of the same Regulation;

“7 (new). “Software application” means any product or service as defined in Article 2(15) of said Regulation.

“ II. – Persons whose activity consists in providing an intermediary service within the meaning of Article 3(g) of the aforementioned Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 are not producers within the meaning of Article 93-3 of Law No 82-652 of 29 July 1982 on audiovisual communication.

“ III. – Persons whose activity consists in providing a hosting service may not be held civilly liable for activities or information stored at the request of a recipient of these services if they were not actually aware of their manifestly unlawful nature or of facts and circumstances showing this nature or if, as soon as they became aware of this, they acted expeditiously to remove this data or make access to it impossible.

“ They may not be held criminally liable for the information stored at the request of a recipient of these services if they were not actually aware of the manifestly unlawful nature of the activity or information or if, as soon as they became aware of it, they acted promptly to remove this information or make access to it impossible.

“ The first and second subparagraphs of this III shall not apply when the recipient of the service acts under the authority or control of the person providing the hosting service.

“ IV. – 1. Persons whose activity consists in providing an internet access service shall inform their subscribers of the existence of technical means for restricting access to or selecting certain services and shall offer them at least one such means at no additional cost. A decree, issued after the opinion of the French Data Protection Authority, specifies the minimum functionalities and technical characteristics to which these means respond, taking into account the nature of the activity of these persons.

“ The persons referred to in the first subparagraph of this 1 shall also inform their subscribers of the existence of security measures to prevent breaches of the obligation laid down in Article L. 336-3 of the Intellectual Property Code.

“2. In compliance with Law No 78-17 of 6 January 1978 on data processing, data files and individual liberties, internet access service providers also inform their subscribers of the amount of data consumed in providing access to the network and indicate the equivalent of the corresponding greenhouse gas emissions. “ The greenhouse gas emission equivalents corresponding to the data consumption shall be established in accordance with a methodology made available by the French Environment and Energy Management Agency.

“3. Internet service providers shall inform their subscribers of the prohibition of distance selling, acquisition, introduction from another Member State of the European Union or the importation from third countries of manufactured tobacco products in the context of distance selling in mainland France and the overseas departments, as well as of the penalties legally incurred for such acts.

“ Failure to comply with this obligation shall be punishable by one year’s imprisonment and a fine of EUR 250,000.

“ Legal persons may be held criminally liable for this offence under the conditions provided for under Article 121-2 of the Criminal Code. They shall be liable to a fine, in accordance with the procedures laid down in Article 131-38 of the same Code, as well as the penalties referred to in Article 131-39(2) and (9) of the said Code. The ban mentioned in the same Article 131-39(2) shall be imposed for a maximum of 5 years and shall relate to the professional activity during which or on the occasion of which the offence was committed.

“4. When internet access service providers advertise the possibility that they offer to download files of which they are not the providers, they shall include in this advertisement an easily identifiable and legible statement reminding that piracy harms artistic creation.

“ V. – 1. Persons whose activity consists in providing hosting services shall assist in combating the dissemination of content constituting the offences referred to in Articles 211-2, 222-33, 222-33-1-1, 222-33-2, 222-33-2-1, 222-33-2-3, 223-1-1, 223-13, 225-4-13, 225-5, 225-6, 225-10, 226-1 to 226-3, 226-4-1, 226-8, 227-4-2, 227-18 to 227-21, 227-22 to 227-24, 226-10, 226-21, 226-22, 312-10 to 312-12, 412-8, 413-13, 413-14, 421-2-5, 431-1, 433-3, 433-3-1 and 431-6 and the second subparagraph of Article 222-33-3 of the Criminal Code, as well as the fifth, seventh and eighth subparagraphs of Article 24 and Article 24a of the Law of 29 July 1881 on freedom of the press.

“To this end, they shall promptly inform the competent authorities of any unlawful activities referred to in the first subparagraph of this 1 which are reported to them and that the recipients of their services are engaged in.

“ Failure to comply with this information obligation shall be punishable by one year’s imprisonment and a fine of EUR 250,000.

“ Legal persons may be held criminally liable for this offence under the conditions provided for under Article 121-2 of the Criminal Code. They shall be liable to a fine, in accordance with the procedures laid down in Article 131-38 of the same Code, as well as the penalties referred to in Article 131-39(2) and (9) of the said Code. The ban mentioned in the same Article 131-39(2) shall be imposed for a maximum of 5 years and shall relate to the professional activity during which or on the occasion of which the offence was committed.

“2. Persons providing hosting services shall provide persons who publish an online public communication service with the technical means enabling them to meet the identification requirements laid down in Article 1-1(I) of this Law.

“3. Failure to immediately inform competent authorities under Article 18 of Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC (Digital Services Regulation) shall be punishable by one year’s imprisonment and a fine of EUR 250,000.

“ When the infringement provided for in the first subparagraph of this 3 is habitually committed by a legal person, the amount of the fine may be increased to 6% of its worldwide turnover excluding taxes for the financial year preceding the penalty.

“ VI. – 1. Under the conditions laid down in IIa to IIIa of Article L. 34-1 of the Postal and Electronic Communications Code, persons engaged in the provision of internet access services or hosting services shall hold and retain data such as to enable the identification of any person who has contributed to the creation of the content or any of the content of the services of which they are providers.

“ A decree in the Council of State, issued following an opinion from the French Data Protection Authority, shall define the data mentioned in the first subparagraph of this 1 and determine the duration and conditions of its preservation.

“2. Any breach of the obligations referred to in 1 of this VI shall be punishable by one year’s imprisonment and a fine of EUR 250,000. Failure to comply with the request from a judicial authority to obtain the information referred to in the same 1 shall be punishable by the same penalties.

“ Legal persons may be held criminally liable for these offences under the conditions provided for under Article 121-2 of the Criminal Code. They shall be liable to a fine, in accordance with the procedures laid down in Article 131-38 of the same Code, as well as the penalties referred to in Article 131-39(2) and (9) of the said Code. The ban mentioned in the same Article 131-39(2) shall be imposed for a maximum of 5 years and shall

relate to the professional activity during which or on the occasion of which the offence was committed.

“ VII. – Any online platform whose activity on French territory exceeds a threshold number of connections determined by decree, whether or not it is established on French territory, shall implement proportionate human and technological procedures and means enabling, when it has a content storage activity, to temporarily retain the content notified to it as contrary to the provisions referred to in 1 of V of this Article and which it has withdrawn or made inaccessible, for the purpose of making it available to the judicial authority for the purposes of researching, establishing and prosecuting criminal offences.

“ The duration and the conditions for the retention of this content shall be defined by a decree in the Council of State taken following the opinion of the French Data Protection Authority.

“ VIII. – Persons whose activity consists in providing a social networking service whose activity on French territory exceeds a threshold number of connections determined by decree are required, when registering for one of their services of a minor under 15 years of age and in the case where their service offer involves the processing of personal data, to provide information to the minor and holders of parental authority on the civic and responsible use of the said service and on the legal risks to which they are exposed in the event of the dissemination by the minor of hateful content, in connection with the collection of consents referred to in the second subparagraph of Article 45 of Law No 78-17 of 6 January 1978 relating to data processing, data files and individual liberties.

“ When they receive a report from a minor under 15 years of age concerning illegal content, or contrary to their general terms and conditions of use, which mentions the same minor under 15 years of age registered on a platform under the conditions laid down in Article 6-7 of this Law, online platforms shall disable the aforementioned content without delay and until the completion of the procedure for processing the alert, regardless of its nature. The minor or his representatives shall, by any means, furnish proof that the person mentioned is under 15 years of age.

“ IX. – Any person who, knowing this information to be inaccurate, presents content or an activity as unlawful to persons whose activity consists of providing hosting services, with the aim of obtaining its removal or stopping its dissemination, is punishable by one year's imprisonment and a fine of EUR 15,000.”

#### CHAPTER IV.

### **Measures to adapt Law No. 86-1067 of 30 September 1986 on freedom of communication**

## **Article 28**

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

(1) In the first sentence of the fifth subparagraph of Article 14, the words: “online platform operators, within the meaning of Article L. 111-7 of the Consumer Code” are replaced by the words: “online platform providers as defined in Article 3(i) of Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC (Digital Services Regulation), online search engines as defined in Article 3(j) of the same Regulation and video-sharing platforms as defined in the seventh to eleventh subparagraphs of Article 2 of this Law”;

(2) In (12) of Article 18, the words: “codes of good conduct designed to significantly reduce communications on audiovisual media services and on services published by online platform operators, within the meaning of Article L. 111-7 of the Consumer Code, having a negative impact on the environment” are replaced by the words: ““Climate contracts” adopted pursuant to Article 14 of this Law”;

(3) At the title of Chapter I of Title IV, the words: “referred to in Article L. 163-1 of the Electoral Code” are deleted;

(4) Article 58 is amended as follows:

a) In the first sentence of the first subparagraph, the words: “online platform operators referred to in the first subparagraph of Article L. 163-1 of the Electoral Code” are replaced by the words: “online platform providers as defined in Article 3(i) of Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC, online search engines as defined in Article 3(j) of the same Regulation and providers of video-sharing platform services as defined in Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828”;

b) The second subparagraph is deleted;

c) The last subparagraph reads as follows:

“ The Regulatory Authority for Audiovisual and Digital Communication shall publish a periodic review of the application of the measures taken by very large platforms and very large search engines in order to combat the dissemination of false information likely to disturb public order or alter the fairness of one of the elections referred to in the first subparagraph of Article 33-1-1 of this Law. This assessment shall be based on the information provided by the European Commission on the measures

adopted by these actors to assess and mitigate the systemic risk of disinformation on the basis of Articles 34 and 35 of Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 and to comply with their disinformation commitments undertaken for the application of Article 45 of the same Regulation, the independent audits provided for in Article 37 of the aforementioned Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022, as well as information made public by these actors pursuant to Article 42 of the same Regulation or collected from them under the conditions laid down in Article 19 of this Law or in Article 40 of the aforementioned Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022.”;

(5) Article 60 is supplemented by a paragraph IV worded as follows:

“ IV. – The Regulatory Authority for Audiovisual and Digital Communication shall ensure, under the conditions laid down in Section 4 of Chapter II of Title I of Law No 2004-575 of 21 June 2004 on confidence in the digital economy, that video-sharing platform services whose principal place of business is located in France or whose legal representative is established in France comply with the obligations referred to in Section 4 of the said Law.”

II. – In A of III of Article 42 of Law No 2021-1109 of 24 August 2021 confirming compliance with the principles of the Republic, the date: “31 December 2023” is replaced by the date: “17 February 2024”.

## CHAPTER V

### **Measures to adapt the law on combating the manipulation of information**

#### **Article 29**

Title III of Law No 2018-1202 of 22 December 2018 on combating the manipulation of information is amended as follows:

- (1) The third to last subparagraphs of Article 11(I) shall be deleted;
- (2) Articles 13 and 14 are repealed.

## CHAPTER X

### **Transitional and final provisions**

#### **Article 36**

I. – Article 2 shall enter into force on 1st January 2024. However, proceedings already initiated on 31 December 2023 remain governed by the provisions of Article 23 of Law No 2020-936 of 30 July 2020 aimed at protecting victims of domestic violence in its version in force on this date.

II. – Article L. 442-12(III) of the Commercial Code, as drafted by Article 7 of this Law, shall apply for up to 3 years from the date of entry into force of the proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules for the fairness in the access to and use of data (Data Regulation) – COM(2022) 68 final.

III. – Articles 8, 9 and 10 shall apply until 15 February 2026.

IV. – Articles 11 and 31 come into force on 24 September 2023.

V. – Article 22(5), Articles 23, 24, 25 with the exception of its (1), (2) and (3), Article 26, Article 28 with the exception of its II and Articles 29, 30, 32 and 34 shall enter into force on 17 February 2024.

VI. – (deleted)

VII. – Article 17 shall come into force on a date fixed by decree and not later than 12 months from the publication of this Law.