

Steering Committee on Media and Information Society - CDMSI

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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DRAFT CDMSI comments on the Draft Recommendation of the Committee of Ministers to Member States on Terrorists Acting Alone

1. The CDMSI examined with interest the draft recommendation of the Committee of Ministers to member States on Terrorists acting alone, prepared by the Committee of Experts on Terrorism (CODEXTER). It welcomes the fact that the role of social media and the internet in countering terrorist threats is acknowledged and paid due attention to in the draft recommendation.

2. The CDMSI is mindful that information and communication technologies and services not only open the door for fuller enjoyment of human rights and fundamental freedoms in the information society, but may also be used for dissemination of unlawful or harmful content, including terrorist propaganda narratives. In line with the multi-stakeholder approach to internet governance, a number of Council of Europe instruments provide insight and guidance on the modalities of involvement of internet providers and other internet intermediaries in combating the spread of unlawful or harmful online content. In this regard the CDMSI recalls Recommendation CM/Rec(2007)11 on promoting freedom of expression and information in the new information and communications environment, Recommendation CM/Rec(2008)6 on measures to promote the respect for freedom of expression and information with regard to Internet filters, Recommendation CM/Rec(2012)4 on the protection of human rights with regard to social networking services, 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.

3. The CDMSI is currently working on a draft recommendation on internet intermediaries which is expected to provide guidance to member states when reflecting on roles and responsibilities of intermediaries vis-à-vis the exercise of fundamental rights and freedoms online. As has been the case with previous standard setting activities of the CDMSI reflected above, the draft recommendation will take due account of the case law of the European Court of human rights having highlighted the need for transparency and rule of law, notably that interferences with the right to freedom of expression must be based on clear, foreseeable and proportionate rules and procedures. This draft recommendation will be submitted to the Committee of Ministers at the end of 2017 for adoption.

4. While noting that the approach to involve the private sector taken in the draft recommendation is generally in line with the existing instruments, and also with the concept of the draft recommendation on internet intermediaries, the CDMSI would recommend that further guarantees be provided to ensure that:

- (a) requests by public authorities addressed to internet intermediaries for “filtering the content on search engines and blocking of websites and social media accounts” (paragraph 16 of the Appendix to the draft recommendation) are based on law, pursue a legitimate aim and are necessary in a democratic society;
- (b) “referral mechanisms and expedited procedures for taking down illegal content” (paragraph 17 of the Appendix to the draft recommendation) originate from a duly established legal framework and respect international law, national legislations on the protection of the freedom of expression and of media as well as the right to privacy.

5. The CDMSI would also draw the attention of the CODEXTER to the following points:

- (a) paragraphs 13 and 17 of the Appendix to the draft recommendation, although leaving the choice of specific measures to member States, may be understood as suggesting arrangements between public authorities and the private sector for monitoring the activities of internet users. Any such arrangements would have to stand a rule of law test including data protection requirements.
- (b) the last sentence of paragraph 2 of the Appendix to the draft recommendation seems to only provide for very general and therefore possibly insufficient safeguards in relation to measures aimed at countering radicalisation leading to violent extremism and terrorism;
- (c) the last sentence of paragraph 8 of the Appendix to the draft recommendation appears to repeat the provisions of paragraph 9.

6. Lastly, the CDMSI invites the CODEXTER to consider the following proposals:

- (a) use the term “narratives and messages countering terrorist propaganda” instead of “alternative messages” (paragraphs 8, 9, 15, 17 of the Appendix to the draft recommendation), since the latter term carries a certain degree of ambiguity originating from current public discourse;
- (b) in paragraph 17 of the Appendix to the draft recommendation add the words “and civil society actors” after the words “the private sector”.