

## The French DSA – What you need to know about the new French content moderation rules

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### I/ Introduction

On 25 August 2021, the [French Law reinforcing the respect of the principles of the Republic](#) (Law on Republican principles) was officially enacted. The law foresees to “pre-implement” large parts of the [Digital Services Act](#) (DSA) proposal, presented in December 2020 and currently debated at European level, into French law. The new law is the result of longstanding attempts by the current **French Government** to introduce national provisions in order to regulate digital services, with a particular focus on the fight against hateful content online. The French Parliament adopted in June 2020 a [Law to fight against hateful content on the Internet](#) (so-called Avia Law), which was largely [invalidated](#) by the **French Constitutional Council**, rendering that first attempt obsolete.

One may wonder why the French Government decided to introduce new provisions on digital services into national law after the presentation of the DSA by the European Commission, considering that once adopted, the regulation will apply in all Member States and prevail over national provisions, thereby making them redundant. To be precise, the Law on Republican principles foresees the extinction of its own provisions by **31 January 2023**. One answer might be that the French government wanted to prepare the ground for the negotiations on the DSA at the European level and maximise its influence by being a frontrunner in the adoption of such legislation. Another answer might be that given the usually lengthy European legislative process, France wanted to introduce new obligations quickly, albeit in an unconventional manner.

In any event, the provisions of the French Law on Republican principles, which are **not limited to actors established in France**, give a first impression of the potential application of the future DSA.

### II/ Main provisions of the Law on Republican principles

#### Scope of the new rules

Article 42 of the Law on Republican principles modifies the [French Law for confidence in the digital economy](#) by introducing new provisions applicable to online platform operators which offer an online public communication service based on the classification, referencing or sharing of content posted online by third parties and whose activity on French territory exceeds a threshold number of connections determined by decree, whether or not they are established on French territory. Interestingly, the fact that this law applies to online platform operators regardless of their country of establishment contravenes to the internal market clause or the so-called country of origin principle



enshrined in Article 3 of the [European Directive on electronic commerce](#) (E-Commerce Directive), which ensures that online service providers are subject to the law of the Member State in which they are established and not to the law of the Member States where the service is accessible. However, neither the European Commission nor other Member States have decided to act on the French law, despite the possibility to do so under the European notification procedure<sup>1</sup>.

The new obligations are divided in 2 layers, applicable to online platform operators meeting different monthly connection threshold set by decree. The [Decree implementing Article 42 of the Law on Republican Principles](#) sets up two thresholds:

- The first connection threshold is set at **10 million unique monthly visitors from the French territory**;
- The second connection threshold is set at **15 million unique monthly visitors from French territory**.

The decree clarifies that only connections to a service, or to a dissociable part of a service, whose main purpose is the classification, referencing or sharing of content put online by third parties are taken into account. The relevant provisions of the Law on Republican principles entered into application, together with the decree, on 17 January 2022. It must be underlined that the decree does not foresee any additional time for the platform operators meeting the connection thresholds to put themselves in compliance with the new provisions.

### Main obligations

The first layer of obligations enshrined in Article 42 of the Law on Republican principles is similar to the due diligence obligations for a transparent and safe online environment provided for in the DSA proposal. Accordingly, online platform providers have to set up procedures and to implement proportionate and technological means to act upon illegal content flagged by public authorities, communicate data allowing to identify the distributors of illegal content to public authorities and store potentially illegal content for the purposes of researching, ascertaining and prosecuting criminal offences. In addition, online platform operators have to establish a single point of contact to communicate with public authorities, to clearly define their content moderation policy in their terms and conditions of use (TCUs), to publicly report on the actions undertaken to fight illegal content online and to set up a notice and action mechanism allowing users to report illegal content, together with an internal complaint mechanism.

The second layer of obligations, which applies to a more limited number of online platform operators, is similar to the additional obligations for very large online platforms to manage systemic risks provided for in the DSA. Accordingly, online platform operators have to carry out an annual assessment of the systemic risks linked to the operation and use of their services with regard to the dissemination of illegal content and the infringement of fundamental rights, particularly freedom of expression. The operators have to put in place reasonable, efficient and proportionate measures to mitigate those risks and to publicly report on the identified systemic risks and related mitigation measures implemented.

### Oversight of the new obligations

The new **French Regulatory Authority for Audiovisual and Digital Communication** (ARCOM), resulting from the merger of the former French Audiovisual Regulator (CSA) and French Piracy Watchdog (HADOPI), is in charge of the supervision of the compliance of online platform operators with their

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<sup>1</sup> For more information, see [“The Notification Procedure to the European Commission: an opportunity for any company operating within the Internal Market”](#), Lighthouse Europe, 23 September 2021.

obligations. In this respect, the ARCOM is empowered to collect the information necessary to monitor the compliance with those obligations. Online platform operators have the obligation to give access to the ARCOM to the operating principles of the automated tools they use to meet these obligations, to the parameters used by these tools, to the methods and data used to evaluate and improve their performance, and to any other information or data enabling the Authority to evaluate their effectiveness, in compliance with the provisions relating to personal data protection. In addition, the ARCOM may make proportionate requests for access, through dedicated programming interfaces, to any data relevant to the evaluation of their effectiveness and may implement proportionate methods of automated collection of publicly available data in order to access the necessary data.

### Sanctions in case of non-compliance

In terms of sanctions for non-compliance with the obligations of the Law on Republic principles, the ARCOM can, following the issuance of a formal notice to comply and a lack of relevant action by the platform operator, issue fines not exceeding **EUR 20 million or 6% of the overall worldwide turnover** of the operator in the previous year, whichever amount is higher. Since the provisions of this law are applicable to platform operators established in other Member States, which most likely contravenes the internal market clause of the E-Commerce Directive, potential sanctions will be probably challenged before French and European jurisdictions.

### III/ Next steps

The ARCOM is expected to issue guidelines on the application of Article 42 of the Law on Republican principles in the first half of 2022. The Authority announced in January 2022 that it will conduct a consultation with the platforms concerned in the first quarter of 2022.

In the meantime, the European Commission, the EU Council and EU Parliament will continue to conduct interinstitutional negotiations to find an agreement on the DSA. As it stands, the institutions [hope](#) to reach an agreement by **June 2022**, for an entry into application of the DSA's provisions in **early 2023**.