



# **Public Conference on Law Enforcement Online**

## **The Challenges of National Regulation**

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# Difficulties encountered for audiovisual regulation in an online and/or transfrontier environment: Case studies

## French legislative framework for online content regulation

## Perspectives



## Case Study #1: A YouTube Channel Raising Public Health Issues

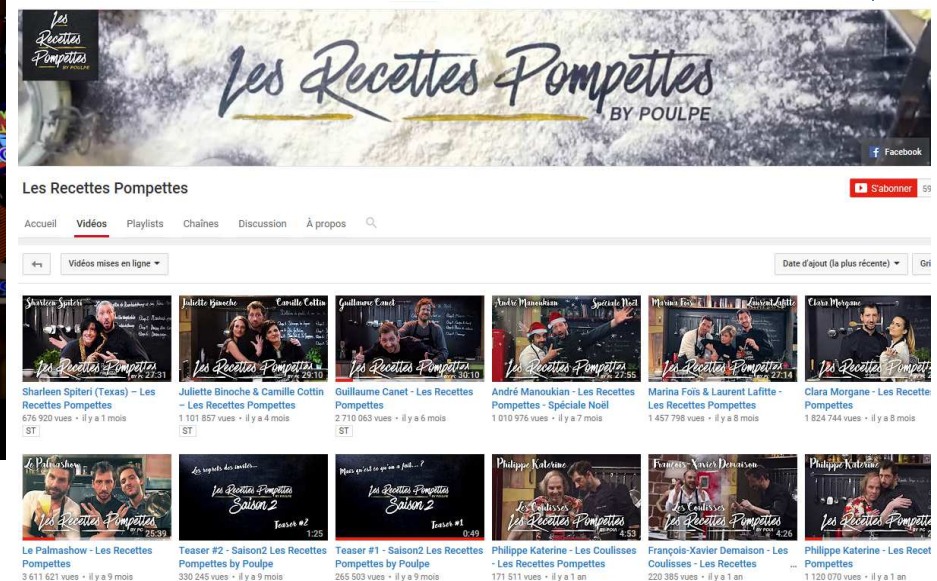


# Les Recettes Pompettes

- ✓ Show provided on a French YouTube channel in 2016–2018
- ✓ Adapted from a Canadian TV show



Screenshots (August 14, 2017)





## Les Recettes Pompettes: Qualification Issues

### Questions

#### Service is a YouTube channel

- May services provided on video sharing platforms be OD-AVMS?



- Is the audiovisual content TV-like?



- Is it user generated contents? What is the role of the presenter/author?



#### Service provided for free

- Does it pursue an economic activity?



### Analysis

- **Technological neutrality:** it makes no difference whether the service is on its provider's website or on another website
- Show adapted from a TV show, built and written as a TV show, produced with significant resources, guests from the TV
- The presenter/author is paid by the provider, which makes editorial choices and publishes contents online
- In 2016, sponsorship and ads; In 2017, no new sponsorship and no more ads → Economic activity to be ascertained



## ***Les Recettes Pompettes: A long and complex process***

- **April 2016: First episode made available on line**
- **June 2016: First letter sent to the provider to inform it about qualification as On-Demand Audio-Visual Media Service**
- **November 2016: Warning letter sent to the provider**
- **June 2017: Decision to ask the provider questions on business model of the service, prior to issuing formal notice**
- **October 2017: CSA informed that service now edited by a British company**
- **November 2017 to March 2018: Requests sent to both companies to ascertain which one is the provider**
- **June 2018: Information to the French company that it is considered as the provider, prior to issuing formal notice**
- **July 2018: Videos withdrawn, YouTube channel closed**



## Satellite channels: AVMSD provisions & French law

- **Non-EU channels accessible in one or more EU Member States via satellite have to comply with the AVMSD**
- **One Member State having jurisdiction:**
  - Use of a satellite up-link situated in that MS
  - Or, if not, use of satellite capacity appertaining to that MS
- **Hundreds of non-EU channels, especially from the Middle East area, carried by a Eutelsat satellite, fall/may fall under France's jurisdiction**
- **The CSA may impose sanctions:**
  - Require Eutelsat to inform the TV service provider of the French law
  - Require Eutelsat to stop broadcasting the TV service
  - Request the Conseil d'Etat to order Eutelsat to stop broadcasting the service under an emergency procedure
- **Eutelsat had to stop 6 TV services between 2004 & 2015**



# Satellite channels: Changes of situations

- **Change name**
  - The NRA's decision is no longer valid
  - Need to prove that the two channels are the same or to investigate the "new" case
- **Move the uplink to fall under jurisdiction of another Member State**
  - Need for efficient cooperation between NRAs
- **Go online**
  - TV services, YouTube videos, Websites, Facebook pages...
  - Satellite criteria & "classical" regulation tools not relevant in the online world



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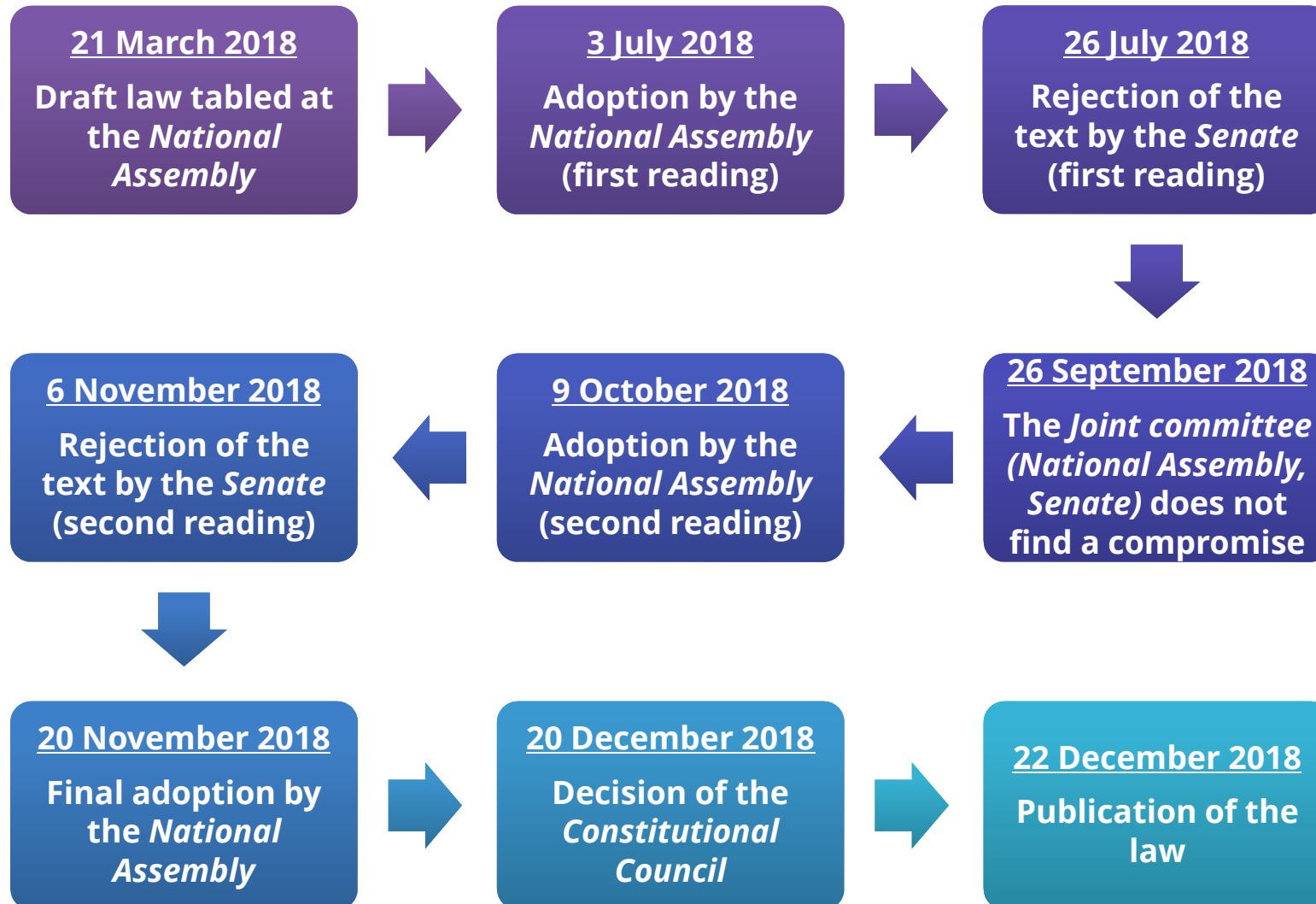
(1) Law of December 2018 against the manipulation  
of information

## Perspectives





## Legislative process





## Main provisions of the law

1. **Transparency obligations for online platforms\* during election periods**
  - To provide information on amounts spent for contents to be sponsored, identity of the person paying to promote a content, use of users' data, etc.
2. **Reinforcing cooperation requirements for online platforms\***
  - To take measures preventing the dissemination of disinformation
  - To communicate on these measures and their cost
  - To report to the CSA each year on their implementation
3. **New judicial proceedings during election periods before the civil judge within 48 hours**
4. **New powers granted to the CSA on radio & TV services**
5. **Reinforcing media literacy**

\* Online platforms over 5 million unique visitors per month in France



# Cooperation requirements for online platforms: Recommendation of the CSA to online platforms (15.5.19)





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(2) Draft law against hateful content online

## Perspectives



## Origin of the proposal & legislative process

Report (National Assembly) to strengthen the fight against racism and antisemitism on the internet (September 2018)

- NetzDG often quoted as an inspiration by the drafter of the legislative proposal



Urgency procedure decided by the Government

First reading by the Senate foreseen in December 2019

Adoption & entry into force envisaged in the beginning of 2020



## Scope of the legislative proposal

**Online platforms operators having a role in the dissemination and propagation of publicly shared content**

- **By connecting parties sharing content**
- **Or by having an impact on the classification or referencing, by means of algorithms, of content offered by third parties**

**Having an activity in France above a threshold set by decree**

### 4 main pillars

1.

**Withdrawal  
obligation**

2.

**Notification  
mechanism**

3.

**Transparency  
requirements**

4.

**Strengthening the  
CSA's powers**



# 1. Withdrawal obligation

**Obligation to withdraw or to make inaccessible in 24 hours contents “obviously” infringing the law:**

- **Apology for crimes against humanity**
- **Provocation or apology for terrorism**
- **Incitement to hatred, violence, discrimination or public insult toward a person or a group of people because of their origin, alleged race, religion, ethnic group, nationality, sex, sexual orientation, handicap**
- **Child pornography**

**Creation of a new criminal offense for cases where the notified content is not withdrawn**

- **One year imprisonment**
- **Fine of 250,000€ for a natural person (1,250,000€ for a legal person)**



## 2. Notification mechanism

### Platforms shall:

- **Implement a notification system in French, easily accessible and easy to use**
- **Inform the users of the risks in case of abusive notifications**
- **Implement processes, human resources and technological means to guarantee the prompt handling of complaint**
- **Inform the users of the results of the notification and the reasons of the decision (within 24 hours in case of withdrawal, 7 days otherwise) with a possibility to appeal**





### **3. Transparency requirement**

**Platforms shall ensure a “public, clear and detailed, easily accessible and visible information” concerning in particular**

- **The possible sanctions in case of publication of a hateful content**
- **What a victim of hate speech can do**
- **The risks in case of abusive notifications**
- **The general modalities of the moderation of contents implemented by the platforms**

**Particular information should be provided to minors (-15 years old) when they get an account on the service**

**Power for the CSA to issue recommendations in order to detail what information the platforms shall make public**



## 4. Strengthening the powers of the CSA

- Issue recommendations, guidelines and good practices to ensure the good application of the new rules by the platforms
- Make sure of the compliance by the platforms and collect all the necessary information from them
- Publish a yearly report on the implementation and the effectiveness of the obligations of the platforms
- Foster cooperation between the platforms
- Take sanctions in case of non-compliance to their administrative obligations (excluding the obligation to withdraw within 24 hours, which is a criminal offense)
  - Up to 4% of the global turnover of the platform
  - Only after a formal notice, and with a possibility to appeal before the *Conseil d'État* (usual procedure)



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**THANK YOU FOR YOUR  
ATTENTION!**