

Steering Committee on Media and Information Society

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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8th meeting of Steering Committee on Media and Information Society (CDMSI)

**16-19 June 2015
(Strasbourg, Palais de l'Europe, Room 11)**

Abridged meeting report

1. The Steering Committee on Media and Information Society (CDMSI) held its 8th meeting from 16 to 19 June 2015, in Strasbourg chaired by Ms Maja Raković (Serbia). The CDMSI adopted the agenda as it is set out in Appendix I. The list of participants appears in Appendix II. Gender distribution: 69 attendants, 26 women (38%), 43 men (67%).

Items submitted to the Committee of Ministers for decision

2. The CDMSI finalised and agreed to transmit to the Committee of Ministers for possible adoption the draft Recommendation CM/Rec____ of the Committee of Ministers to member States on protecting and promoting the right to freedom of expression and the right to private life with regard to network neutrality (Appendix III).¹

Items submitted to the Committee of Ministers for information

3. The CDMSI elected Ms Małgorzata Pek (Poland) and Mr. Andris Mellakauls (Latvia) as members of the Bureau for a term of office expiring on 31 December 2015. It also designated Ms Maja Zarić (Serbia) as Gender equality rapporteur. These elections were made necessary by the departure from the CDMSI Bureau of two members, Ms Bissera Zankova (Bulgaria) and Ms Christina Lamprou (Greece).

4. In respect of observer status requests, the CDMSI:

- i. agreed to admit the Internet Rights and Principles Coalition as an observer;
- ii. noting the criteria it has applied in the past, in particular with regard to representativeness of applicants at the European level, did not grant at this stage observer status to European Media Platform;

¹ Germany stated in the meeting that it does not object to the transmission of the draft recommendation to the Committee of Ministers while noting that this is without prejudice to the current negotiations on legislative rules on network neutrality in the EU. Greece stated that it considers important to include equal treatment of traffic in section 5 of the draft recommendation. The Russian Federation made a statement in the meeting (to be included in the full report of the meeting) that it does not consider appropriate to submit at this stage the draft recommendation to the Committee of Ministers.

5. The CDMSI had an exchange of views with Mr Gvozden Srećko Flego (SOC), PACE member, on PACE work on protection of media freedom in Europe and future CDMSI work on the same topic.

6. The CDMSI took note of a stocktaking report prepared by the Secretariat on areas of work in its remit and discussed future priorities and working methods for the next biennium. It underlined the need to balance standard-setting activities with other actions enabling the committee to promote the implementation of existing Council of Europe standards.

7. In discussion about the working methods and priorities, the CDMSI underlined the issues related to hate speech, media pluralism and transparency of media ownership as well as the roles and responsibilities of Internet intermediaries, notably in the light of the recent Grand Chamber judgement of the European Court of Human Rights in the case of Delfi v. Estonia. It supported the idea of feasibility studies for possible standard-setting instruments on issues of media coverage of elections (including the gender equality dimension) and the human rights implications of new Internet developments (i.e. the Internet of things and algorithms).

8. Furthermore, the CDMSI agreed to share information and best practices on the protection of journalists, issues related to the decriminalisation of defamation, public service media and media independence. Also, expert hearings and reports will enable the CDMSI to keep abreast of emerging issues and challenges to freedom of expression, related to connected TV, protection of journalism (in particular in light of economic pressure), etc. The CDMSI will continue to play an oversight role with regard to the implementation of the Internet governance strategy. Further proposals of CDMSI members to working priorities are welcomed. Based on the good experience with its two subordinate committees of experts, the CDMSI encourages the Committee of Ministers to continue with this approach in the future.

9. It also discussed, finalised and agreed on a draft text of comments on PACE Recommendation 2067(2015) on Mass surveillance to be sent to Committee of Ministers by 12 July 2015 (Appendix IV).²

10. The CDMSI designated Ms Małgorzata Pek (Poland) as its representative for the Ad hoc Committee of Experts on Legal, Operational and Technical Standards for e-voting.

In addition, the CDMSI dealt with the items below:

11. The CDMSI took note of the adoption of the Recommendation CM/Rec(2015)6 on the free, trans boundary flow of information on the Internet and of the recommendation CM/Rec(2015)5 on the processing of personal data in the context of employment and CM Declaration on ICANN, human rights and the rule of law and the CM Declaration on the World Summit on the Information Society (WSIS) +10 review and the extension of the mandate of the Internet Governance Forum (IGF).

12. The CDMSI took note of information on:

- i. and welcomed the follow-up activities to the Committee of Ministers Thematic debate "Ensuring freedom of expression on the Internet", in particular, the organisation and preparations of Council of Europe Conference "Freedom of expression: still a precondition for democracy?" (13-14 October 2015), a publication on protection of journalists and a series of video recordings on promoting freedom of expression as a human right;
- ii. the launching of an Internet-based platform to promote the protection of journalism and safety of journalists;

² Estonia expressed its regret that its amendment was not accepted.

iii. the state of play of the implementation of the Guide to Human Rights for Internet users and, in that context, welcomed and congratulated the winners of a comics school competition organised in Spain on the topic;

iv. on-going and future co-operation activities.

13. Committee of Experts on cross-border flow of Internet traffic and Internet freedom (MSI-INT):

- i. took note of the progress of work on a draft recommendation on Internet freedom and of the comments received from Council of Europe steering and conventional committees and other stakeholders. It discussed the draft recommendation and invited delegations to provide comments to the MSI-INT by 31 July 2015. It congratulated the MSI-INT for the work done and agreed to consider the draft recommendation with a view to its approval at its next plenary meeting (8-11 December 2015);
- ii. took note of the progress made regarding the draft report on freedom of assembly and association on the Internet and invited delegations to provide comments on the draft report by 31 July.

14. The Committee of experts on protection of journalism and safety of journalists (MSI-JO)

- i. held an exchange of views with Ms Françoise Tulkens, chairperson of the MSI-JO, and with Mr Tarlach McGonagle, member and Rapporteur in the MSI-JO;
- ii. congratulated the MSI-JO for its work and further discussed the draft recommendation on the protection of journalism and safety of journalists and other media actors. It invited delegations to provide comments to the MSI-JO by 10 July 2015 with a view to having a draft for approval by the CDMSI at its next plenary meeting (8-11 December 2015).

15. In respect of the implementation of existing standards, the CDMSI took note of the replies sent by member states to a questionnaire on safety of journalists the Bureau had revised at its April meeting. The Chair strongly encouraged all CDMSI members to send their responses to the questionnaire for a compilation to be prepared by the Secretariat as a basis for further discussion at the next plenary meeting.

16. In respect of the Internet governance strategy - the CDMSI took note of the information provided by the Secretariat on:

- i. the state of implementation of the Internet governance strategy 2012-2015 and had a discussion on this;
- ii. the draft Internet governance strategy 2016-2019, discussed it and reiterated that human rights, democracy and rule of law aspects of Internet governance are priorities of the CDMSI. CDMSI delegates also agreed to send their comments to the Secretariat by 31 July 2015.

17. The CDMSI took note of information provided by the Secretariat and members who participated in the 2015 European Dialogue on Internet Governance (EuroDIG) which took place on 4-5 June 2015 in Sofia and next EuroDIG which will take place in Brussels in 2016. Also, it noted the Council of Europe's planned activities within the Internet Governance Forum 2015 that will take place in Joao Pessoa, Brazil (10-13/11/2015) and encouraged member states to participate in it.

18. In respect of data protection, the CDMSI took note of information provided by the Secretariat on the state of play of the modernisation of Convention 108 and on-going work of the T-PD on big data, police and medical data.

19. In addition, the CDMSI took note of the following Council of Europe activities:

- i. A report by the PACE Committee on Culture, Science, Education and Media on Increasing transparency of Media Ownership and of a motion for a resolution on "Increasing co-operation against cyberterrorism and other large-scale attacks on the Internet";
- ii. two issue papers of the Commissioner for Human Rights, respectively 'The Rule of Law on the Internet and in the Wider Digital World' and "Democratic and effective oversight of national security services";
- iii. the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism;
- iv. a draft recommendation on the Internet of Citizens to which it had provided comments.
- v. Other information by representatives of the European Audio-visual Observatory, with which it held an exchange of views on the current and future work.

20. The CDMSI took note of information provided by the Secretariat on the Report by the Council of Europe's Secretary General 'The State of Democracy, Human Rights and the Rule of Law 2015'. The CDMSI expressed support for the recommendations by the Secretary General and discussed ways to give follow-up to these recommendations as appropriate in view of the CDMSI remit. In particular, CDMSI members supported the idea of sharing and exchanging information and good practices on issues covered by the Report.

21. The CDMSI took note of information provided by the Secretariat and CDMSI members on the following activities, meetings and events:

- i. a High Level Conference: Tolerance Trumps Hate (Brussels, 08/05/2015);
- ii. the Evaluation and Follow-Up Conference of the No Hate Speech Movement (29/05/2015);
- iii. a UNESCO Conference on its Internet study: access, free expression, privacy and ethics - Connecting the dots (3-4/03/2015);
- iv. activities carried out on gender equality and media.

22. The CDMSI took note of the information given by Mr Jan Kleijissen, Director of Information Society and Action against Crime and Mr Patrick Penninckx, Head of the Information Society Department, on developments within the Council of Europe related to the CDMSI's work as well as on administrative arrangements concerning the Secretariat.

APPENDIX I

Meeting agenda

- 1. Opening of the meeting by Mr Jan Kleijssen, Director of Information Society and Action against Crime, Directorate General Human Rights and Rule of Law**
- 2. Adoption of the agenda**
- 3. Information by the Chair and the Secretariat**
 - 3.1 Adopted texts
 - 3.2 Committee of Ministers' Thematic Debate on Freedom of Expression and follow-up
 - 3.3 Internet based Platform to promote the protection of journalism and safety of journalists
 - 3.4 Implementation of the Guide to human rights for Internet users.
 - 3.5. Cooperation activities
- 4. Implementation of Council of Europe adopted standards**
- 5. Media standard setting**
 - 5.1 Draft Recommendation on the protection of journalism safety of journalists and other media actors
 - 5.2 Gender equality and the media
- 6. Internet standard setting**
 - 6.1 Draft Recommendation CM/Rec(2014)____ of the Committee of Ministers to member States on protecting and promoting the right to freedom of expression and the right to private life with regard to network neutrality
 - 6.2 Draft Recommendation CM/Rec(2014)____ of the Committee of Ministers to member States on Internet Freedom
 - 6.3 Committee of Experts on cross-border flow of Internet traffic and Internet freedom (MSI-INT)
 - 6.4 Draft report on freedom of assembly and association on the Internet
 - 6.5 (Draft) Declaration of the Committee of Ministers on WSIS+10 review and IGF extension
 - 6.6 (Draft) Declaration of the Committee of Ministers on ICANN, human rights and the rule of law
- 7. Internet governance**
 - 7.1 Council of Europe Internet Governance Strategy 2012-2015
 - 7.2 Council of Europe Internet Governance Strategy 2016-2019

- 7.3 European Dialogue on Internet Governance (4-5 June 2015, Sofia) and Internet Governance Forum (João Pessoa, Brazil, on 10-13 November 2015)

8. Data protection

- 8.1 Modernisation of Convention 108
8.2 On-going work: police, big data, medical data

9. CDMSI working methods

10. Information about the work of other organisations and other Council of Europe bodies

10.1 Council of Europe bodies and institutions

*Secretary General
Parliamentary Assembly of the Council of Europe (PACE)
PACE Recommendation 2067 (2015) on Mass surveillance
Commissioner for Human Rights*

- Other steering and conventional committees

*Committee on Foreign Terrorist Fighters and Related Issues (COD-CTE) and
CODExTER
Steering Committee for Culture, Heritage and Landscape (CDCPP)
European Audiovisual Observatory*

10.2 Other international organisations

UNESCO

10.3 Participation of CDMSI members and members of other committees to meetings and events

11. Applications for observer status

12. Elections to the Bureau

13. Any other business

14. Adoption of abridged report

GENERAL REFERENCE DOCUMENTS

RECENT MEETING REPORTS

APPENDIX II

LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS DRAFT LIST OF PARTICIPANTS / PROJET DE LISTE DES PARTICIPANTS

Total number of participants :

Gender distribution – 47 men (67%) / 26 women (38%)

Parité entre hommes / femmes - 47 hommes (67%) / 26 femmes (38%)

AUSTRIA/AUTRICHE

Mr Andreas Ulrich

Federal Chancellery, Media Affairs and Information Society, Federal Chancellery, Constitutional Service

BOSNIA AND HERZEGOVINA/BOSNIE-HERZEGOVINE

Mr Emir Povlakic

Head of Division for Licensing, Digitalization and Coordination in Broadcasting,
Communications Regulatory

CROATIA/CROATIE

Mr Milan F. Zivkovic

Head Advisor for Communication Policy, Ministry of Culture

CYPRUS/CHYPRE

Mrs Sofia (Sunny) Papadimitriou Tofa

Press and Information Officer, Ministry of Interior

CZECH REPUBLIC/REPUBLIQUE TCHEQUE

Mr Jan Drdla

Media and Audio-Visual Department, Ministry of Culture

DENMARK/DANEMARK

Ms Katja Just Maarbjerg

Ministry of Culture

ESTONIA/ESTONIE

Mr Tanel Tang

Permanent Representation of Estonia to Council of Europe

FRANCE

Ms Joanna Chansel

Bureau des affaires européennes et internationales

Direction Générale des Médias et des Industries Culturelles

Ministère de la Culture et de la Communication

M. Julien Plubel

Rédacteur

Ministère des Affaires étrangères, Direction de la coopération culturelle, universitaire et de la recherche, Pôle de l'audiovisuel extérieur

GEORGIA/GEORGIE

Ms Irine Bartaia

Deputy Director, Department of International Law, Ministry of Foreign Affairs of Georgia

GERMANY/ALLEMAGNE

Mr Gajus Köhr

Division K 31, International Media Cooperation
Federal Government Commissioner for Culture and the Media

Ms Carolin Schumacher
Representation of the Free State of Bavaria to the EU

Ms Annick Kuhl
Representation of the Free State of Bavaria to the EU

GREECE/GRECE

Mr Evgenios A Nastos
Head of Department for New Media, Directorate for Mass Media, Secretary General for Mass Media

HUNGARY/HONGRIE

Mr György Ocskó
International Legal Adviser, National Media and Infocommunications Authority

Mr János Auer

Member of the Media Council of the National Media and Infocommunications Authority

ICELAND/ISLANDE

Ms Elfa Ýr Gylfadóttir
Media Commission, Ministry of Education, Science and Education

IRELAND/IRLANDE

Mr Éanna O'Conghaile
Principal Officer, Broadcasting Policy Division, Department of Communications, Energy & Natural Resources

ITALY/ITALIE

Mr Pierluigi Mazzella
Director General, Agency for the right to university education, Professor of Information and Communication, University of Rome

LATVIA/LETTONIE

Mr Andris Mellakauls
Information Space Integration, Ministry of Culture

LIECHTENSTEIN

Mr. Claudio Nardi
Officer for Foreign Affairs

LUXEMBOURG

Mr Benjamin Bollendorff
Adjoint au Représentant Permanent du Luxembourg
auprès du Conseil de l'Europe

Ms Anne Klensch

Intern at the permanent representation of Luxembourg to the Council of Europe

MALTA/ MALTE

Ms. Maria Mifsud
Executive, Ministry for the Economy, Investment and Small Business, Office of the Permanent Secretary

MONACO

M. Serge Robillard
Chef de Division, Direction des Communications Électroniques, Principauté de Monaco

MONTENEGRO

Mr Ranko Vujovic
Executive Director, UNEM

THE NETHERLANDS/PAYS-BAS

Mr Nol Reijnders
Senior Adviser for Media Policy
Ministry of Culture, Education and Science

Ms Pien van den Eijnden
Legal Adviser, Constitutional Affairs, Ministry of the Interior and Kingdom Relations

NORWAY/NORVEGE

Mr Anders Huitfeldt
Senior Adviser, Department of Media Policy and Culture

POLAND/POLOGNE

Mr Jarosław Sekuła
Senior expert, Department of Information Society, Ministry of Administration and Digitalization

Ms Małgorzata Pek
Director of Legal Department
National Broadcasting Council of Poland

PORTUGAL

Mr Pedro Ruivo
GMCS, Portugal, Cabinet pour les Medias ("Gabinete para os Meios de Comunicação Social")

RUSSIAN FEDERATION / FEDERATION RUSSIE

Mr Alexander Surikov
Deputy Director Department of Information and Press
Ministry of Foreign Affairs

SAN MARINO / SAINT MARIN

Mme Chiara Cardogna
Agent de presse - Département des Affaires Etrangères

SERBIA/SERBIE

Ms Maja Raković
First Counselor
Serbian Embassy, France

Ms Maja Zarić
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SLOVENIA/SLOVENIE

Mr Skender Adem
Undersecretary, Ministry of Culture of Republic of Slovenia

SLOVAKIA/SLOVAQUIE

Ms Ivana Maláková
Head of Unit Media Law and Audiovisual Unit Media, Audiovisual and Copyright Department
Ministry of Culture of Slovak Republic

SWEDEN

Mr Christoffer Lärkner
Department of Culture

SWITZERLAND

Mr Thomas Schneider

International Affairs, Federal Office of Communication, Federal Department for the environment, transport, energy and communication

M Pierre Smolik, Spécialiste des médias

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Mr Ersat Çiplak

Member of Supreme Council, Radio and Television Supreme Council of the Republic of Turkey

Mr Süleyman Demirkan

Member of Supreme Council, Radio and Television Supreme Council of the Republic of Turkey

UKRAINE

Ms Olha Herasymiuk

First Deputy Chair of the National Council of Ukraine for Television and Radio Broadcasting

UNITED KINGDOM/ROYAUME-UNI

Mr Mark Carvell

Media Team, Department for Culture, Media and Sport

Ms Katharina Ribbe

Head of International Broadcasting and Content Regulation, Department for Culture, Media and Sport.

* * *

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Ms Nadia Bellardi

Vice President CMFE

Ms Lyacout Haïcheur

Community TV Canal Nord.

EUROPEAN PLATFORM OF REGULATORY AUTHORITIES (EPRA)

Ms Emmanuelle Machet, Secretary to the EPRA

EUROPEAN FEDERATION OF JOURNALISTS / FEDERATION EUROPEENNE DES JOURNALISTES

Mr Marc Gruber

EUROPEAN AUDIOVISUAL OBSERVATORY / OBSERVATOIRE EUROPENNE DE L'AUDIOVISUAL

Ms Susanne Nikoltchev, Executive Director

Mr. Gilles Fontaine, Head of the Department for Information on Markets and Financing

Ms Maja Capello, Head of the Department for Legal Information

EUROPEAN BROADCASTING UNION (EBU) / UNION EUROPEENNE DE RADIO-TELEVISION (UER)

Mr Giacomo Mazzone, Head of Institutional Relations, Public Affairs & Communications

EuroISPA

Mr Michael Rotert, Honorary Spokesman

ASSOCIATION OF EUROPEAN JOURNALISTS (AEJ) / MEDIA FREEDOM REPRESENTATIVE

Mr William Horsley, Media Freedom Representative

EUROPEAN NEWSPAPER PUBLISHERS ASSOCIATION (ENPA) / ASSOCIATION EUROPEENNE DES EDITEURS DE JOURNAUX

Mr Holger Rosendal, Head of Legal Department

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Didier Schretter, Member of the Standing Committee

Vice-chair Education and Culture Committee

HOLY SEE / SAINT SIEGE

Dr Michael Lukas, Episcopal Press Office

INTERNET WATCH FOUNDATION

Mr Kristof Claesen, Press and Public Affairs Manager

EU DELEGATION TO COUNCIL OF EUROPE

Ms Miina Korhonen, Press and Communication Officer

European Union delegation to the Council of Europe

PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE / ASSEMBLEE PARLEMENTAIRE DU CONSEIL DE L'EUROPE

Mr Gvozden Srećko Flego (SOC), member of PACE

Mr Rüdiger Dossow, Secretary of the Committee on Culture, Science and Education
Committee on Culture, Science, Education and Media

MEXICO / MEXIQUE

M. Diego Sandova Pimentel, Adjoint à l'Observateur Permanent du Mexique

* * *

Request for Observer status

MEDIA PLATFORM EUROPE

Ms Oksana Prykhodko, Director

INTERNET RIGHTS AND PRINCIPLES COALITION

Dr Marianne Franklin, Vice-chair

Professor of Global Media & Politics, Goldsmiths, University of London

* * *

INDEPENDENT EXPERT / EXPERT INDEPENDANT

Mme Françoise Tulkens

Dr Tarlach McGonagle

University of Amsterdam

* * *

INTERPRETERS / INTERPRETES

Mr Jean-Louis Wunsch

Mr Giamil Laracuente

Ms Clarissa Worsdale

Ms Shéhérazade Hoyer

Ms Corinne McGeorge

* * *

SECRETARIAT

Mr Jan Kleijssen, Director of Information Society and Action against Crime, Directorate General Human Rights and Rule of Law

Mr Patrick Penninckx, Head of Information Society Department, Directorate General Human Rights and Rule of Law

Ms Silvia Grundmann, Head of Media and Internet Division, Directorate General of Human Rights and Rule of Law, Secretary to the Steering Committee on Media and Information Society

Ms Onur Andreotti, Administrator, Media and Internet Division, Directorate General Human Rights and Rule of Law

Ms Elvana Thaçi, Administrator, Media and Internet Division, Directorate General Human Rights and Rule of Law

Ms Lejla Dervisagic, Administrator, Media and Internet Division, Directorate General Human Rights and Rule of Law

Ms Anne Boyer-Donnard, Principal Administrative Assistant, Media and Internet Division, Directorate General Human Rights and Rule of Law

Mr Lee Hibbard, Administrator, Media and Internet Division, Directorate General Human Rights and Rule of Law

Ms Ana Gascón-Marcén, Administrator, Media and Internet Division, Directorate General Human Rights and Rule of Law

Ms Loreta Vioiu, Media and Internet Division, Directorate General Human Rights and Rule of Law

Ms Maria Michaelidou, Programme Advisor, Data Protection Unit, Directorate General Human Rights and Rule of Law

Ms Sarah Gregg, Assistant, Media and Internet Division, Directorate General Human Rights and Rule of Law

Ms Elisabeth Maetz, Assistant, Media and Internet Division, Directorate General Human Rights and Rule of Law

Ms Julia Whitham, Assistant, Media and Internet Division, Directorate General Human Rights and Rule of Law

APPENDIX III

CDMSI(2014)005Rev10

29 January 2015

Draft Recommendation CM/Rec(2014)____of the Committee of Ministers to member States on protecting and promoting the right to freedom of expression and the right to private life with regard to network neutrality

1. In information society, the exercise and enjoyment of the right to freedom of expression by individuals, including the right to receive and impart information and ideas as well as their participation in democratic life is increasingly reliant upon accessibility and quality of an Internet connection.
2. Providers of Internet access services have the technical ability to manage information and data flows (Internet traffic) transiting through the networks that they operate. They may engage in Internet traffic management for specific legitimate purposes such as to preserve the integrity and security of the network. They may also take action to prevent access to, or the dissemination of, unlawful or harmful content, for example through self-regulatory systems in co-operation with public authorities. However, other interferences with Internet traffic may affect the quality of the Internet service delivered to users and may result in blocking, discrimination or prioritisation of specific types of content, applications or services. Moreover, some of the techniques used in this context permit inspection or monitoring of communications, which can undermine users' trust in the Internet.
3. These matters raise concerns in respect of the protection and promotion of the right to private life and the right to freedom of expression, which are guaranteed respectively by articles 8 and 10 of the European Convention on Human Rights (ETS No. 5, hereinafter the ECHR), as well as in the light of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No.108). In addition, there are implications for access to diverse and pluralistic information and public service media content on the Internet, which are fundamental for democracy and cultural diversity. The right to freedom of expression, including the right to receive and impart information is not an absolute right. However, any restrictions to this right must meet the requirements of Article 10, paragraph 2 of the ECHR.
4. The principle of network neutrality underpins non-discriminatory treatment of Internet traffic and users' right to receive and impart information and to use services of their choice. It reinforces the full exercise and enjoyment of the right to freedom of expression since Article 10 of the ECHR applies not only to the content of information but also to the means of its dissemination. Also, the principle of network neutrality supports technological innovation and economic growth.
5. The Committee of Ministers recalls Article 1 of the Statute of the Council of Europe and relevant Council of Europe standard-setting instruments³. With a view to protecting and promoting the right to private life and the right to freedom of expression in full compliance with Articles 8 and 10 of the ECHR as well as to promoting the full delivery of the public service value of the Internet, the Committee of Ministers recommends that member states:

³ Declaration of the Committee of Ministers on protecting the role of the media in democracy in the context of media concentration (31 January 2007); Recommendation Rec(2007)3 on the remit of public service media in the information society; Recommendation CM/Rec(2007)16 on measures to promote the public service value of the Internet; Recommendation CM/Rec(2008)6 on measures to promote the respect for freedom of expression and information with regard to Internet filters; Declaration of Committee of Ministers on network neutrality (29 September 2010); Declaration by the Committee of Ministers on Internet governance principles (21 September 2011); Recommendation CM/Rec (2014)6 to member States on a Guide to human rights for Internet users.

- take all the necessary measures, in co-operation with all relevant stakeholders, to safeguard the principle of network neutrality in their policy frameworks having due regard to the guidelines set out in this recommendation;
- promote these guidelines in other international and regional fora that deal with the issue of network neutrality.

Guidelines on network neutrality

1. General principles

1.1. Internet users have the right to freedom of expression, including the right to receive and impart information, by using services, applications and devices of their choice, in full compliance with Article 10 of the ECHR. These rights must be enjoyed without discrimination on any ground such as gender, sexual orientation, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

1.2. Internet users' right to receive and impart information on the Internet should not be restricted by means of blocking, slowing down, degrading or discriminating Internet traffic associated with particular content, services, applications or devices or traffic associated with services provided on the basis of exclusive arrangements or tariffs.

1.3. Internet users are entitled to an Internet connection with the characteristics defined in contractual agreements that they have concluded with Internet access service providers on the basis of specific and adequate information provided to users with regard to all aspects which might affect their Internet access capacity and their right to receive and impart information.

2. Equal treatment of Internet traffic

2.1. Internet traffic should be treated equally, without discrimination, restriction or interference irrespective of the sender, receiver, content, application, service or device. This is understood as the network neutrality principle for the purpose of this recommendation. The network neutrality principle applies to all Internet access services irrespective of the infrastructure or the network used for Internet connectivity and regardless of the underlying technology used to transmit signals.

2.2. This does not preclude Internet traffic management measures which are necessary and proportionate to:

- give effect to a court order or an order of a regulatory authority
- preserve the integrity and security of the network, services provided via the network and end-users' terminal equipment;
- prevent network congestion and optimise traffic management when congestion occurs.

2.3. Internet traffic management measures should be non-discriminatory, transparent and maintained no longer than strictly necessary. Traffic management policies should be subject to periodic review by competent authorities within each member state.

3. Pluralism and diversity of information

3.1. Internet service providers should not discriminate against traffic from other providers of content, applications and services which compete with their own content, applications and services. This requires that traffic management decisions be strictly dissociated from content-related decision-making processes of the operator in the spirit of the 2007

Committee of Ministers Declaration on protecting the role of the media in democracy in the context of media concentration.

3.2. As an exemption to the network neutrality principle, preferential treatment of traffic on the basis of arrangements between Internet service providers and providers of content, applications and services should be allowed only if sufficient safeguards for users' ability to access, use and impart information are in place. In particular, preferential treatment of traffic should not diminish or affect the affordability, performance or quality of users' access to the Internet. Internet users should have a real opportunity to choose an Internet connection without preferential treatment of traffic and must be informed about the impact that such treatment might have on their ability to access, use and impart information, diverse and pluralistic content that is publicly available, applications and services of their choice.

3.3. If the physical Internet connection is shared between Internet traffic and other services, states may consider imposing reasonable, transparent and proportionate obligations on Internet service providers to carry content which meets general interest objectives.

4. Privacy

4.1. Internet traffic management measures should involve processing of personal data only to the extent that is necessary and proportionate to achieve the purposes set out in the second section of this recommendation. Such measures should be in accordance with Article 8, paragraph 2 of the ECHR, the Convention 108 and applicable legislation on the right to private life and personal data protection.

4.2. The use of techniques for the purpose of Internet traffic management which are capable of assessing the content of communications is an interference with the right to respect for private and family life. Therefore, such use must be fully in line with Article 8 of the ECHR, be tested against applicable legislation on the right to private life and personal data protection and reviewed by a competent authority within each member state in order to assess compliance with legislation.

5. Transparency

5.1. Internet service providers should provide users with clear, complete and publicly available information with regard to any traffic management practices which might affect users' access to and distribution of content, applications or services. Internet users should be enabled to obtain information from Internet service providers about Internet traffic management and Internet speeds.

5.2. Competent authorities within each member state should monitor and report on Internet traffic management practices. Reports should be prepared in an open and transparent manner and made available to the public for free.

6. Accountability

6.1. Internet service providers should put in place appropriate, clear, open and efficient procedures to respond within reasonable time limits to complaints of Internet users alleging breaches of the principles included in the foregoing provisions. Internet users should be enabled to refer the matter directly to competent authorities within each member state and be entitled to timely redress.

6.2. States should ensure in their policy frameworks the accountability of Internet service providers with regard to respect for the principle of network neutrality. Accountability also includes that appropriate mechanisms are in place to respond to network neutrality complaints.

APPENDIX IV

Strasbourg, 18 June 2015

CDMSI(2015)008REV

**Draft CDMSI comments on
PACE Recommendation 2067 (2015) on Mass surveillance**

1. The CDMSI examined with interest the PACE Recommendation 2067 (2015) on Mass surveillance. The CDMSI notes with interest that cases are pending before the European Court of Human Rights on mass surveillance with regard to Article 8 of the European Convention on Human Rights. It also notes with interest the work under way at the EU Fundamental Rights Agency on the protection of fundamental rights in the context of large-scale surveillance.
2. The CDMSI recalls the Declaration of the Committee of Ministers on Risks to Fundamental Rights stemming from Digital Tracking and other Surveillance Technologies (2013), in particular that mass surveillance "capabilities and practices can have a chilling effect on citizen participation in social, cultural and political life and, in the longer term, could have damaging effects on democracy. They can also undermine the confidentiality rights associated to certain professions, such as the protection of journalists' sources, and even threaten the safety of the persons concerned".
3. The CDMSI also recalls the Conference of Ministers responsible for media and information society on freedom of expression and democracy in the digital age (Belgrade, 7-8 November 2013), in particular the Political Declaration stating that "growing technological capabilities for electronic mass surveillance and the resulting concerns, (...) emphasise that there must be adequate and effective guarantees against abuse which may undermine or even destroy democracy."
4. Building on Resolution No.1 on Internet freedom adopted at the Conference of Ministers responsible for media and information society on freedom of expression and democracy in the digital age in Belgrade, the CDMSI is developing a draft recommendation on Internet freedom, which addresses also issues of mass surveillance. The draft recommendation is expected to be finalised by the CDMSI pursuant to its mandate at the end of 2015. Any measures taken in the interest of national security should rigorously meet the requirements set out in the European Convention on Human Rights and its interpretation through the case law of the European Court of Human Rights, in particular regarding the right to freedom of expression and access to information (Article 10), freedom of assembly and association (Article 11), and the right to private and family life (Article 8). It should be underlined that these requirements constitute effective guarantees against abuse. In this context, it is important to stress that member States have negative obligations, that is, to refrain from interference with fundamental rights, and positive obligations, that is, to actively protect these rights. This includes the protection of individuals from arbitrary restrictions by non-state actors such as online intermediaries.
5. The CDMSI welcomes the PACE recommendation to explore Internet security issues related to mass surveillance and intrusion practices with regard to human rights and fundamental freedoms. It highlights the Council of Europe Guide to Human Rights for Internet Users, and its implementation through capacity building and cooperation assistance activities. The Guide states that Internet users must not be subjected to general surveillance or interception measures but may only be subject to legitimate interference which is prescribed by law, such as a criminal investigation. In particular, users should have access to clear and precise information about the relevant law or policy and rights in this regard.