
Recommendation CM/Rec(2022)11 of the Committee of Ministers to member States on principles for media and communication governance

*(Adopted by the Committee of Ministers on 6 April 2022
at the 1431st meeting of the Ministers' Deputies)*

Preamble

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the right to freedom of expression and its corollaries, media freedom and pluralism, as guaranteed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, "the Convention"), are essential for the functioning of democratic societies, and that these freedoms carry with them duties and responsibilities and can be subject to limitations in accordance with Article 10, paragraph 2, of the Convention;

Recognising that media freedom is a necessary – but not the only – condition for democracy, and that, therefore, media and communication governance not only serves to safeguard the fundamental objectives of the public interest, including freedom of expression and media freedom and pluralism, but also to create and maintain the structural conditions that ensure the adequate functioning of the media and the public sphere in the interest of democracy;

Conscious that, in the past, the media were the main means of public communication in society but that the digitalisation of information and communication technologies in conjunction with related social and economic changes has brought about a profound structural transformation of the public sphere;

Further considering that this transformation has not only changed the production, dissemination and use of the media and journalism but has also allowed for the creation of new platforms that have become powerful intermediaries in the public sphere alongside the media, as a consequence of which the relationships between individuals, policy makers and the media, as well as the way democracy functions, are changing;

Reaffirming that diverse and independent media play a central role in democratic societies by offering a wide range of information on issues of public interest, providing a space for public debate to support individuals in the forming of opinion and holding States as well as powerful groups and individuals to account; and emphasising that, beyond journalism, the media provide education, entertainment, and cultural and artistic expression;

Underlining that this important role of the media remains irrespective of digitalisation, which provides journalism with new opportunities for information gathering and presentation as well as for more inclusive and engaging interaction with individuals;

Noting that while digitalisation offers new business opportunities for some media, most private news outlets, whether part of what is known as the "legacy media" or new ventures, are in crisis as digitalisation has caused a shift of users and advertising to platforms, thus disrupting their traditional business models and undermining their sustainability;

Recognising that these developments have brought about cost-cutting measures that have an impact on the working conditions of journalists and the performance of news media, particularly of investigative journalism, and have contributed to increasing levels of media ownership concentration that pose a risk to media pluralism and diversity, thus potentially undermining the essential role of the media in the public sphere;

Underlining that platforms such as search engines, news aggregators, video-sharing services or social networks have become an important part of people's everyday information and communication activities, including their media and news consumption habits, and that the media have become heavily dependent on platforms, with their content no longer being distributed exclusively through printed products, broadcasts, websites and media apps but also through the websites and apps of platforms, and with platforms also having a dominant position in online advertising by providing both advertising space and services;

Acknowledging that, for end users, platforms offer new opportunities in terms of access to information, freedom of expression, public debate and participation, which is especially important in light of growing pressure on media independence, yet also noting that platforms are not neutral but have assumed an active curatorial or editorial role, including through the use of algorithmic systems, in the dissemination of content produced by the media and by others, and thus have a huge impact on the way people perceive the world and are exposed to other information and ideas;

Recognising that new challenges for the realisation of human rights and fundamental freedoms, including the freedom of expression and information, the right to private life and human dignity and the protection of personal data, but also for the functioning of democratic societies, result from the platforms' dominant position in markets and access to personal data, from the dissemination of illegal content and of legal but harmful content and its often non-transparent or biased moderation by platforms, and from algorithmic systems designed to serve the private interests of platforms;

Realising that despite this structural transformation of the public sphere brought about by digitalisation, the aims of media and communication governance have not changed, but that, to be able to continue realising them, media and communication governance needs to be modernised to cover both the media and platforms, as they both play an essential role in facilitating communication in the public sphere, and further realising that States cannot and should not address all challenges alone but that those in the private sector should bear responsibility as well;

Affirming that, irrespective of digitalisation, the human rights dimension continues to be the underlying basis for any media and communication governance, not only with respect to the aim of protecting freedom of expression and its corollaries but also in relation to other regulatory areas such as competition law, and that consequently, in light of market developments, it is especially important to emphasise the role that those in the private sector must fulfil in order to contribute to the realisation of these rights;

Recognising that media and communication governance is interconnected with multiple policy and regulatory areas such as competition, data protection, copyright, consumer protection or cybersecurity, and that, therefore, achieving its goals necessitates a holistic approach that considers adapting regulation in these areas to new market realities and the changing actors and roles in the production, dissemination and use of content, while not precluding the possibility and need for sector- or topic-specific rules,

Recommends that the governments of member States:

1. review their legislative frameworks and policies as well as their own practices with respect to the principles set out in the appendix to this recommendation and promote their implementation in all relevant areas;
2. in implementing the principles, take account of the standards enshrined in Article 10 of the Convention, the relevant case law of the European Court of Human Rights and previous Committee of Ministers' recommendations to member States and declarations dealing with different aspects of media and communication governance;
3. promote the goals of this recommendation at national and international levels by translating and disseminating them as widely as possible and engaging in dialogue, and co-operate with all relevant and interested parties to achieve those goals;
4. evaluate at regular intervals the measures taken to implement this recommendation in order to enhance their effectiveness, in light of the importance of safeguarding democratic standards and values in an ever-changing digitalised society by ensuring adequate media and communication governance;
5. ensure that this review, implementation and evaluation involves all relevant stakeholders (notably those in the private sector, journalists and other media stakeholders, self- and co-regulatory organisations, civil society organisations and academics), in addition to legislative and executive bodies, and that they are aware of their respective roles, rights and responsibilities in the production, dissemination and use of content, especially when it is relevant to the political decision-making process.

Appendix to Recommendation CM/Rec(2022)11

Principles for media and communication governance

Scope and definitions

1. Democratic societies are confronted with a structural transformation of the public sphere. Therefore, media and communication governance needs to be modernised to include both the media and platforms in order to guarantee a level playing field and an appropriate level of protection from undue interference and to provide a clear indication of their duties and responsibilities in line with Council of Europe standards and values. In today's digital environment, actors other than those that comply with the definition of the media as set out in Recommendation CM/Rec(2011)7 of the Committee of Ministers to member States on a new notion of media, namely having the intent to act as media and the purpose to produce content, the exercise of editorial control over content and the adherence to professional standards, play an essential role in facilitating communication in the public sphere. Given the similarities and differences between the media and platforms, a differentiated approach is needed with respect to the roles played by different actors in the production, dissemination and use of content. At the same time, given the significant differences in size, market share and impact of different providers, governance should aim to be proportionate and follow a graduated approach to avoid overburdening micro and small providers while reflecting the responsibility of the dominant ones.
2. The challenges brought about by the structural transformation of the public sphere cannot and should not be addressed by States and public authorities alone, not least because of the essential requirement to respect freedom of expression and media freedom. While States are primarily responsible for ensuring that the media and platforms fulfil their responsibilities to respect human rights and fundamental freedoms, industry self-regulation and co-regulation as well as private ordering initiatives by individual media and platform providers are also relevant. At the same time, the private sector is not subject to the same governance requirements as States and public authorities.
3. Governance by the State must comply with the requirements set out in Article 10 of the Convention and the standards that stem from the relevant case law of the European Court of Human Rights. Similarly, governance by those in the private sector should protect and respect freedom of expression and other rights, and remedy any breaches as appropriate.

4. For the purpose of this recommendation:

- “media and communication governance” refers to all types of formal rules such as statutory regulation, co-regulation, industry self-regulation and private ordering initiatives by individual media and platform providers, informal norms and technological solutions (for example, the design of algorithmic systems) at the national, supranational, transnational and international level that shape the production, dissemination and use of content in the public sphere;
- “the media” includes those providers of services that meet the following criteria, or a combination thereof, as proposed by Recommendation CM/Rec(2011)7 on a new notion of media: they have the intention to act as a media outlet, they act with the purpose of producing and disseminating content, they have editorial control over content, they follow professional standards, they seek outreach and are subject to the expectations of the public. This definition encompasses print, broadcast and online media, including audio and video-streaming services;
- “platforms” are understood as those providers of digital services that connect participants in multisided markets, set the rules for such interactions and make use of algorithmic systems to collect and analyse data and personalise their services (in the field of communications, such platforms include search engines, news aggregators, video-sharing services and social networks);
- “electronic communications networks and services” refers to intermediaries other than the media and platforms that are relevant for communication and dissemination of content and covers signal transmission systems irrespective of the technology used (for instance, wired and wireless networks for telecommunications, internet and broadcasting) as well as services provided via such networks (such as interpersonal communications services);
- “industry self-regulation” means that an industry-level organisation develops and enforces rules relating to the conduct of firms in the industry;
- “co-regulation” (sometimes also called “regulated self-regulation”) refers to industry self-regulation with a mandate and/or some oversight by the State;
- “private ordering initiatives” are initiatives by individual private sector organisations to develop and enforce rules that may not only apply within their organisation (an organisation’s internal editorial guidelines, for example) but potentially also affect users of their services (such as a platform’s terms-of-service agreement or what are known as community standards);
- “algorithmic systems” are understood as applications that perform one or more tasks such as gathering, combining, cleaning, sorting, classifying and inferring data, as well as selection, prioritisation, the making of recommendations and decision making, as defined in Recommendation CM/Rec(2020)1 on the human rights impacts of algorithmic systems;
- “disinformation” refers to verifiably false, inaccurate or misleading information deliberately created and disseminated to cause harm or pursue economic or political gain by deceiving the public.

5. This recommendation and the principles in this appendix are addressed to States, public and private sector actors and civil society. The appendix contains procedural and substantive principles that should inform media and communication governance. Procedural governance principles address how to develop and enforce governance, while substantive governance principles detail which elements of the production, dissemination and use of content in the public sphere require governance. While these principles apply, as appropriate, to the governance of both the media and platforms and while they are addressed to States and public authorities as well as private sector providers, their formulation reflects the different obligations of different actors. A detailed explanation of the principles setting out the roles, rights and responsibilities of the different actors is contained in an accompanying explanatory memorandum.

6. These principles, together with the explanatory memorandum, should assist policy makers, in dialogue and consultation with all societal actors, to modernise policies as well as to develop and enforce regulation compatible with Council of Europe standards and values. Further, these principles should also assist the media, platforms and other public and private sector actors, in dialogue with civil society, in their governance activities. Those in the private sector have a responsibility to respect internationally recognised human rights and fundamental freedoms of their users and other parties who are affected by their activities. This responsibility exists irrespective of State obligations and across all jurisdictions.

Procedural principles for media and communication governance

1. **Transparency and accountability:** media and communication governance should be transparent and accountable to enable public scrutiny of State and private sector decision making and activity as well as to guarantee that it is accessible and understandable.
2. **Openness and inclusiveness:** media and communication governance should be open and inclusive to satisfy the right to be heard of various groups and interests in society and to democratise decision making about communication in the public sphere.
3. **Independence and impartiality:** media and communication governance should be independent and impartial to avoid undue influence on policy making, discriminatory treatment and preferential treatment of powerful groups, including those with significant political or economic power.
4. **Evidence-based and impact-oriented governance choice:** media and communication governance should be based on evidence showing the need for intervention and take account of its regulatory and human rights impact in order to allow for a graduated and differentiated response respecting the roles played by different actors in the production, dissemination and use of content.
5. **Agility and flexibility:** media and communication governance should be agile and flexible in order to ensure its impact and effectiveness.

Substantive principles for media and communication governance

Substantive principle regarding free communication in the public sphere

6. **Promoting human rights and fundamental freedoms in communication.** Media and communication governance should aim to promote human rights and fundamental freedoms in communication as they are essential for the functioning of democratic societies. This includes guaranteeing the widest possible exercise of these freedoms and limiting restrictions to what is necessary for the efficient protection of Council of Europe standards and values while encouraging industry self-regulation and private ordering initiatives. It also entails aligning rules for the offline and online environments, while guaranteeing free and independent media, platforms and communication. Furthermore, it includes safeguarding access to official documents and to the internet, as well as balancing freedom of expression and media freedom against other rights.

Substantive principles regarding production

7. **Securing media freedom.** Media and communication governance should aim to secure media freedom, including freedom of information. This includes guaranteeing editorial independence and operational autonomy of a diversity of media, protecting the safety of journalists and guaranteeing them the necessary working conditions, entailing access to official documents and balancing media freedom with other rights in editorial decisions.
8. **Promoting media pluralism and safeguarding the sustainability of journalism.** Media and communication governance should aim to safeguard and promote media pluralism and safeguard professional journalism. This includes market access in the most open form possible, regulation of economic competition addressing market power and sector-specific regulation of media ownership concentration. In addition, it involves the institutionalisation of independent and adequately funded public service media, direct and indirect subsidies for professional journalism, support for not-for-profit community media and the promotion of media content reflecting societal diversity, including gender and ethnic diversity, as well as additional measures to ensure the diversity of content production.
9. **Ensuring transparency of content production.** Media and communication governance should aim to ensure transparency of content production. This includes the obligation to provide information on the circumstances of content production, including editorial standards, as well as on the ownership and funding of media and other actors producing content in an easily accessible and regularly updated manner that is made available to the public by independent media regulatory authorities or other designated bodies. Governance also entails disclosure of the use of and potential bias resulting from algorithmic systems in content production, the use of which must respect human rights and fundamental freedoms.

10. **Ensuring compliance with content obligations and professional standards.** Media and communication governance should aim to ensure that the media, individual journalists and others comply with content obligations in accordance with Article 10 of the Convention and with professional standards. This includes clearly defining illegal content and addressing legal but harmful content, the possibility of other public interest content requirements, effective measures against violations of content standards, and redress mechanisms. It further entails the use of adequately financed media industry self-regulation or private ordering initiatives by individual media organisations both to protect vulnerable groups and contribute to responsible media practices and the upholding of professional journalistic and ethical standards.

Substantive principles regarding dissemination

11. **Ensuring functioning markets and protecting personal data in content dissemination.** Media and communication governance should aim to ensure functioning markets and protect personal data in content dissemination in order to safeguard human rights. This includes ensuring the availability and accessibility of the electronic communication infrastructure and of universal services for individual users. It further entails *ex ante* regulation in markets with significant market power in electronic communications networks and services to guarantee non-discriminatory, reasonable and fair access conditions. Governance also includes introducing, where appropriate, content dissemination obligations promoting pluralism. Moreover, it entails preventing the negative impact of the market power of platforms by means of modern competition law and new types of *ex ante* instruments, while ensuring that platforms contribute to the adequate functioning of the public sphere in the interest of democracy, overseen by designated bodies, as well as guaranteeing fair use of data by platforms.

12. **Responding to the risks caused by platforms disseminating illegal content as well as legal but harmful content.** Media and communication governance should aim to respond in a transparent way to the risks caused by platforms disseminating illegal content as well as legal but harmful content. This includes a risk-based and human rights-compliant moderation of content disseminated via platforms. It may also involve measures to mitigate the potential negative effects of disinformation and lack of transparency about content dissemination, such as initiatives to strengthen media and information literacy, greater transparency of advertising on platforms and non-biased and transparent efforts to label reliable content provided by those in the private sector or civil society.

13. **Mitigating the risks posed by algorithmic curation, selection and prioritisation.** Media and communication governance should aim to mitigate the risks to the safeguarding of human rights and the democratic process posed by algorithmic curation, selection and prioritisation. This includes respecting human rights and fundamental freedoms in the design, development and ongoing deployment of algorithmic systems used for content dissemination. It also involves enhancing the transparency and explainability of such algorithmic systems as well as the accountability of those developing and implementing them, and taking measures to enhance exposure diversity, such as encouraging platforms to offer alternative forms of personalisation compatible with the public interest as well as strengthening the role of public service media in offering personalised services.

Substantive principles regarding use

14. **Guaranteeing human rights and fundamental freedoms in media and platform use.** Media and communication governance should aim to guarantee human rights and fundamental freedoms in media and platform use, taking into account the role and increased responsibility of the media and platforms when providing a forum for public debate and political participation. This includes ensuring the availability, accessibility and affordability of content for all sections of the population while safeguarding the function of public service media in this context and universal access to the internet. It also involves supporting individuals' enjoyment of their communication rights and participation in the public sphere, and protecting users from unjustified interference by States and those in the public and private sector. This in turn involves respect for data-protection rights and personality rights, as well as providing and informing users about affordable and effective redress mechanisms, including independent oversight.

15. **Empowering users and encouraging responsible use.** Media and communication governance should aim to empower users and encourage the responsible use of media and platforms, while being mindful that calling for individuals to be responsible does not discharge States, the media and platforms from their respective responsibilities as set out in this recommendation. This includes the implementation of media and information literacy initiatives and also entails additional empowerment measures, such as labelling reliable content, ensuring the transparency of commercial content and political advertising, enhancing the transparency, accountability and explainability of algorithmic systems and introducing alternative forms of personalisation compatible with the public interest.