



Wikimedia France is an association that promotes the free sharing of knowledge, which makes education a priority. It is part of the global Wikimedia movement whose mission is to bring free educational content to the world. To do this, in addition to supporting Wikipedia, Wikidata and other online projects, Wikimedia advocates for laws and rules that empower citizens to be active in sharing knowledge and educational materials. The regulation of the digital ecosystem and the moderation of online content have a direct impact on our work.

Nowadays, Wikipedia is one of the ten most popular sites worldwide. In 2020, the collaborative encyclopedia had nearly 30 million unique visitors per month in France. And yet, the movement is still too often sidelined in debates around internet regulation where it seems the focus is mostly on for-profit service providers.

The purpose of this contribution is to present Wikimedia France's comments and position on the *Law Reinforcing Compliance with the Principles of the Republic*, as notified by France on 12/03/2021 under [TRIS Notification Number 2021/152/F \(France\)](#).

## I. Some French background elements

The Law Reinforcing Compliance with the Principles of the Republic (hereinafter referred to as the "Bill") is a French government bill presented to the Council of Ministers on December 9, 2020. The idea of this bill was to target online activity targeted "against the Republic". After the assassination of Samuel Paty, teacher of history and geography, on October 16th 2020, the Government announced an enrichment of the provisions of the bill, with a possible resumption of the objectives of the *Law Against Hateful Content on the Internet* of the deputy Laetitia Avia, previously censored by the Constitutional Council.

***“The objective of this text is to have a comprehensive approach to the fight against online hatred, with the triple objective: to sanction, regulate and protect”*** summarizes Laetitia Avia, MP LaRem and rapporteur of the text, at [BFMTV](#).

The Bill was adopted by the French National Assembly on February 16th, 2021 and by the French Senate on April 12th, 2021. The Bill was transmitted to the *Commission mixte*

*paritaire* (composed of 7 deputies and 7 senators) on April 13th, 2021 which did not reach an agreement on May 12th because the members of the *Commission* did not manage to find a compromise. Therefore, a further examination in the National Assembly and the Senate is expected in the coming months.

## II. The provisions of Article 19a

Article 19a of the Bill was created following the tabling of an amendment by the government taken up by the rapporteur, Laetitia Avia. The proposed device, which completes the legislative arsenal provided for by law n ° 2004-575 of 21 June 2004 for Confidence in the Digital Economy (hereinafter referred as the “LCEN”) is inspired by the preventive aspect of the Avia Law, which itself was declared unconstitutional because certain provisions infringed [on freedom of speech and communication and were not necessary and proportionate to the aim pursued](#).

Mr Cédric O [said](#) he wanted to “take the lead in the Digital Services Act”. The Secretary of State in charge of the digital transition and electronic communications, underlined, during his hearing before the deputies, that “our objective is to pre-transcribe in the bill (...) given the urgency, we are dealing with the big problem: moderation of hate speech on major social networks”. According to him, the sunset clause of 31st December 2023 is there to signify that the European provisions are intended to take over from this text”.

So, the amendment tabled has an objective to strengthen the French legal framework for combating hate speech online by handing platforms a list of obligations and by giving the Conseil Supérieur de l’Audiovisuel (CSA) the power to monitor and enforce the implementation of the new obligations, including with respect to platforms establishes in other Member States.

***“They [the groups owning the social networks] report to the public on the means implemented and the measures examined to fight against the dissemination of the content mentioned in the same first paragraph [illegal content], by publication, according to the terms and a periodicity fixed by the Superior council of audio-visual” thus details the text.***

In accordance with Directive (UE) 2015/1535 laying down a [procedure](#) for the provision of information in the field of technical regulations and of rules on information society services, the European Commission has been notified of several technical provisions detailed by the Bill. Amongst them, draft Article 19a of the Bill was submitted to the European Commission on March 12th, 2021 (Notification number: 2021/152/F). From this date on, the European Commission and the other Member States had three months to examine the notified Bill. As the Bill concerns a matter where harmonisation work is currently underway, as a result of the

proposed DSA regulation, it is stressed that the Commission may find it appropriate to exercise its prerogatives under Article 6(4) Directive (UE) 2015/1535 and decide that the adoption of the Bill shall be postponed for twelve months.

### **III. Difficulties raised by Wikimedia France and the project communities**

First of all, it is essential to remember that the Wikimedia Foundation and the Wikimedia movement are in favor of regulating online platforms. But it is very important to stress that Wikipedia and its sister projects were never intended as websites where anyone can say anything. They are platforms offering a synthesis of knowledge, all freely reusable. As a result, compliance with laws (copyright, fight against hate speech, fight against disinformation) has always been in line with the site's objectives.

Wikimedia France nevertheless notes that the legislator enacts laws with a single model in mind, that of dominant, for-profit platforms. The digital giants model is not the only existing model. Wikimedia projects do not operate for-profit and it is trying to regulate a collaborative not-for-profit encyclopedia the same way as a dominant for-profit service poses risks and challenges.

The thresholds for inclusion are usually enacted by decree in France (e.g. 5 million users nationally) and Wikipedia almost always falls within scope. .

On the provisions of article 19a contrary to the collaborative model

**On the general conditions of use (GCU):** Article 19a provides for a reference to hate content prohibited by French law, in the general conditions of use of the platforms.

- ❖ The Wikimedia Foundation, with the help of volunteers, drafted [Terms of Use](#). These Terms of Use inform users/contributors of Wikimedia projects about the services of the Foundation, the relationship between the Foundation and users/contributors, and the rights and responsibilities that guide the entire community. There is a section on "restrictions on certain activities" which lists all prohibited activities (whether legal or illegal). The defense of terrorism, for example, is not part of these rules. Instead, misusing the services and facilities for illegal purposes is stated, which includes terrorist activities.
- ❖ It would be completely inconsistent to make, within these Terms of Use, drafted for the entire Wikimedia community worldwide, a reference to French law (Article 6 de la loi pour la confiance dans l'économie numérique) which explicitly prohibits the apology against terrorism.

- ❖ In addition, in February 2021 a [Universal Code of Conduct](#) was drawn up in 30 languages by the Wikimedia Foundation and 1,500 volunteers from five continents. This Code aims to curb disinformation, abuse and manipulation on Wikipedia. It expands existing policies to create standards combating negative behavior. It is binding on anyone participating in Wikimedia projects, including paid staff and casual users. It enacts expected behaviors, and unacceptable behaviors, such as vandalism of content with hate speech. A direct reference to the French law, once again, be inconsistent in the case of a community platform.

**On the notification device** : Article 19a sets up a notification system that can be quite cumbersome and complicated to set up for a platform that is almost entirely regulated by volunteers.

The Wikimedia Foundation's Trust and Safety Team is made up of 13 people around the world. Most of the moderation is done by volunteers, which allows this very small team to work off an incredibly small amount of tickets. The [latest transparency report](#) shows 361 content removal requests from authorities around the world between January and June 2020, but none were granted. **Wikipedia moderation works because most of the notifications are not sent to the host, but processed by the encyclopedia's editing communities.**

- ❖ The proposed implementation suggest that both the author and the person signalling the content are informed about the moderation decision taken is welcome in principle, although it might cost volunteer energy. Such decisions and discussions are already made in the public on Wikimedia projects and are linked to the edited page in question, so it might be worthwhile to see whether this satisfies the conditions.
- ❖ The Wikimedia Free Knowledge Advocacy Group EU raised a concern within the Digital Service Act's Article 14, which seems to suggest that a simple notice automatically generates knowledge of the existence of illegal content. This is rarely the case with Wikimedia projects. A similar concern exists within the French Bill. For Wikimedia it is important to clarify that a notification results in actual knowledge of the information presented by the user, but not necessarily of illegality.
- ❖ This kind of provision can be dangerous for models - however virtuous - like Wikipedia. We must be careful not to bypass the model of citizen content moderation especially in cases where it has proven itself to work much better today than known alternatives.

Faced with these difficulties, Wikimedia France has not remained inactive. Indeed, after numerous debates and discussions with members of parliament and the government, the Senate excluded in its text "non-profit online encyclopedia". Wikimedia France hopes that this exception will remain during the next readings in Parliament.

## On contradictions with European rules and principles

### 1. Inconsistent with the country-of-origin principle

If the Bill were to come into force as is, an online platform operator would have to comply with the requirements set out by Article 19a under the supervision and control of the French regulatory authority –the CSA – whether or not it is established on French territory. This provision fundamentally goes against the country-of-origin principle pursuant to Article 3(1) of the E-commerce Directive according to which information society services must be supervised “at the source of the activity” and that also applies to video sharing platforms pursuant to the Audiovisual Media Services Directive. Besides, as Synthec Numérique and TECH In France pointed out in their contribution, this country-of-origin principle is reaffirmed in the DSA proposal “with the Commission [reiterating](#) that it is the optimum model for ensuring that rules can effectively be enforced against services”.

For its part, the French Government [affirmed](#) that it was essential, in order to ensure the useful effect of the mechanism, that the article 19a would be applicable to platforms established abroad, in particular in other Member States of the European Union and that the derogation from the country of origin principle, provided for by the Directive on electronic commerce, is completely justified by the objective of protecting human dignity.

***“The possibility of derogating from the country-of-origin principle is based on certain conditions: the measures must be targeted and proportionate. This is indeed the case with the provisions of Article 19a, which respects the proportion thanks to the thresholds that have been set, with very large platforms constituting the priority target. In this sense, we are part of the continuity of the DSA, which sets obligations proportional to the size of the platforms.”, Laetitia Avia during the [debates](#) at the National assembly.***

With the sunset clause scheduled for early 2023, France will therefore have to return to the country of origin principle.

Wikimedia France believes that there is legal uncertainty stemming from this proposal. We are worried that if more countries follow France’s path, application of a patchwork of rules will become practically impossible. Clashes between laws, sanctions and competent authorities will be inevitable since the same service provider is likely to be handed different, potentially conflicting, decisions depending on the country.

### 2. Fragmentation of European legislation

As discussions on the DSA have barely begun, the article 19a is legally an over-transposition of the E-commerce Directive in force and not a real anticipation of the DSA - as the French government claims. Period.

In fact, in December 2020, the European Commission presented its proposal for a regulation, intended to review the responsibility of platforms and increase their obligations. However, this proposal is only at the start of its legislative process within the Union. Thus, the French government is unilaterally rewriting the principles still in force by the 2000 E-commerce Directive. There are other countries with anticipatory regulatory activity, such as Austria which has passed a law against hate speech, Germany which is updating its Network Enforcement Act and Hungary which is planning new rules for the digital industry. Even without pointing to abuse of this strategy by Member States that have serious rule of law issues, such behaviour poses a dangerous precedent for the EU's integrity.

**As a reminder, one of the main objectives of the DSA is to define how digital services and content moderation should work across the European Union.** There are over 10,000 online platforms in the EU, many of which will need to comply with European rules and the emerging patchwork of national initiatives. Contradictions are inevitable. For example, the French notion of “online platform” as defined by the National Consumer Code differs from that proposed in the DSA. We must ensure that horizontal and continental legal frameworks are in place before vertical and national laws are added.

As the European Commission rightly [reminded](#) the Austrian authorities, “while pursuing a legitimate political objective, national measures are likely to amplify the existing legal fragmentation of the internal market”.

Thus, if the European Commission wants to achieve its objective of harmonising rules within the EU, Wikimedia France believes that it must avoid the prior emergence of an array of national rules and ensure that the DSA establishes the necessary clear regulatory framework. For this, France must put this legislative proposal on hold.