

# An update on developments regarding civic space in the EU and an overview of the possibilities for human rights defenders to enter EU territory

**France**

**Year 2022**

Contractor: IFDL

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## Table of Contents

1.	Civic space developments in 2022 .....	3
1.1.	Whistleblowers' protection .....	3
1.2.	Criminalisation of expression .....	4
1.3.	A republican commitment contract .....	6
2.	Promising practice in 2022 .....	8
2.1.	A legal and digital self-defence database .....	8
3.	Visa for human rights defenders.....	9
3.1.	Entry and stay for human rights defenders (HRDs) at risk.....	9

# 1. Civic space developments in 2022

## 1.1. Whistleblowers' protection

Area	Safe space & protection
Topic	Whistleblowers' protection
Impact	Major

The law of 21 March 2022 to improve the protection of whistleblowers<sup>1</sup> transposed the Directive of 23 October 2019 on the protection of persons who report breaches of Union law, going even beyond the European provisions.

The notion previously enshrined in the law of 9 December 2016,<sup>2</sup> that the whistleblower had to act "disinterestedly", has been replaced by the notion of lack of a financial reward for reporting or disclosing information about a crime, misdemeanour, threat or harm to the general interest, a breach or attempted concealment of a breach of international or European Union law or regulations. A whistleblower can now also report facts that have been reported to them, without knowing them "personally". The law has also extended some of the protections available to whistleblowers, including protection against retaliation, to individuals and non-profit legal entities (unions and associations) that are in connection with the whistleblower. The law of 21 March 2022 abolishes the hierarchy between alert channels. The whistleblower can now choose between internal and external whistleblowing to the competent authority, the Defender of Rights, the courts or a European body. Public disclosure is still only possible in certain situations: failure to respond to an external whistleblower report within a certain time frame; the risk of retaliation or if the whistleblower report has no chance of success; in the event of "serious and imminent danger" or, for information obtained in a professional context in cases of "imminent or obvious danger for the general interest". In cases of anonymous

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<sup>1</sup> France, Law No. 2022-401 to improve the protection of whistleblowers ([Loi n° 2022-401 visant à améliorer la protection des lanceurs d'alerte](#)), 21 March 2022.

<sup>2</sup> France, Law No. 2016-1691 on transparency, the fight against corruption and the modernization of economic life ([Loi n° 2016-1691 relative à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique](#)), 9 December 2016.

whistleblowing or public disclosure, individuals who have had their identities revealed, such as journalists, can obtain whistleblower status.

The organic law of 21 March 2022 to strengthen the role of the Defender of Rights in the area of whistleblowing<sup>3</sup> specifies that the Defender of Rights informs and advises whistleblowers of their rights and defends their rights and freedoms . These assignments are carried out by a new deputy of the Defender of Rights "responsible for supporting whistleblowers". Any person may apply to the Defender of Rights for certification of whistleblower status.

## 1.2. Criminalisation of expression

Area	Freedom of expression and information
Topic	Other forms of criminalisation of expression (e.g. in the framework of laws on disinformation or counter-terrorism)
Impact	Major

Law No. 2022-1159 of 16 August 2022, containing various provisions for adapting to European Union law with regard to the prevention of the dissemination of terrorist content online<sup>4</sup> designated the Central office for the fight against information and communication technology crime (*Office central de lutte contre la criminalité liée aux technologies de l'information et de la communication*), part of the police force central directorate (*direction centrale de la police judiciaire*), to issue national injunctions for the removal or blocking of terrorist content under the regulation. A qualified person within the Regulatory authority of audiovisual and digital communication (*Autorité de*

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<sup>3</sup> France, Organic law to strengthen the role of the Defender of Rights in whistleblowing ([Loi organique visant à renforcer le rôle du Défenseur des droits en matière de signalement d'alerte](#)), 21 March 2022.

<sup>4</sup> France, Law No. 2022-1159 containing various provisions for adapting to European Union law with regard to the prevention of the dissemination of terrorist content online ([Loi n° 2022-1159 portant diverses dispositions d'adaptation au droit de l'Union européenne en matière de prévention de la diffusion de contenus à caractère terroriste en ligne](#)), 16 August 2022.

*régulation de la communication audiovisuelle et numérique - Arcom*)<sup>5</sup> investigates cross-border injunctions, examining their compliance with the European Regulation 2021/784 of 29 April 2021 on addressing the dissemination of terrorist content online and the EU Charter of Fundamental Rights.

The criminal penalties incurred by hosts who fail to comply with the obligation to remove or block content or who fail to inform the authorities of terrorist content "presenting an imminent threat to life" or announcing a planned attack are one year in prison and a fine of €250,000. For a legal entity, a fine of up to 4% of its worldwide turnover may be imposed in the event of persistent breaches. Arcom can impose administrative and financial sanctions (formal notice for a host to comply with the obligations of the European regulation and, in cases of non-compliance, a fine of up to 4% of its worldwide turnover).

The hosts or Internet users producing contents, who contest a removal injunction and the restriction of the liberty of expression in the civic society, will be able to form a summary suspension or a summary liberation and to file an appeal for annulment within 48 hours before the administrative court, which will have 72 hours to rule. An appeal may be filed within 10 days. The administrative court of appeal will then have one month to rule. They will also be able to call for the annulment of Arcom's decisions.

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<sup>5</sup> Arcom was created on 1 January 2022 as a result of merger of the Superior Audiovisual Council (CSA) and the High Authority for the distribution of works and the protection of copyright on the Internet (HADOPI).

## 1.3. A republican commitment contract

Area	Freedom of association
Topic	Strict legal requirements
Impact	Major

The law No. 2021-1109 of 24 August 2021 reinforcing the respect of the principles of the Republic<sup>6</sup> introduced an obligation for associations and foundations to sign a republican commitment contract if they want to obtain State approval (*agrément d'Etat*),<sup>7</sup> a public subsidy or host a young person in civic service. This obligation came into effect on 1 January 2022.

Under the terms of this contract, associations will have to commit themselves to respecting the principles of liberty, equality and fraternity, not to challenge the Republic's secularity and to refrain from any action that would undermine public order.

This provision is criticized by associations as "entrusting the administration with a very broad power of interpretations and sanctions" and also "without clear, prior and compulsory information regarding the remedies that may be exercised by the associations and foundations in question".<sup>8</sup> 25 associations have filed an appeal with the Council of State (*Conseil d'Etat*) against a decree implementing the "separatism" law on the "republican commitment contract", citing the freedoms of association, expression and assembly enshrined in the European Convention on Human Rights (*Convention européenne des droits de l'homme*), and also pointing out that some associative actions

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<sup>6</sup> France, Law No. 2021-1109, strengthening the respect of the principles of the Republic ([Loi No. 1109-1109 confortant le respect des principes de la République](#)), 24 August 2021.

<sup>7</sup> Agrément d'Etat is a recognition (accreditation) of the commitment of an association in a particular field, e.g. sports. The approved associations benefit from different advantages: a right to apply for public subsidies, tax advantages, etc.

<sup>8</sup> France, Le Mouvement associatif, Press release entitled "Republican commitment contract: the disagreement of associations" ([Communiqué de presse « Contrat d'engagement républicain : le désaccord des associations »](#)), 3 January 2022.

are in fact contradictory to the requirement of the contract of republican commitment, such as those of civil disobedience, a "long-standing means" of mobilization.<sup>9</sup>

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<sup>9</sup> France, Friends of the Earth, Press Release entitled "Separatism" Law and Republican commitment contract: remedies available to environmental and anti-corruption associations" (« *Loi « séparatisme » et contrat d'engagement républicain : recours des associations de défense de l'environnement et de lutte contre la corruption* » ), 2 March 2022.

## 2. Promising practice in 2022

### 2.1. A legal and digital self-defence database

A legal and digital self-defence database has been created by members of the Coalition for Associational Freedom (*Coalition pour les libertés associatives*).

This resource center is available online at: <https://www.lacoalition.fr/Bibliographie-commentee-autodefense-juridique-et-numerique>

Six sections, each containing key resources, have been organised, as well as more specific filters for legal or digital issues to differentiate the responses to be implemented:

- General information security and threat modelling
- Legal knowledge on surveillance
- Knowledge of those involved in repression
- Digital self-defence: computer security, technical protection of information, tools and practices for the use of tools
- Legal self-defence: before the police, before the courts, rights and penal and administrative procedures, collective practices



## 3. Visa for human rights defenders

### 3.1. Entry and stay for human rights defenders (HRDs) at risk

Dedicated visa scheme for HRDs at risk available in your country	No
Other type of visa or alternative legal entitlement or derogation clause applied to HRDs	Yes

"A human rights defender is defined as any person engaged, individually or in association, in the promotion and defence of the rights inherent to the human being without necessarily being a member of a human rights organization".<sup>10</sup>

If the defender is fleeing persecution or fear of persecution in their country of origin, they can request protection if their life, safety or freedom are threatened if they return to their country, by seeking asylum. When a person seeks asylum in France, their application is examined by a protection authority: the French office for the protection of refugees and stateless persons (*Office français de protection des réfugiés et apatrides* - OFPRA) in the first instance, the French asylum court (*Cour nationale du droit d'asile* - CNDA) in the second instance. Once the asylum application has been examined, the protection authorities may grant protection under the asylum system. In this case, they either recognize the applicant as a refugee or grant them the benefit of subsidiary protection.

On 10 December 2021, the President of the French Republic launched the Marianne initiative for human rights defenders.<sup>11</sup>

Each year, an independent selection committee chooses 15 foreign laureates fighting for civil, political, social and environmental rights; rights of women and children, rights

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<sup>10</sup> [www.diplomatie.gouv.fr/fr/politique-etrangere-de-la-france/droits-de-l-homme/la-france-et-les-institutions-de-protection-et-de-promotion-des-droits-de-l/article/la-diplomatie-francaise-soutient-les-defenseurs-des-droits-de-l-homme](http://www.diplomatie.gouv.fr/fr/politique-etrangere-de-la-france/droits-de-l-homme/la-france-et-les-institutions-de-protection-et-de-promotion-des-droits-de-l/article/la-diplomatie-francaise-soutient-les-defenseurs-des-droits-de-l-homme)

<sup>11</sup> <https://www.initiativemarianne.fr>

of LGBTQI+ people and against violence in different regions of the world. These laureates will be received in Paris during a period of 6 months, they will benefit from a monthly grant payment and personalized support including networking opportunities with other defenders of rights.

Since 2011, the city of Paris participates in the International Cities of Refuge Network (ICORN), an independent organisation of cities and regions offering shelter to writers and artists at risk, including human rights defenders.<sup>12</sup> The cities of Poitiers and Lyon joined the network in 2018 and 2021 respectively. The cities receive human rights defenders for a period of 2 years, assist with visa, provide accommodation and monthly grants. The cities also provide support and access to different networks.

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<sup>12</sup> <https://www.icorn.org>