[FR] Laws to combat manipulation of information finally adopted

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On 20 November 2018, having been firmly rejected twice by the Senate, draft ordinary and organic laws on the fight against the manipulation of information have been adopted following the final reading by the National Assembly.

Under the new law, an emergency procedure can be used to stop the dissemination, during election campaigns, of “inaccurate or misleading allegations or statements likely to affect the sincerity of the vote” when they are “disseminated on a massive scale in a deliberate, artificial or automated manner via an online public communication service”.

Digital platforms are also subject to new obligations concerning cooperation (to combat “fake news”) and transparency. For example, those “whose activity exceeds a certain number of connections on French soil” will be required to “provide users with accurate, clear and transparent information about the identity of any natural person, or the name, headquarters and purpose of any legal entity, or of that on whose behalf it is acting, that pays the platform to promote information linked to a debate of general public interest”. Failure to respect these obligations may be punished by a year’s imprisonment and a EUR 75 000 fine.

The new law also amends the law of 30 September 1986 on freedom of communication. The national audiovisual regulatory authority (the Conseil supérieur de l’audiovisuel - CSA) will be able to prevent, suspend or prohibit the distribution of television services controlled by a foreign state that “harm the fundamental interests of the nation, including the smooth functioning of its institutions - particularly by disseminating false information”. The law in particular establishes an exceptional procedure for administrative suspension of the distribution of a licensed broadcasting service during election campaigns.

In the wake of the adoption of the law by the National Assembly, the prime minister and more than 60 senators, including some from the presidential majority, appealed to the Constitutional Council, claiming that Article 1 and the new emergency procedure unnecessarily, inappropriately and disproportionately contravened the freedom of expression and communication. They also argued that the newly created offence of infringing the new transparency obligations of online platforms violated the constitutional principle of the legality of offences and

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penalties.

“The manipulation of information is not only a threat but a widespread reality,” Minister of Culture Franck Riester warned the National Assembly on the day of the vote. “France cannot wait for the European Union,” he added, although he admitted that “Regulation needs to happen at EU level.” Meanwhile, the rapporteur, Bruno Studer, stressed the balanced nature of the law, “which guarantees the freedom of the press” and could be in force in time for the next European elections. However, other MPs have criticised the definition of “false information”, stating that it is “neither clear nor protective” and that they are “sceptical” about the effectiveness of the measures and fearful of “self-censorship”, “thought police” and “breaches of press freedoms”.

The Constitutional Council validated the two laws in two decisions of 20 December 2018 (Decisions no. 2018-773 DC and 2018-774 DC), after some reservations concerning interpretation in order to guarantee the balance between the limits to freedom of expression, the need for a sincere vote and the principle of clarity of the electoral vote.

Proposition de loi relative à la manipulation de l’information, enregistrée à la Présidence de l’Assemblée nationale le 21 mars 2018

http://www.assemblee-nationale.fr/15/pdf/propositions/pion0799.pdf

Bill on the manipulation of information, registered at the office of the president of the National Assembly on 21 March 2018

Communiqué de presse du ministère de la Culture, Fake news : Les enjeux de la loi contre la manipulation de l’information, 21 novembre 2018

http://www.culture.gouv.fr/Actualites/Les-enjeux-de-la-loi-contre-la-manipulation-de-l-information

Ministry of Culture press release: ‘Fake news: issues linked to the law against the manipulation of information’, 21 November 2018

Décision du Conseil constitutionnel n° 2018-773 DC du 20 décembre 2018, concernant la loi relative à la lutte contre la manipulation de l’information, JORF n°0297 du 23 décembre 2018

https://www.conseil-constitutionnel.fr/decision/2018/2018773DC.htm

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Decision of the Constitutional Council n° 2018-773 DC of 20 December 2018, concerning the ordinary law on the fight against the manipulation of information, JORF n°0297 of 23 December 2018

Décision du Conseil constitutionnel n° 2018-774 DC du 20 décembre 2018, concernant la loi organique relative à la lutte contre la manipulation de l'information, JORF n°0297 du 23 décembre 2018

https://www.conseil-constitutionnel.fr/decision/2018/2018774DC.htm

Decision of the Constitutional Council n° 2018-774 DC of 20 December 2018, concerning the organic law on the fight against the manipulation of information, JORF n°0297 of 23 December 2018

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