[FR] Law on manipulation of information, validated by the Constitutional Council, is published

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The law on the fight against the manipulation of information, called for by the President of the Republic at the beginning of 2018, was adopted at the end of the year following a chaotic legislative process in which the Senate consistently rejected the text. After it was validated by the Constitutional Council (subject to reservations concerning interpretation), the law was published in the official gazette at the turn of the year. It will therefore be in force by the run-up to the next European elections in May, as intended by the Executive.

The law is divided into three sections. The first, entitled ‘provisions amending the Electoral Code’, introduces a new urgent procedure (Article L. 163(2) of the Electoral Code, based on Article 1 of the law). During the three months leading up to a general election (presidential, national, or European election, or referendum), it will therefore be possible to stop the dissemination of false information via online public communication services if it is likely to affect the integrity of the vote by taking legal action against both the hosts and the access providers. However, the Constitutional Council, in view of the consequences of such a procedure, expressed reservations concerning interpretation. For example, such an urgent cessation order can only be justified if the inaccurate or deceptive nature of the disputed allegations or claims is ‘clear’. The same applies to the danger posed to the sincerity of the vote, which must also be ‘clear’.

Online platforms help to spread “fake news”, which is why, under the new law, those that attract a certain number of users have a duty of loyalty and transparency that requires them to clearly identify any natural or legal person that pays them “remuneration in return for promoting news content linked to a debate of general interest” (sponsored content). The law provides for criminal sanctions (up to a one-year prison sentence and a EUR 75 000 fine) for an infringement of these new transparency obligations during an election campaign. Platforms also have a permanent duty of cooperation (not only during election periods), although this is not subject to criminal sanctions. This requires them to establish measures to combat “fake news” and a system for bringing it to users’ attention. They must also ensure the transparency of the algorithms that they use, promote the certification of genuine accounts, and inform users about the nature, origin, and means of distribution of content. Although these obligations are not subject to specific sanctions, the law extends the powers of the Conseil

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Supérieur de l'Audiovisuel (the national audiovisual regulatory authority - CSA , which "contributes to the fight against the dissemination of false information likely to disrupt public order or affect the integrity of a vote" covered by the law (new Article 17(2) of the law of 30 September 1986). To this end, the CSA can make recommendations to platforms and monitor their compliance with their obligations.

The second section of the new law, which amends the law of 30 September 1986, is aimed at certain audiovisual communication services. For example, the CSA can now reject a licence application from a radio or television service if "the dissemination of its programmes seriously risks harming human dignity, freedom and the property of others, the pluralistic expression of schools of thought and opinions, … [or] the protection of public order, national security or the fundamental interests of the nation (including the smooth functioning of its institutions)". Although these grounds are not directly related to the dissemination of "fake news" during election periods, the law now enables the CSA to "take into account the content that the applicant, its subsidiaries, the legal entity that controls it or the subsidiaries of the latter disseminate via other electronic communication services … if the applicant is controlled or influenced by a foreign state". The law also gives the CSA powers to suspend the distribution of a licensed service controlled or influenced by a foreign state if it deliberately distributes "false information likely to affect the integrity of the vote". This only applies during the three months leading up to an election and is designed to prevent foreign influence on national elections.

There is sure to be close scrutiny of the initial application of the law, which could arise in the coming weeks, during the three months leading up to the first day of voting in the forthcoming European elections.

Loi n° 2018-1202 du 22 décembre 2018 relative à la lutte contre la manipulation de l'information

https://www.legifrance.gouv.fr/affichTexte.do;jsessionid=0D62E143AC23CBE4B3156D8F1D85E68E.tplgfr23s_2?cidTexte=JORFTEXT000037847559&dateTexte=&oldAction=rechJO&categorieLien=id&idJO=JORFCONT000037847553

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