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Contribution of the Council of Europe

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

The Council of Europe's activities in the media and information society field aim at promoting 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 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 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 challenge the respect of private life, leading the Council of Europe to also set standards protecting the right to privacy, as safeguarded by Article 8 of the European Convention on Human Rights. 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 five years.

Throughout the years 2015-2016, 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

The public's ability to use, receive and impart information on the Internet, without interference and regardless of frontiers constitutes a pillar of democratic society. Therefore, the *Recommendation CM/Rec(2015)6 on the free, trans boundary flow of information on the Internet* was adopted in April 2015, calling the 47 member states of the Council of Europe to promote and protect the free flow of information on the Internet, and to ensure that any blocking

of content complies with human rights standards and does not interfere with international Internet traffic.

In 2015, the Committee of Ministers emphasized its commitments towards Internet issues by adopting a *Declaration on ICANN, human rights and the rule of law*, and a *Declaration on the World Summit on the Information Society (WSIS) +10 review and the extension of the mandate of the Internet Governance Forum (IGF)*.

The Council of Europe organized a high level Conference, “Freedom of expression: still a precondition for democracy?” in Strasbourg on 13-14 October 2015. It involved more than 300 participants, amongst them high-level representatives of governments, European and international organizations, parliamentarians, ECtHR judges, national judges, national ombudspersons, journalists, academics, representatives of non-governmental organizations and representatives of professional and journalistic communities. The Conference provided the Council of Europe with a valuable opportunity to discuss a number of key themes or challenges facing freedom of expression in Europe, such as how to fight terrorism whilst respecting free expression online and what are the implications of mass surveillance.

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.

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 focus 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* which has been adopted in April 2016. The recommendation contains guidelines organized in four pillars (prevention/protection/prosecution/promotion of information, education and awareness-raising) 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.

2015 was also the first year of the online “Platform to promote the protection of journalism and safety of journalists”, 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.

The Secretary General of the Council of Europe in his third *Report on the State of Democracy, Human Rights and the Rule of Law in Europe*, released in May 2016, stated that almost half of member states were failing to guarantee the safety of journalists and too frequently freedom of expression was under attack. The detailed chapter devoted to freedom of expression covers *i.a.* safety of journalists and others performing public watchdog functions, protection from arbitrary application of the law, media independence media pluralism and diversity, and protection of freedom of expression on the Internet.

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 Internet intermediaries* focused on the roles and responsibilities of these actors that have a crucial impact on the exercise of human rights online. A report that will assess the human rights dimensions of 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 the gender equality in the context of media coverage of elections and another on the use of Internet in elections.

The Council of Europe continued to develop a more holistic and sustainable vision for the Internet, one which puts people first. On 30 March 2016, the 47 member states adopted a new Strategy on Internet governance for 2016-2019. The overall aim of the Strategy is to ensure that public policy for the Internet is 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.

The *modernisation of the Data Protection Convention 108* of the Council of Europe (to deal with new technological challenges and enhance 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.

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-organise a conference on “Internet freedom: a constant factor of democratic security in Europe” on 9 September 2016 in Strasbourg. The conference seeks to promote the recently adopted *Recommendation on Internet freedom* and to examine best practices and examples regarding its implementation by member States. Experience of non-governmental organisations which report on Internet freedom will be also showcased and discussed in order to promote a multi-stakeholder engagement to Internet freedom. The OSCE Guidebook on Media freedom on the Internet will also be 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 and Frane Maroevic will feature as speakers at the Conference on Internet Freedom. Furthermore, Ms Mijatovic was also involved in the Conference, “Freedom of expression: still a precondition for democracy?”, organised by the Council of Europe in October 2015 as one of the key speakers.

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).