

The fight against the manipulation of information on online platforms

A look back at three years of implementation
of the French law of December 22nd, 2018

November 2022

I- The framework introduced by the French law of December 22nd, 2018

Title III of the French law of December 22nd, 2018 on the fight against manipulation of information introduces a duty of cooperation for online platform operators¹. It establishes a set of measures aimed at combating the dissemination of false information likely to pose public order issues or adversely affect the fairness of any of the elections mentioned in the first paragraph of Article 33-1-1 of the French law of September 30th, 1986².

1. The platforms concerned

The operators concerned are those whose activity exceeds the threshold of five million unique visitors per month and per platform, calculated on the basis of the last calendar year³.

Arcom considers, as it indicated in its previous review, that operators whose platform hosting activity is incidental to the publishing of editorial content should be excluded. This is particularly the case for comments displayed underneath press articles.

Conversely, it considers that an operator, whose activity of providing its users with a dedicated platform-type space can be analysed as a detachable part of the service it provides, shall be subject to the obligations under Title III of the law of December 22nd, 2018, subject to verification of the aforementioned condition relating to the number of connections.

2. The obligations of operators

The online platform operators concerned by the duty to cooperate enshrined in the aforementioned law are subject to obligations of means and are required to be transparent towards their users.

Under the Article 11 of the same law, they must therefore set up an easily accessible and visible system enabling users to report to them false information likely to pose public order issues or adversely affect the fairness of any of the elections mentioned in the first paragraph of Article 33-1-1 of the Act of September 30th, 1986⁴. They must also take additional measures which may relate to the transparency of algorithms, the promotion of content from media companies, press agencies and audiovisual communication services, the fight against accounts that massively spread false information, the provision of information to users concerning sponsored news content related to a debate of general interest, or media and information literacy. Operators must make these measures and the resources they devote to them available to the public.

They are also required to report annually to Arcom on the implementation of the measures taken under Article 11.

¹ As defined in Article 111-7 of the French Consumer Code: "I.-An online platform operator means any natural or legal person offering, on a professional basis, whether for payment or not, an online communication service to the public based on: 1) The classification or referencing, by means of computer algorithms, of content, goods or services offered or put online by third parties; or 2) the bringing together of several parties with a view to the sale of a good, the provision of a service or the exchange or sharing of content, goods or services".

² These provisions cover the election of the President of the Republic, general elections of Members of Parliament, the election of representatives to the European Parliament, and referendums.

³ As set out in Decree no. 2019-297 of April 10th, 2019 on the information obligations of online platform operators promoting information content related to a debate of general interest.

3. Arcom's powers

The law of December 22nd, 2018 entrusts Arcom with the general mission of "*contributing to the fight against the dissemination of false information likely to pose public order issues or adversely affect the fairness of any of the elections mentioned in the first paragraph of Article 33-1-1 of the French law of September 30th, 1986*". The Authority is responsible for monitoring and evaluating compliance with the "systemic" obligations of platforms in terms of the fight against manipulation of information and it does not have the authority to take action concerning individual content.

Based on Article 12 of this law, Arcom addressed a recommendation to online platform operators on May 15th, 2019 to improve the fight against manipulation of information⁵.

The Authority is responsible for publishing a periodic review on the implementation and effectiveness of the measures taken by operators, for which it may collect any information from them that it needs. Based on these provisions and in a cooperation logic, Arcom sends a questionnaire to operators every year⁶.

Arcom's work to combat the manipulation of information is part of a process of enhanced transparency. It ensures that users have access to the most comprehensive information so that they themselves may be active in the fight against manipulation of information. To that end, the Authority publishes operators' annual declarations on its website as soon as they are received⁷.

II- Lessons from three years of implementing the law on the fight against manipulation of information

By adopting the law of December 22nd, 2018 on the manipulation of information, the French Parliament established a precursory framework based on obligations of means and transparency incumbent upon online platform operators.

Arcom wanted to draw some initial and general conclusions from more than three years of implementation of the law. It also wanted to outline future prospects for the fight against manipulation of information in the context of profound changes in the French and European regulatory framework.

To that end, operators were invited to comment on this issue in their annual declarations. *Dailymotion*, *Snap*, *Twitter*, *Google* and *Meta* took part in the exercise.

1. Implementation of a new form of regulation based on rich and demanding relationships between Arcom and platforms

The law does not give the regulator any coercive authority to force operators to comply with their obligations. Therefore, Arcom takes action through an open and demanding dialogue with platforms. It initiated this dialogue as soon as the law came into force. These exchanges quickly intensified and were highly informative for both operators and the regulator.

⁵ <https://www.csa.fr/Reguler/Espace-juridique/Les-textes-adoptes-par-l-Arcom/Les-deliberations-et-recommandations-de-l-Arcom/Recommandations-et-deliberations-du-CSA-relatives-a-d-autres-sujets/Recommandation-n-2019-03-du-15-mai-2019-du-Conseil-superieur-de-l-audiovisuel-aux-operateurs-de-plateforme-en-ligne-dans-le-cadre-du-devoir-de-cooperation-en-matiere-de-lutte-contre-la-diffusion-de-faussees-informations>

⁶ <https://www.arcom.fr/vos-services-par-media/internet-et-reseaux-sociaux/lutte-contre-la-manipulation-de-linformation-declarations-des-operateurs-de-plateformes-en-ligne-et-questionnaires-de-larcom>

⁷ <https://www.arcom.fr/vos-services-par-media/internet-et-reseaux-sociaux/lutte-contre-la-manipulation-de-linformation-declarations-des-operateurs-de-plateformes-en-ligne-et-questionnaires-de-larcom>

The questionnaire sent by Arcom each year to operators in the perspective of their declaration is one of the essential vehicles for these exchanges, in full transparency towards the public. The questions asked encourage operators to not answer superficially and to respond to the approach developed by Arcom addressing the various aspects of the fight against manipulation of information. The annual review published by the regulator takes this feedback into account. The same approach applies to the questionnaires, which are updated and clarified from year to year in order to better understand the issues raised by changes in manipulation of information.

In addition, without departing from a comparative approach, Arcom has gone further each year in analysing the specific situation of each platform, to take into account the plurality of models and better assess the adequacy of the means implemented by each of them with regard to the impact of information manipulation.

Moreover, Arcom's board and its committee of experts about disinformation have held hearings with platforms on several occasions, on the topic of online disinformation, to clarify the information declared and also to report on the means put in place in response to manipulation of information phenomena observed in specific contexts (such as the COVID-19 crisis in spring 2020).

Lastly, this cooperation has particularly intensified in the run-up to the various election campaigns held in France since 2018, in particular during the 2022 elections season. This is described in the Authority's election campaign report published in November 2022⁸, and also in the 2022 review⁹. Several operators have noted the importance of regular exchanges with Arcom during this period. *Snap*, *Google* and *Meta* have thus welcomed constructive cooperation.

In general, the **implementation of the French law of December 22nd, 2018 has greatly contributed to the creation of institutional capacities in France in terms of the fight against online manipulation of information, both at Arcom and among operators.** It has helped to build and consolidate operational skills with regard to the supervision of the means implemented by online platforms to fight online information disorder.

2. Some improvement in the means and in transparency implemented by operators

The prevalence of online disinformation remains a major challenge today and is requiring, more than ever before, that online platform operators step up their efforts to stop this phenomenon. It must be acknowledged that in general, these operators have worked to improve the means implemented for this purpose since the law came into force. This is reflected in the actions taken by some of them, particularly in response to the recommendations made by Arcom in its reviews.

In this respect, *Dailymotion* and *Snap* mention that these recommendations have prompted them to enhance their features or put in place means or measures dedicated to the fight against manipulation of information. For example, *Dailymotion* reports improved transparency in its moderation mechanisms while *Snap* describes changes in its reporting system as well as updates to its community rules to target deepfakes.

⁸ <https://www.arcom.fr/nos-ressources/etudes-et-donnees/mediatheque/rapport-sur-les-campagnes-electorales-2022-election-la-presidence-de-la-republique-et-elections-legislatives>

⁹ See Part II-7 of the annual review of the means and measures implemented by operators in 2021.

In particular, operators are now complying in a generally satisfactory manner with the obligation to set up a mechanism for reporting false information likely to pose public order issues or adversely affect the fairness of a major election. However, on its own, this essential tool is not nearly enough to address the risks raised by the use of online platforms for disinformation.

This is perhaps one of the limitations of the approach adopted in the law of December 22nd, 2018, which makes content a central issue. Not all false content is illegal in itself, and neither does it necessarily call for strong moderation in the form of removal. On the other hand, its reporting can be a weak signal enabling the platform to address, more comprehensively, the risks posed not only by content, but also by accounts and practices that contribute to disinformation on a platform. Arcom believes that issues of manipulation of information should be approached from this broader perspective, enabling both the phenomena and the consistency of the responses thereto to be assessed.

Furthermore, Arcom notes an overall improvement in transparency in terms of both the quality and the overall quantity of information provided by operators from year to year. This improved transparency is the result of Arcom's repeated statements as part of the dialogue held with operators and reflects its demand that users and citizens be provided with clear, concise and intelligible information enabling them to understand the impact of platforms on information dynamics.

Nevertheless, these efforts at transparency still appear to be very insufficient¹⁰ and operators remain silent on essential topics, such as the economic impact of disinformation on their service. With the law of December 22nd, 2018, the French legislature laid a first essential milestone that provided Arcom with a clear mandate. For this first step, given the complexity of this matter involving freedom of expression, a coercive regime was not necessary. That is why the law does not provide for authority a power to collect data from operators.

The exercise of regulation now shows the limitations of this sole flexible framework that fails to hold platforms accountable, firstly for the reality of manipulation of information phenomena found in their services, and secondly for all the measures taken to mitigate them, in particular compliance with the regulator's recommendations. A data collection power is essential to assess the relevance of the means and measures implemented with regard to the models and specificities of platforms.

In this regard, providing regulators and academics with the information necessary to assess risks and the measures taken to counter them is a lever that must be urgently activated, both at national and European levels.

3. An essential experience for the implementation of the new European framework for the regulation of online platforms

Arcom thus underlines the importance and the initial results of the new "systemic" regulation on the fight against information manipulation put in place towards online platform operators since 2018. It notes that the Parliament chose to use this as inspiration for the legislation for combating hateful online content introduced by the French law of August 24th, 2021 to comfort the respect for the principles of the French Republic.

A dynamic has now been set in motion at European level with the Digital Services Act (DSA)¹¹. This ambitious and innovative text is intended, with strict respect for freedom of expression, to respond even better to the risks posed by online platforms in terms of public

¹⁰ See Part I-3 of the annual review of the means and measures implemented by operators in 2021.

¹¹ 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 Act)

protection and the stability of our democratic societies. It is built on greater operator accountability and a stricter requirement for transparency.

The provisions of the strengthened European Code of Practice on Disinformation dated June 16th, 2022¹² are intended to complete the systemic risk mitigation tools implemented under this regulation. This new code has similar objectives and is based on similar principles to those of the French regulatory system: commitments to means, measurement of effectiveness through indicators, similar areas for action, and involvement of various stakeholders. However, some measures are more binding for the signatories, who commit to transparency both through improved access to data for researchers and through the creation of a Transparency Centre for each signatory to report on the monitoring of compliance with commitments at national and EU levels.

Thus, the various commitments made by its signatories and the resulting reporting obligations will provide input for the Authority's reflections on the harmonisation of the concepts and key indicators requested annually from operators based on the law of December 22nd, 2018, in perspective of a coordinated approach that several operators have called for (*Google*, *Meta* and *Twitter*). In order for this new European framework to work as well as possible, a high level of cooperation at the national and EU levels is essential. The DSA provides for feedback and information-sharing procedures between competent regulators, which may include the regulator of the country of establishment or, for the specific obligations of very large platforms and search engines, the European Commission.

A strong national base must therefore endure, in particular to feed the European Commission's work aimed at very large online platforms and search engines. It is essential that the various national competent authorities within the meaning of the DSA, in coordination with each other and with the European network, retain their role of organising dialogue at national levels. With regard to the fight against the manipulation of online information, in light of France's specific context and practices, such a dialogue should provide an opportunity to question operators about the means and measures implemented, particularly in the event of an exceptional or specific situation occurring on national territory. For this to happen, the national regulator must be able to collect information, including data, from all online platforms to assess the specific risks associated with their activity in their country.

Therefore, based on its knowledge of these issues and its experience in regulating operators, Arcom is willing to work alongside the competent French authorities, the European Commission, and its European counterparts to set up an effective framework for the regulation of online platforms.

¹² <https://digital-strategy.ec.europa.eu/en/policies/code-practice-disinformation>