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Contribution of the Council of Europe

OVERVIEW OF THE WORK OF THE COUNCIL OF EUROPE IN THE INFORMATION SOCIETY FIELD

The Council of Europe's activities in the information society field aim at promoting the right to respect for private life as guaranteed by Article 8 of the European Convention on Human Rights and the freedom of expression and information, as guaranteed by Article 10 of the European Convention on Human Rights, as well as the free flow of information at the pan-European level through the existence of a plurality of independent media. Whilst the European Court of Human Rights provides judicial protection of the right to private life and data protection, and freedom of expression and information, the Council of Europe policy-making work strives to map out measures that will facilitate the effective exercise of these rights and freedoms having regard to new services, technologies and trends.

The rapid spreading of new information technologies and their ever growing role in all sectors of everyday life challenges the respect of private life, leading the Council of Europe to also set standards in that field. The modernisation of the 1981 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and guidance provided on a sector by sector approach (big data, health data, data processing in a law enforcement context, etc.) has been a priority of the organisation for the past years.

Throughout the years 2016-2017, the Council of Europe Steering Committee on Media and Information Society (CDMSI) continued to follow the directions given at the 2013 ministerial conference in Belgrade. In fulfilling the second year of its mandate, it focussed on the application of Article 10 of the European Convention on Human Rights in the context of new developments and technological innovations embracing a multi-stakeholder approach.

Main activities and achievements

In March 2016 the Committee of Ministers approved the Council of Europe's *Internet Governance Strategy 2016-2019*. Its aim is to ensure that the activities of the Organisation related to the Internet are people-centred in order to build democracy online, to protect Internet users, and to ensure respect and protection for human rights online. In particular, the strategy is defined by a series of key actions and activities which seek to protect the freedom, privacy and security of Internet users and to empower and engage them as stakeholders in Internet governance dialogue.

In the framework of the Council of Europe's Internet Governance Strategy 2016-2019, there

is an on-going dialogue between the Council of Europe and Internet companies on the respect for human rights and fundamental freedoms of Internet users. This collaboration will be formalised by way of an exchange of letters to be launched during a ceremonial event that will take place in autumn 2017.

Considering further the respective challenges in promoting an enabling environment for the free exercise and enjoyment of fundamental rights and freedoms online, the Committee of Ministers of the Council of Europe adopted in April 2016 a *Recommendation CM/Rec(2016)5 on Internet freedom* which outlines Internet freedom indicators which member States could use to evaluate their level of Internet freedom and produce respective reports.

In the same regard, the accessibility and quality of an Internet connection is an essential factor. In its *Recommendation CM/Rec(2016)1 on protecting and promoting the right to freedom of expression and the right to private life with regard to network neutrality*, the Council of Europe calls upon its member States to safeguard this principle in their policy frameworks on the basis of provided guidelines. These focuses further on ensuring the privacy of personal data that is being processed, the transparency of Internet traffic management practices and the accountability of Internet service providers for breaches of the principle of network neutrality.

The issues of freedom of the media and safety of journalists have implications in many areas of society and must involve various actors. The *Recommendation CM/Rec(2016)4 on the protection of journalism and the safety of journalists and other media actors*, adopted in April 2016, contains guidelines on prevention, protection, prosecution and promotion of information, education and awareness-raising. These are designed to ensure the effective protection of journalism as a function as well as the safety of journalists and other media actors, which necessitates coherent, complementary strategies by member States to fulfil their relevant obligations, combining legal, administrative and practical measures.

The online *Platform to promote the protection of journalism and safety of journalists* was launched in April 2015 as an initiative of the Secretary General of the Council of Europe. The platform is a public space to facilitate the compilation, processing and dissemination of information on serious concerns about media freedom and safety of journalists in Council of Europe member States, as guaranteed by Art. 10 of the European Convention on Human Rights. Within two years of its operation, over 300 alerts were registered in the platform originating from 35 member states. The respective governments provided replies in approximately 135 cases, and there are on-going efforts to increase the response rate, and in this way better address the threats and violence against media professionals and improve their protection.

The Secretary General of the Council of Europe in his fourth *Report on the State of Democracy, Human Rights and the Rule of Law in Europe*, released in April 2017 and entitled "Populism – How strong are Europe's checks and balances?", pointed to a further deterioration in overall conditions for the freedom of expression in Europe. Media in most member states are experiencing a decline in editorial independence, which hinders their watchdog role and limits plurality, as regulatory safeguards are often not strong enough to resist interference from political and economic players. Protection for journalists, in particular, is further weakening throughout Europe and there is increasing evidence of self-censorship, often exacerbated by job insecurity, as the media industry overall has come under significant financial pressure.

In June 2016, the Council of Europe published a *Comparative study on blocking, filtering and take-down of illegal internet content in the 47 member States*. The study was carried out by the Swiss Institute of Comparative Law and it describes and assesses the legal framework but also the relevant case-law and practice in the field. It is divided in two main parts: country

reports and comparative considerations.

Ongoing standard-setting activities

The Council of Europe has established a committee of experts which is currently working on a draft Recommendation on the roles and responsibilities of internet intermediaries. A study assessing the human rights dimensions of automated data processing techniques and algorithms will also be produced.

A pluralist media landscape with transparent and diverse media ownership is a precondition for a functioning democracy and an effective use of freedom of expression. A committee of experts within the Council of Europe analyses best practices in Europe, works on a draft Recommendation on Media pluralism and transparency of media ownership and will produce two feasibility studies one on gender equality in the context of media coverage of elections and another on the use of internet in elections.

The *modernisation of the Data Protection Convention 108* of the Council of Europe, aimed at responding to new technological challenges and enhancing the follow-up mechanism of the Convention, is ongoing. The modernisation of the Convention encompasses revision of article 9, which limits the Convention rights when this is foreseen by the law and constitutes a necessary measure in a democratic society, notably, in the interests of protecting State security, public security, the economic and financial interests of the State or the prevention and suppression of criminal offences. Article 9 also provides for an exception when this is prescribed by law and necessary in a democratic society for the protection of the data subject or the rights and fundamental freedoms of others, notably freedom of expression.

The Committee of Convention 108 recently adopted two important texts: an *Opinion on the Data protection implications of the processing of Passenger Name Records* and *Guidelines on the protection of individuals with regard to the processing of personal data in a world of Big Data*.

Co-operation with the OSCE

The Estonian Chairmanship of the Committee of Ministers of the Council of Europe, the German Chairmanship of the OSCE and the Council of Europe co-organised a conference on “Internet freedom: a constant factor of democratic security in Europe” on 9 September 2016 in Strasbourg. The conference meant to promote the *Recommendation on Internet freedom*, adopted in April 2016, and to examine best practices and examples regarding its implementation by member States. Experience of non-governmental organisations reporting on Internet freedom was also showcased and discussed in order to promote a multi-stakeholder engagement to Internet freedom. In addition, the OSCE Guidebook on Media freedom on the Internet was presented and discussed at the conference.

Regular contacts are kept with the Office of the OSCE Representative for Freedom of the Media, on the occasion of events organised in the framework of the general work of both Organisations or of Council of Europe co-operation activities. For instance, Dunja Mijatovic, former OSCE Representative for Freedom of the Media, and Frane Maroevic, Director of the Office of the OSCE Representative on Freedom of the Media, featured as speakers at the Conference on Internet Freedom. Furthermore, Thijs Berman, Principal Adviser of the OSCE Representative on Freedom of the Media, participated in the *High Level Seminar on the role and powers of National Human Rights Institutions (NHRIs)* and other national mechanisms in protecting freedom of expression, which was co-organised by the Council of Europe and the European Network of National Human Rights Institutions and held on 15 December 2016.

The Czech Chairmanship of the Council of Europe, the Austrian Chairmanship of the OSCE and the Council of Europe will jointly organise another key internet freedom related event entitled “A test case for internet freedom” on 13 October 2017 in Vienna. Given that the needs of society in the digital age are shifting and the role of internet intermediaries is

expanding, key stakeholders will be brought together to examine the scope of their duties and responsibilities in promoting the enjoyment of human rights and fundamental freedoms online.

The OSCE is a participant (observer) in the Council of Europe's Steering Committee on Media and Information Society (CDMSI) as well as in its two Committee of Experts, respectively on: Internet intermediaries (MSI-NET) and on media pluralism and transparency of media ownership (MSI-MED).