

Steering Committee on Media and Information Society – CDMSI



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CDMSI comments on the Congress of Local and Regional Authorities Recommendation 398 (2017)

1. “Open data for better public services”

The CDMSI examined with interest the Congress of Local and Regional Authorities Recommendation 398 (2017) “Open data for better public services”.

2. Freedom of expression, and the right to seek and receive information as an inseparable element of this right, are fundamental for the functioning of a genuine democracy.

3. The CDMSI recalls that building democracy online is one of the strategic objectives of the Council of Europe’s Internet Governance Strategy 2016-2019. This includes enabling online participation in public life, also at the local level. The CDMSI supports the implementation of the Strategy and values the engagement of the Congress of Local and Regional Authorities in this work.

4. The CDMSI acknowledges that open data is a powerful tool for enhancing transparency and accountability of governments, including at the local level. This implies anti-corruption safeguards and public awareness about governmental expenditures and performances, to name just a few beneficial effects of open access to public data. At the same time, open data policies can have a bearing on the protection of privacy and personal data. For this reason the CDMSI considers it necessary to underline the importance of a careful balancing of the right to information and the right to privacy.

5. As one of pre-requisites for building democracy online the Strategy mentions access to public documents and data. At the same time, the Strategy expressly draws attention to the need to respect the privacy of citizens and to ensure that any personal information processed is not mismanaged or misused. This approach is based on the Council of Europe’s established standards and the case-law of the European Court of Human Rights.

6. The CDMSI recalls Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (ETS No.108) and the “Guidelines on the protection of individuals with regard to the processing of personal data in a world of Big Data” adopted earlier this year by the Consultative Committee of Convention 108. According to point 8 of the Guidelines “... public and private entities should carefully consider their open data policies concerning personal

data since open data might be used to extract inferences about individuals and groups. When Data Controllers adopt open data policies, the assessment process ... should take into account the effects of merging and mining different data belonging to different open data sets also in light of the provisions on anonymisation.”

7. The CDMSI further recalls the Committee of Ministers Recommendation Rec(2004)15 on Electronic governance (“e-governance”). This Recommendation also attaches great importance to assessment of risks to human rights in the process of development and implementation of e-governance services. Points 18 and 22 of the Appendix to the recommendation expressly require that safeguards to people’s right to privacy be in place, and that appropriate infrastructure be built to ensure that privacy, confidentiality and reliability of personal data are secured at all times.

8. Finally, the CDMSI notes that although in the recent years the European Court of Human Rights has moved towards a broader interpretation of the notion of “freedom to receive information”, strengthening a right of access to information (*Társaság a Szabadságjogokért v. Hungary*, no. 37374/05, § 35, 14 April 2009; *Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung v. Austria* (no. 39534/07, § 41, 28 November 2013), this right is not absolute and may be subject to restrictions under the conditions listed in Article 10 § 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. This is the case, in particular, when a fair balance must be struck between the right to receive information and the right to privacy (see, for instance, *Grupo Interpres SA v. Spain* (dec.), no. 32849/96, 7 April 1997).

9. In conclusion, recalling the Committee of Ministers Recommendation CM/Rec(2016)5 on internet freedom and the Committee of Ministers Recommendation CM/Rec(2014)6 on a Guide to human rights for internet users, the CDMSI observes that these recommendations invite member states to regularly evaluate their performance in respecting, protecting and promoting human rights and fundamental freedoms on the internet and encourage them to guarantee the transparency of the results of such evaluation. The CDMSI sees potential for the engagement of the local authorities in this process and is convinced that it would be most beneficial for building democracy online.