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**STEERING COMMITTEE ON THE MEDIA
AND NEW COMMUNICATION SERVICES**

(CDMC)

**13th meeting
from 16 to 19 November 2010
Council of Europe, Agora building, Strasbourg
(Room G01)**

Meeting report

Executive summary

During the meeting, the CDMC:

- adopted comments on PACE Recommendations 1931(2010) on combating sexist stereotypes in the media, 1933 (2010) on fight against extremism: achievements, deficiencies and failures, 1934 (2010) on child abuse in institutions: ensure full protection of the victims, and 1936 (2010) on human rights and business
- concluded that, given the magnitude and the multi-disciplinary nature of gender mainstreaming in the media and freedom of expression standard-setting field, this area of work would deserve a transversal approach within the Council of Europe;

- decided to pursue work with the aim of providing guidance to member states on the review of their anti-terrorism legislation and practice and their impact on freedom of expression and information;
- decided to explore possible standard-setting responses to the problem of jurisdiction and forum shopping in respect of defamation (also known as libel tourism);
- decided to explore possible follow up in standard-setting terms to work to the 2008 Human rights' guidelines for Internet Service Providers;
- subject to priority decisions yet to be adopted by the Committee of Ministers, decided to start preparing the 2nd Council of Europe conference of Ministers responsible for media and new communication services on the inextricable link between freedom of expression and democracy and/or governance in the information society.

Item 1. Opening of the meeting

1. The Steering Committee on the Media and New Communication Services (CDMC) held its 13th meeting from 16 to 19 November 2010 at the Council of Europe's Agora Building in Strasbourg.

2. The gender distribution of the 62 participants in the meeting was as follows: 21 women (33.87%) and 41 men (66.13%). During the meeting, the CDMC held elections to the Bureau with a resulting (unchanged) gender distribution of 3 women (42.86%) and 5 men (57.14%); the new Chairperson is a man (previously a woman) and the Vice-Chairperson is a woman (previously a man). The CDMC agreed to propose a replacement for an outgoing member in the MC-S-CI with a resulting (unchanged) gender distribution of zero women (0%) and 5 men (100%); it reiterated the request that a female Bureau member be closely associated to the work of this ad hoc advisory group.

3. The meeting was chaired by Delia MUCICĂ (Romania). The Chairperson welcomed, in particular, those participants attending a CDMC meeting for the first time. The CDMC noted with sadness the bereavement of Pawel STEPKA, who represented Poland in previous CDMC meetings. It also noted the death of Andrew McINTOSH, who regularly represented the Parliamentary Assembly of the Council of Europe at CDMC meetings; the Steering Committee paid tribute to his indefatigable defence of freedom of the media.

4. The CDMC very warmly thanked Luis FERRO (Portugal) who had announced his early retirement, for his contribution to the work of the CDMC in general and, more particularly, for his work as a Bureau member over the last three years.

5. The list of participants is set out in Appendix I.

Item 2. Adoption of the agenda

6. The CDMC adopted the agenda, as set out in Appendix II, and the order of business subject to certain changes.

Item 3. Decisions of the Committee of Ministers of interest to the work of the CDMC

Appointment and broadening of the terms of reference of the Thematic Coordinator on Information Policy (TC-INF)

7. The CDMC welcomed the appointment of Ambassador Thomas HAJNOCZI, Permanent Representative of Austria to the Council of Europe, as Thematic Coordinator on Information Policy and the Committee of Ministers' decision to broaden his terms of reference to encompass information society and internet governance. Ambassador HAJNOCZI emphasised the relevance of the work of the Steering Committee and its importance for the future of the Organisation. He also expressed his intention to raise awareness about the CDMC's work and its transversal implications at the Ministers deputies' level.

Standards and CDMC texts

8. The CDMC noted that, on 29 September 2010, the Committee of Ministers adopted three Declarations prepared by the Steering Committee, respectively on network neutrality, on a digital agenda for Europe and on the management of the Internet protocol address resources in the public interest. These texts have been formally sent to the competent EC Commissioner. The Committee of Ministers also took note of the report of the 12th meeting of the CDMC.

Renewal of the terms of reference of the subordinate groups to the CDMC

9. Given Committee of Ministers arrangements for the processing of requests for the renewal of terms of reference, this question was dealt with by e-mail consultation and proposals were submitted prior to the meeting.¹

Texts from the Parliamentary Assembly of the Council of Europe (PACE)

Comments on PACE Recommendations 1897(2010) on respect for media freedom and 1916(2010) on the protection of whistleblowers

10. The CDMC's comments on these Recommendations were finalised by electronic consultation and were submitted to the Committee of Ministers prior to the meeting (Appendices III and IV).

Comments on PACE Recommendations 1931(2010) on combating sexist stereotypes in the media, 1933 (2010) on fight against extremism: achievements, deficiencies and failures, 1934 (2010) on child abuse in institutions: ensure full protection of the victims, and 1936 (2010) on human rights and business

11. In response to an invitation by the Committee of Ministers, the CDMC adopted, subject to certain changes, the comments kindly prepared by Elfa YR GYLFADOTTIR (Iceland) as regards Recommendation 1931(2010) (Appendix V), by Andris MELLAKAULS (Latvia) as regards Recommendation 1933(2010) (Appendix VI), by the Secretariat as regards Recommendation 1934(2010) (Appendix VII), and by Maja RAKOVIC (Serbia) and Emir POVLAKIC (Bosnia and Herzegovina) as regards Recommendation 1936(2010) (Appendix VIII), and decided to transmit them to the Committee of Ministers.

12. In light of rapid progress being made in the drafting of a Council of Europe convention on preventing and combating violence against women and domestic violence and the current draft's references to media, the CDMC indicated that it would be desirable that the Steering Committee and its Secretariat be informed in a timely manner and consulted on matters falling under its own remit but being dealt with by other Council of Europe bodies. As regards in particular the abovementioned draft convention, it decided to offer comments to the Ad

¹ The terms of reference of all bodies reporting to the CDMC were renewed by decision of the Committee of Ministers of 23 November 2010. They will expire on 31 December 2011.

Hoc Committee on Preventing and Combating Violence Against Women and Domestic Violence (CAHVIO).

Item 4. Draft instruments or texts for consideration by the CDMC

13. The CDMC noted that no draft instruments or texts were submitted to it for finalisation at the 13th meeting.

Item 5. Implementation of Council of Europe standards on media and freedom of expression

Roles and responsibilities of the European ISPs

14. Michael ROTERT, Honorary Spokesperson of the European Internet Service Providers Association (EuroISPA), explained the challenges and issues facing Internet service providers from a human rights perspective. He also reported on reflexions carried out among ISPs in respect of the implementation of the Human Rights Guidelines developed together with the CDMC in 2008. ISPs regard the guidelines as a useful tool when considering and discussing requests addressed to them by law enforcement agencies and other authorities or state agencies. In view of the experience to date, EuroISPA asked for a review of these guidelines and, more particularly, for their upgrade to an instrument, such as a Committee of Ministers recommendation, addressing the roles and responsibilities of states. The CDMC asked the MC-NM to consider the matter.

15. Mr Rotert signalled certain issues that merit Council of Europe consideration such as developments in social network and street-view applications, privacy concerns and data retention, or further guidance, in particular as regards removal of content and applicable procedures and legal safeguards thereof.

16. He also signalled the desirability to promote the setting up of national Internet service providers associations (ISPAs) in Council of Europe member states where they do not yet exist as a means of promoting the application of Council of Europe standards and providing a platform for related dialogue between authorities and ISPs. Michael Rotert further underlined the interest of promoting Council of Europe work among relevant private and public sector actors and, in this connection, encouraged the translation of relevant documents into a range of languages².

17. The CDMC welcomed EuroISPA's proposals and asked for more precise information on the situation and on the needs that might be addressed by any further standard setting activity in this field. Some delegations underlined the importance of pursuing work on "intermediaries". The CDMC asked the Secretariat to bring certain of the proposals (see the preceding paragraph) to the Council of Europe services entrusted with the provision of country specific technical assistance.

- Follow-up to the Resolution on Developments in anti-terrorism legislation in Council of Europe member states and their impact on freedom of expression and information - Texts adopted by the 1st Council of Europe Conference of Ministers responsible for Media and new Communication Services (Reykjavik, May 2009)

² The guidelines already exist in English and French, and have also been translated into Bulgarian

18. At its last meeting, the CDMC decided to set up a small informal working group to explore possible guidance or other action to be offered to member states in light of the Resolution whereby member states "Resolve to review [their] national legislation and/or practice on a regular basis to ensure that any impact of anti-terrorism measures on the right to freedom of expression and information is consistent with Council of Europe standards, with a particular emphasis on the case law of the European Court of Human Rights". The volunteer group is composed as follows:

- Hamit ERSOY, International Relations Department, Radio and Television Supreme Council (Turkey);

- Bissera ZANKOVA, Media Consultant, Ministry of Transport and Communications, Directorate on Information Technology (Bulgaria);

- Andris MELLAKAULS, Adviser to the Minister of Culture of Latvia

In addition, the following observer organisations offered to contribute to this work:

- Article 19 (David BANISAR, Senior Legal Counsel);

- ENPA (Holger ROSENDAL (Head of Legal Department, Danish Newspaper Publishers' Association);

- EFJ (Arne König, President of the EFJ and Vice-President of the Swedish union of Journalists);

- AEJ (William HORSLEY, Media Freedom Representative).

19. The CDMC agreed that the group should remain open to participation by representatives of other member states. It recalled that the Resolution was agreed to by all delegations, with the exception of the Russian Federation due to the fact that the ministry represented at the conference was not empowered to commit another competent ministry on the matter. The Steering Committee also asked the Secretariat to persevere in attempts to associate Lord Ken MACDONALD, former United Kingdom Director of Public Prosecutions (2003-2008) and human rights / freedom of expression advocate, to this work.

20. On behalf of the informal working group, Andris Mellakauls presented the situation and the context of the work involved, emphasising the necessity for state co-operation.

21. A representative of the CDDH Secretariat presented the follow-up work that was done in the past, similarly to the abovementioned Reykjavik Resolution. The CDDH Secretariat is prepared to cooperate and exchange practices and is interested in the CDMC work on the topic.

22. The CDMC noted contacts with the Secretariat of the Council of Europe Committee of Experts on Terrorism (CODEXTER) in order to discuss proposed work and reiterated its call for synergies, avoiding possible overlap or duplication. It noted support for this work by the Department for the Execution of Judgements of the European Court of Human Rights.

23. The AEJ, supported by other observers to the CDMC, stressed the importance of the issue. Public opinion is increasingly conscious of existing exaggerations in measures taken in respect of media in the framework of fight against terrorism.

24. The CDMC emphasised the transversal dimension of the exercise and requested that contacts with various Council of Europe services be pursued and that the Office of the Commissioner for Human Rights be informed of this work. Further, it agreed with the Bureau's suggestion that the registry of the European Court of Human Rights be approached

at a later stage. It suggested to the informal group that a questionnaire be prepared and sent to member States, though it recognised that this method is not fully satisfactory.

Item 6. Work of CDMC subordinate bodies

- Committee of Experts on New Media (MC-NM)

25. Thomas SCHNEIDER, Chairperson of the MC-NM, gave a general overview of progress being made by the Committee of Experts and detailed the draft recommendation on a new notion of media and other texts in preparation, namely, a draft recommendation and self-regulatory guidelines on the protection of human rights with regard to search engines and a draft recommendation and self-regulatory guidelines on the protection of human rights on social network service providers. He explained the state of play as regards these texts, mentioning that he expects them to be ready for consideration by the next CDMC at the next meeting.

26. The Steering Committee took note of the meeting report and thanked the group for the important work done. It recommended that the MC-NM start organising consultation with stakeholders as soon as possible, and that the finalisation of the recommendations on search engines and social network service providers be carried out in parallel to work on the new notion of media. The CDMC looks forward to examining a draft recommendation on a new notion of media during at its next meeting.

- Ad hoc Advisory Group on Public Service Media Governance (MC-S-PG)

27. The Chairperson of the group, Tim SUTER, provided information on progress being made by the MC-S-PG and of its last meeting held on 12 and 13 October 2010.

28. The CDMC took note of the meeting report and discussed the work of the Group, in particular the draft policy paper on the governance of public service media which signals the need for changes to the internal and external governance of PSM to meet their objectives. These changes concern (a) innovation, (b) openness and responsiveness, (c) independence, (d) transparency and accountability, and (e) management.

29. The CDMC warmly welcomed progress being made and the direction of the Group's work, fully justified by developments in public service media legislation and, more broadly, in the media landscape in many member states.

- Request for observer status by the non-governmental organisation Article 19

30. Article 19, which already enjoys observer status with the CDMC, has requested observer status with the MC-S-PG. The CDMC held an exchange of views with the representative of Article 19 and decided that it should be granted observer status with the ad hoc advisory group on public service media governance.

- Ad hoc Advisory Group on Cross-border Internet (MC-S-CI)

31. The Chairman of the MC-S-CI, Wolfgang KLEINWÄCHTER, provided information on progress being made by the MC-S-CI, including its most recent meeting held on 8 and 9 November 2010. He gave details on the outcome of the group's work to date (reflected in its

interim report) and its proposal to submit to the CDMC a draft Declaration on principles for Internet and a draft Recommendation on states shared responsibilities in respect of resources that are critical for the functioning of the Internet in a cross-border context. These two documents could, in the future, pave the way for future international legally binding instruments addressing general principles and also specific issues.

32. Mr KLEINWÄCHTER drew the attention of the Steering Committee to the fact that the area of work of the advisory group is delicate and that it calls for innovative approaches towards innovative international law instruments. He underlined that the CDMC is a pioneer body and suggested the organisation, in 2011, of a conference where these issues could be explored with relevant stakeholders; it would also offer an opportunity for a consultation on the draft instruments under preparation. He proposed to initiate discussions with other countries that are not members of the Council of Europe (e.g. USA, Japan) as this is indispensable when working on the field of Internet.

33. The CDMC congratulated the group for the work done to date and reiterated its support for the work undertaken and, more specifically for the group's proposals. It endorsed the proposal of organising a conference recalling, in this context, the CDMC's own discussions and the Bureau report on architectures for participation and multi-stakeholder approach, which should involve dialogue with countries outside Europe. In order to broaden the expertise brought to the proposed conference, the CDMC encouraged members to associate national experts to the discussions representing relevant agencies or organs in their national administrations.

Composition of the Group – replacement of Mark KELLY

34. In light of Mark Kelly's resignation from the group, the CDMC decided, having due regard to the Bureau's recommendation, to designate Bertrand de la CHAPELLE as a member of the ad hoc advisory group. Mr. de la Chapelle is member elect of ICANN's Board of Directors and, to date, has been the French Government's special envoy for the Information Society.

- Ad hoc Advisory Group on the protection of neighbouring rights of broadcasting organisations (MC-S-NR)

35. The CDMC took note of a letter by EU Commissioner Michel BARNIER to the Secretary General of the Council of Europe on the subject of a possible mandate for the European Commission to negotiate a future convention on the protection of neighbouring rights of broadcasting organisations. The CDMC noted that, according to officious information received, such a mandate is expected by March 2011.

36. The CDMC confirmed earlier decisions that no further work should be conducted on this subject until the Commission receives the above-mentioned mandate.

Item 7. Hearing on defamation and “forum shopping”

37. At its 12th meeting, the CDMC decided to organise a hearing on this subject. A background paper and links to press articles were provided to prepare the discussion.

38. The following took part in the hearing (in order of intervention):

- Nicolas NORD, Law Professor at Strasbourg University, explained the legal framework, including applicable EU regulation;
- Peter NOORLANDER, Legal Director of the Media Legal Defence Initiative, presented the perspective of the defendants, offering concrete examples; he encouraged the CDMC to address the issue of forum shopping or “libel tourism” given its strong implications for the exercise of the right to freedom of expression, as well as the rights to a fair trial;) he suggested the adoption of legal standards on jurisdiction and a “visa” (exequatur) regime for enforcement;
- Barbora BUKOVSKA, representing the non-governmental organisation Article 19, linked the issue to the need for reform of defamation legislation globally, emphasising the potential impact on media freedom (restricting investigative journalism, silencing political opposition, provoking self-censorship, etc.) of certain national laws beyond their own borders ;
- Tyge TRIER, practicing media and human rights lawyer, emphasised the impact of the disproportionate costs, including contingency fees, of defamation cases in certain jurisdictions which represent a real threat to media and media professionals; he recommended substantive and conflict (jurisdiction) law reform and awareness raising on media freedom, while welcoming the Danish government’s call to exclude libel from (EU) Brussels Regulation 1; he suggested a similar approach by other EU members or, at the proposal of the CDMC, by the Council of Europe itself.
- Roland BLESS, Director of the Office of the OSCE Representative on Freedom of the Media, signified that defamation laws and related forum shopping impinges upon media freedom (chilling effect, violation of the principle of proportionality on account of damages awarded, fines meted out and legal costs); the OSCE Representative on Freedom of the Media would welcome an international law instrument on the subject, complemented by best practices or practical guidelines, and its prompt incorporation into national legislations.

39. Further discussants contributed to the debate, in particular:

- Lawrence Early and Michelle Lafferty from the Registry of the European Court of Human Rights, acknowledged the importance of the issue and the need for clear rules on jurisdiction, while clarifying that the Court had so far only been confronted with one (pending) case on the issue;
- Holger Rosendal, European Newspaper Publishers Association (ENPA), made clear that it is in the interest of newspaper publishers to be able to predict the jurisdiction before which they may have to respond as defendants, and signalled an undesirable trend to settle claims through payment of negotiated compensation which, while being financially and procedurally understandable, serves poorly freedom of the media; he pleaded for the Council of Europe to address vigorously this matter, of concern within and beyond Europe;
- William Horsley, Association of European Journalists (AEJ), while acknowledging the existence of some irresponsible journalism and media, confirmed serious concerns about the chilling effect which libel shopping has on them; the response lies with self-regulation and the proper application of professional standards rather than law suits;
- Elfa Yr Gylfadottir (Iceland) referred to the Icelandic Modern Media Initiative, a Parliamentary resolution seeking, at national level, solutions to the broader problem of the threat posed by certain legislations to freedom of expression; in addition to libel tourism, the initiative extends to the protection of sources and whistle blowing.

40. The CDMC decided to explore possible standard-setting responses to the problem of jurisdiction and forum shopping in respect of defamation (or “libel tourism”); given the multidisciplinary nature of this work, it agreed that it should be pursued in consultation with other competent Council of Europe bodies.

Item 8. Work programme for the CDMC in 2011

41. The CDMC noted a lack of progress in the implementation of the Committee of Ministers Declaration of 13 January 2010 on measures to promote the respect of Article 10 of the European Convention on Human Rights.

42. The disappointment expressed by member states' representatives was compounded by concerns among observers about lack of action by the Council of Europe in respect of escalating violence against media professionals and well documented impunity for such violence. For some, the prevailing standstill is all the more disquieting given the importance attached by the Secretary General in several of his statements to freedom of expression and freedom of the media and the possibility to seek extra-budgetary resources for at least part of the activities that would stem from the 13 January 2010 Declaration. The CDMC heard, in particular, that the Council of Europe has the best possible credentials (as compared to other actors) to do more to promote and protect freedom of the media given the combined effect of its distinguishing feature, namely the objective to promote and preserve human rights, democracy and the rule of law

43. While one delegation (the Russian Federation) reiterated its call for caution as regards its potential budgetary implications and its position not to increase contributions towards Council of Europe activities, the CDMC decided to invite the Committee of Ministers to ensure that future priorities for the Council of Europe include making arrangements for improved collection and sharing of information and enhanced co-ordination between the different Council of Europe bodies and institutions, without prejudice to their respective mandates and to the independence of those bodies and institutions, in line with the above-mentioned Declaration.

Organisation of further hearings / exchanges

44. The CDMC also decided that, resources permitting, journalists, media professionals and relevant civil society organisations be invited to a hearing on freedom of expression and freedom of the media at the Steering Committee's 14th meeting .

Item 9. Working methods

Gender issues

45. At its 12th meeting, the CDMC welcomed the proposals made by Elfa Yr GYLFAÐOTTIR (Iceland) and Karl JAGDIS (United Kingdom) in their paper "Mainstreaming gender equality in the work of the CDMC" and agreed to consider standards previously prepared by the CDMC (formerly the CDMM) from a gender equality perspective with a view to identifying which of them should be reviewed and how.

46. The CDMC considered further proposals by Ms Gylfadottir, endorsed by the Bureau, in this respect, namely to set up an informal working group to review standards, if possible with the assistance of an external consultant. There should be a backward gender proofing of existing instruments, preferably grouped according to themes or according to the nature of the updating needed. In certain cases, it may be necessary to prepare new provisions, while in

other cases it may suffice to produce a new text covering several instruments and setting out any necessary common rectifiers.

47. The CDMC concluded that the gender dimension of freedom of expression and freedom of the media is a vast multi-disciplinary domain which requires a transversal approach. It found that a particularly telling example is media coverage of election campaigns which involves media and freedom of expression, democracy and constitutional law, gender equality policies and where discussions should associate both governmental and non-governmental experts in all those fields and also women, civil society, political parties, media representatives and other interested stakeholders.

48. It agreed to bring the transversal nature of this endeavour to the attention of the Committee of Ministers so that appropriate arrangements can be made and suggested also that the Secretary General might incorporate a distinct gender equality perspective to the ongoing reform process.

Request for observer status by Global Network Initiative (GNI)

49. GNI informed the Secretariat that it would be unable to submit a request and supporting documents and information on time for the 13th CDMC meeting. The CDMC decided to consider this request at a later stage if and when GNI formally submits an application for observer status.

Item 10. Next Council of Europe Conference of Ministers responsible for Media and New Communication Services

50. Following advance information provided to the CDMC by the representative of Serbia at the previous meeting, the Steering Committee took note of the formal invitation addressed by the Serbian Minister for Culture to the Council of Europe Secretary General offered to host the 2nd Council of Europe Conference of Ministers responsible for Media and New Communication Services in Belgrade.

51. Having regard to the recommendation of the Bureau, the CDMC expressed a favourable view in this respect asking for arrangements to be made to respond to the invitation accordingly. In view of an early preparation of the conference, the CDMC decided that an informal group could start reflecting on the themes for the conference which, subject to priorities yet to be decided upon by the Committee of Ministers in the context of the reform process, could relate to the inextricable link between freedom of expression and democracy and/or to governance in the information society. Frédéric RIEHL (Switzerland) agreed to coordinate the informal group which will also include Els Hendrix (Germany) and Elfa Yr Gylfadottir (Iceland) and make preliminary proposals at the next meeting.

Item 11. Internet Governance and Information Society

Internet Governance Forum (IGF)

- IGF (Vilnius, 14-17 September 2010)

52. The CDMC took note of the recent creation within the Secretariat of a transversal Task Force on Information Society and Internet Governance and of the objectives to be pursued. It welcomed the appointment of Lee HIBBARD as Coordinator for those matters.

53. The CDMC was also informed about the 5th IGF (Vilnius, 14 to 17 September 2010) and about the Council of Europe's participation therein. This included a workshop on "Freedom of expression and Internet intermediaries: Where do we go from here?"

European Dialogue on Internet Governance (EuroDIG)

54. The CDMC also noted developments concerning EuroDIG, welcoming that it is now acknowledged as the European IGF.

Item 12. Standing Committee on Transfrontier Television (T-TT)

55. The CDMC was apprised of action taken in light of its discussions on this matter at the last meeting, in particular Secretariat participation in the Audiovisual Media Services Directive Contact Committee meetings (Brussels, 16 June and 20 October 2010) and letter addressed by the Secretary General of the Council of Europe to the EU Commissioner and Commission Vice-President Neelie Kroes.

56. The CDMC reiterated its concern in respect of the current standstill in the revision of the Convention and expressed support for work designed to identify solutions which meet the needs of member states and avoid a legal vacuum in respect of audiovisual media services received from places not bound by European Union law and the possibly undesirable consequences for the European audiovisual media landscape. It expressed surprise about the absence of appropriations in the 2011 budget for Standing Committee on Transfrontier Television (T-TT) work and agreed to ask the Committee of Ministers to accord due priority to this and allocate resources taking account of the obligations that stem from the Convention

Item 13. Information on the work of, and co-operation with, other Council of Europe bodies, of interest to the CDMC

Cooperation activities in the field of media

57. Ivan NIKOLTCHEV reported on Council of Europe cooperation activities in the field of media.

58. Relevant CDMC members reported on their participation on behalf of the CDMC in various events and meetings:

- Bissera ZANKOVA (Bulgaria) reported on the *2010 Exchange on the religious dimension of intercultural dialogue, which focussed on "the role of the media in promoting intercultural dialogue, tolerance and mutual understanding: freedom of expression in the media and respect for cultural and religious diversity"* (Ohrid, 14-15 September 2010), which she attended on behalf of the CDMC together with experts and the Secretariat;

- Garegin CHUGASZIAN (Armenia) reported on the *Forum on the Future of Democracy (Yerevan, 19 to 21 October 2010)* which he attended on behalf of the CDMC; the Secretariat transmitted a message from Michael Remmert, Secretary of the Forum;

- *European Committee on Legal Co-operation (CDCJ)*

59. CDMC comments on the draft recommendation on the protection of individuals with regard to automatic processing of personal data in the context of profiling as finalised by the Bureau of the European Committee on Legal Co-operation;

- *Steering Committee on Gender Equality (CDEG)*

60. The secretary of the CDEG reported a favourable reaction by the Steering Committee to the work gender mainstreaming approach adopted by the CDMC. The CDEG would like to pursue further discussions with the CDMC perhaps during its next meeting (8-9 December). The CDMC noted that the Committee of Ministers is expected to give terms of reference for joint work by the two Steering Committees on a handbook for combating sexist stereotypes in the media; work should start in early 2011;

61. - the Secretariat informed on the work the *Steering Committee on Human Rights (CDDH)* currently focusing primarily on the accession of the European Union to the European Convention on Human Rights.

Item 14. Other information of interest to the work of the CDMC

62. The CDMC took note of information provided by the representative of Belgium on activities undertaken during the Belgian Presidency of the European Union. It also took note of the information provided by the representative of Hungary on activities foreseen during the upcoming Hungarian Presidency.

Item 15. Elections

63. The CDMC held elections for Chairperson, Vice-Chairperson and vacancies in the Bureau, in accordance with the provisions of Resolution Res(2005)47 on committees and subordinate bodies, their terms of reference and working methods. The results (all by unanimous vote) were:

- Andris MELLAKAULS (Latvia) was elected Chairperson for an initial term of office of one year, expiring on 31 December 2011;
- Elfa Yr GYLFADÓTTIR (Iceland) was elected Vice-Chairperson for an initial term of office of one year, expiring on 31 December 2011;
- Emir POVLAKIC (Bosnia Herzegovina) was re-elected member of the Bureau for a second term of office of two years, expiring on 31 December 2012;
- Thomas SCHNEIDER (Switzerland) was elected member of the Bureau for an initial term of office of two years, expiring on 31 December 2012;
- Els HENDRIX (Germany) was elected member of the Bureau replacing Luís Santos Ferro (Portugal) to serve the remainder of his term of office, ending on 31 December 2011.

The other members of the Bureau are:

- Maja RAKOVIC (Serbia), serving an initial two-year term ending on 31 December 2011;
- Garegin CHUGASZYAN (Armenia) serving a second two-year term of office ending on 31 December 2011.

64. The CDMC warmly thanked Delia MUCICĂ for her highly productive contribution to the work of the Bureau and of the CDMC during two consecutive terms of office as Chairperson.

Item 16. Administrative and budgetary matters

65. The Secretariat informed the CDMC of relevant administrative and budgetary matters. The CDMC noted that a lawyer would join its Secretariat in January 2011, but regretted that it would be deprived of another post. On the other hand, the Chairperson informed of her discussions with Philippe BOILLAT, Director General of Human rights and Legal Affairs, who expressed confidence that Internet governance, information society and freedom of expression and media would remain among the future Council of Europe priorities.

Item 17. Item to be included on the agenda of the 14th meeting of the CDMC

66. The CDMC approved the preliminary list of item to be included in the agenda for its 14th meeting.

Item 18. Dates of next meetings

67. The CDMC took note of the dates of meetings planned in 2011. The Secretariat drew attention to the fact that the 15th CDMC meeting will coincide with the beginning of the Christmas market in Strasbourg and advised to book hotel room well in advance.

Item 19. Other business*European Audiovisual Observatory*

68. The Executive Director of the European Audiovisual Observatory presented the activities carried out in 2010 and its action plan for 2011. The CDMC held an exchange of views with him on topics of common interest.

Item 20. Abridged report

69. The CDMC adopted the abridged report of its 13th meeting and asked that it be submitted to the Committee of Ministers.

Appendix I

List of participants

MEMBER STATES / ETATS MEMBRES

Albania/Albanie

(Confirmed/Confirmé)

Ralf GJONI, Director General of Communications/ Spokesperson, Ministry of Foreign Affairs of the Republic of Albania

Armenia/Arménie

(Confirmed/Confirmé)

Garegin CHUGASZIAN, Executive Director, IT Foundation

Austria/Autriche

(Confirmed/Confirmé)

Andreas ULRICH, Federal Chancellery

Azerbaijan

(Confirmed/Confirmé)

Jeyran AMIRASLANOVA, Senior Consultant for Public and Political Issues, Office of the President of the Republic of Azerbaijan

Araz ALIYEV (observer), Chief Consultant of "Azellsh" Ltd

Belgium/Belgique

(Confirmed/Confirmé)

Johan BOUCIQUE, Adviser Media, Department Cultuur, Jeugd, Sport en Media

Bosnia and Herzegovina / Bosnie-Herzégovine

(Confirmed/Confirmé)

Emir POVLAČIĆ, Head of Division for Licencing, Digitalization and Coordination, Broadcasting Communications Regulatory Agency

Lea TAJIĆ, Broadcasting Communications Regulatory Agency

Bulgaria/Bulgarie

(Confirmed/Confirmé)

Bissera ZANKOVA, Media Consultant, Ministry of Transport and Communications, Directorate on Information Technology

Croatia/Croatie

(Confirmed/Confirmé)

Tomislav TUDIĆ, Human Rights Officer, Ministry of Foreign Affairs and European Integration of the Republic of Croatia

Cyprus/Chypre

Apologised / Excusé

Czech Republic/République Tchèque

(Confirmed/Confirmé)

Marián ORAVEC, Media and Audio-Visual Department

Denmark/Danemark

(Confirmed/Confirmé)(16-17 only)

Katja JUST MAARBJERG, Head of Section, Danish Ministry of Culture

Pernille RAHBK, Chief Adviser, Danish Ministry of Culture

Estonia/Estonie*(Confirmed/Confirmé)*

Peeter SOOKRUUS, Ministry of Culture

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Appendix II**MEETING AGENDA**

- 1) Opening of the meeting**
- 2) Adoption of the agenda**
- 3) Decisions of the Committee of Ministers of interest to the work of the CDMC**
- 4) Draft instruments or texts for consideration by the CDMC**
- 5) Implementation of Council of Europe standards on media and freedom of expression prepared under the authority of the CDMC**
- 6) Work of CDMC subordinate bodies**
- 7) Hearing on defamation and forum shopping**
- 8) Work programme for the CDMC in 2010 and 2011**
- 9) Working methods**
- 10) Next Council of Europe Conference of Ministers responsible for Media and New Communication Services**
- 11) Internet Governance and implementation of WSIS action lines**
- 12) Standing Committee on Transfrontier Television (T-TT)**
- 13) Information on the work of, and co-operation with, other Council of Europe bodies, of interest to the CDMC**
- 14) Other information of interest to the work of the CDMC**
- 15) Elections**
- 16) Administrative and budgetary matters**
- 17) Item to be included on the agenda of the 14th meeting of the CDMC**
- 18) Dates of next meetings**
- 19) Other business**
- 20) Abridged report**

Appendix III

Comments on PACE Recommendations 1897(2010) on respect for media freedom

The Steering Committee on the Media and New Communication Services (CDMC) welcomes the Parliamentary Assembly's Recommendation 1897 (2010) on respect for media freedom and shares the Assembly's serious concern about the increase of attacks on media and journalists in Europe.

Media freedom is indeed a necessary condition for genuine democracy, as has been repeatedly stated in Committee of Ministers' instruments. Member states' obligations to protect the safety of journalists, the free and unhindered exercise of journalism and the independence and plurality of the media have been amply expounded in the relevant case law of the European Court of Human Rights. A wide catalogue of well-known Committee of Ministers instruments also offer a common understanding of those obligations and provide guidance to assist member states in meeting them.

However, the numerous examples mentioned by the Parliamentary Assembly illustrate the existence of serious shortcomings in the law and practice of member states in respect of the effective protection of freedom of expression and information, including freedom of the media.

The CDMC agrees that more needs to be done and refers, in this context, to the Declaration on measures to promote the respect of Article 10 of the European Convention on Human Rights adopted by the Committee of Ministers on 13 January 2010. Its implementation should improve the gathering of information and its sharing among different Council of Europe bodies and institutions. It should also ensure enhanced coordination between them without prejudice to their respective mandates and independence, thus enabling them to promote more effectively respect of Article 10. More specifically, it would contribute to respond to certain of the recommendations made by the Parliamentary Assembly (see in particular paragraphs 11.3 and 12 of Recommendation 1897 (2010)).

In the CDMC's view, action upon the abovementioned Declaration should be pursued vigorously. It would, however, point out that the type of reporting suggested by the Assembly would require commensurate resources and that its feasibility in budgetary terms would have to be carefully assessed.

The CDMC would also refer to desirability to offer expert assistance to member states in appropriate cases. Funding possibilities for these activities should be explored. The CDMC agrees that assistance programmes for the training of judges, law enforcement authorities and police should, in appropriate cases, extend to media freedom and the protection of journalists (see paragraphs 11.2 of Recommendation 1897 (2010)) or address other Assembly concerns covered by well-established Council of Europe standards (see paragraphs 10 and 11, subparagraphs 4 to 7, of the Assembly Recommendation).

As regards the recommendation to review national legislation and practice to ensure that anti-terrorism measures fully respect media freedom (see paragraph 11.1 of the Assembly's Recommendation), the CDMC would recall the related commitment included in the

Resolution on Developments in anti-terrorism legislation in Council of Europe member states, and their impact on freedom of expression and information, adopted at the 1st Council of Europe Conference of Ministers Responsible for Media and New Communication Services (Reykjavik, May 2009). The CDMC understands that the Committee of Ministers invited the Secretary General to offer assistance to member states in this context. It would encourage all member states to translate this commitment into concrete action, where appropriate with expert assistance from the Council of Europe.

Appendix IV

Comments on PACE Recommendations 1916(2010) on the protection of whistleblowers

Although it has not been formally invited to comment on PACE Recommendation 1916 (2010) on the protection of whistleblowers, the Steering Committee on the Media and New Communication Services (CDMC) would like to welcome this Recommendation which emphasises the importance of the protection of whistleblowers in Council of Europe member states. The CDMC shares the Assembly's concerns and applauds its call to explore the possibilities for developing comprehensive legislation and guidelines designed to protect whistleblowers.

The CDMC underlines, in particular, the relationship between whistleblowers and media. They are natural partners in the process of exposing wrongdoings and ensuring the accountability and of both public officials and private citizens; as well as of the organisations within which they operate. Recent disclosures have abundantly demonstrated the positive value for society of whistleblowing, including in the context of security agencies and religious communities.

Whistleblowing journalism related to human rights and fundamental freedoms, as well as in respect of issues of broad or even global interest, merits particular attention and protection. This extends to situations where whistleblowers are the victims of retaliation and reprisals from within or outside the organisation in question. The relationship of trust, based on the understanding that journalistic sources will not be disclosed, must be preserved.

This matter has been addressed in broad terms in several media-related Council of Europe documents, for example the Committee of Ministers 2007 Declaration on the protection and promotion of investigative journalism, the Recommendation No. R (2000)7 on the right of journalists not to disclose their sources of information and the 2003 Declaration on freedom of communication on the Internet. The CDMC would stress, in particular, that the effective protection of journalists' sources is an essential tool for the protection of whistleblowers and also for the protection of journalists themselves when acting as whistleblowers. It can be regarded as a litmus test for the accountability mechanisms in operation within democratic countries with regard to protection of freedom of expression of journalists and freedom of the media.

Future legislation and guidelines on the protection of whistleblowers and media should ensure the same level of protection to journalists in both the public and private media sectors (and extend such protection to any in-house whistleblowing by journalists), as well as to those involved in new media and media-like services, and also to any relevant Internet-based services.

Given its cross-cutting nature, this matter (and PACE Recommendation 1916 (2010) on the protection of whistle-blowers) might usefully be on the agenda of a wide range of bodies within the Council of Europe. Discussion on whistleblowing should pay due attention to gender differences, both in terms of disclosures that provoke consequences for female whistleblowers; such as sexual harassment, and the fact that women whistleblowers usually experience greater levels of retaliation than their male equivalents because of their lower status in corporate culture.

The CDMC would wholeheartedly support the Parliamentary Assembly's proposal that a European conference on the protection of whistle-blowers be organised; would like to be closely associated thereto.

Appendix V

Comments on PACE Recommendation 1931(2010) on combating sexist stereotypes in the media

1. The CDMC welcomes Parliamentary Assembly Recommendation 1931 (2010) on Combating sexist stereotypes in the media. The recommendation is well-timed, since the question of gender stereotyping in the media is unresolved and examples can be found of degrading or humiliating images of both men and women, especially in entertainment and advertising. However, the CDMC does not share the sometimes heavy-handed approach proposed in the underlying Resolution 1751 (2010), in particular when calling on national Parliaments to combat sexist stereotypes in the media by penalising sexist remarks or insults. This may not be consistent with the right to freedom of expression requirements set out in Article 10 of the European Convention on Human Rights and related case law.
2. Respect for human dignity and equality are fundamental principles of a genuine democratic society. They comprise also a sound basis for the operation of socially effective and responsible media aiming at creating a culture of tolerance and harmony among various groups and individuals.
3. The CDMC shares the opinion that avoiding stereotypes and an objective presentation of facts and images should be a fundamental objective for any type of media and journalistic work as an element of their public function. This will only be achieved through a constant endeavour to present different persons with their own characteristics, peculiarities and sensibilities, with their ambitions and accomplishments. In this regard, the CDMC stresses the importance of combating sexist stereotypes while considering freedom of expression and information and editorial independence.
4. Public service media (PSM) can have an important function in combating sexist stereotypes in the media, because of their important role in integrating all communities, social groups and generations. With regard to this, the recommendation Rec (2007)3 on the remit of public service media in the information society, underlines the fact that PSM should serve social integration and should respect different identities and needs “paying due attention to gender equality issue”.
5. Community media can be an essential factor for social cohesion which brings together various groups, communities and persons with different identities at a local and regional level as emphasised by the 2009 Committee of Ministers Declaration on the role of community media in promoting social cohesion and intercultural dialogue.
6. As regards the proliferation of the new communication services, the CDMC considers desirable a creative media environment on the Internet which respects the dignity of

all persons and especially of children. The broad availability of pornography on the Internet and the existing sexist stereotypes in the video material and advertisements carry risk of harm for younger people and may impair their proper understanding of the contribution and role of individuals of different gender. Reference might be made in this respect to relevant provisions of the European Convention on Transfrontier Television and to the 2004 Recommendation of the Convention's Standing Committee, which address comparable issues, and also to the Committee of Ministers Recommendation No. R (89) 7 concerning principles on the distribution of videograms having a violent, brutal or pornographic content and, as regards online games, to the Human rights guidelines for online games providers developed by the CDMC in co-operation with the Interactive Software Federation of Europe (2008).

7. The CDMC considers that a comprehensive and wide-ranging strategy is necessary to combat sexist stereotypes in both traditional and new media, which demands involvement of all interested parties. Avoiding sexist stereotypes can be understood in relation to intercultural dialogue and the proper implementation of its principles as it is crucial how persons with various identities are presented in different cultures and traditions.
8. Member states could summarise and exchange good practices in combating sexist stereotypes in the media.. It goes without saying that any regulatory measures should comply fully with the Article 10 requirements, namely they must be prescribed by law necessary in a democratic society and proportionate to the legitimate aims pursued. Gender issues might be included among the indicators established by the media regulatory authorities or authorities responsible for gender equality for the proper evaluation of media performance. Attention should also be paid to distinguishing enabling measures for the media as a whole as opposed to possibly undue attempts to regulate content.
9. Dealing with gender stereotypes will contribute to reducing inequality, including gender violence which is one of its most unacceptable expressions. Given that addressing this issue effectively will inevitably have to take account of the fundamental principle of media's independence, purely regulatory measures may not provide a satisfactory response. The task therefore falls largely to the media themselves which have to incorporate the principle of equal presentation and fair treatment of various persons with their specific identities in their professional codes and self-regulatory mechanisms and to combat stereotypes as an everyday practice. It may be even more effective to consider solutions through governance models and approaches. The CDMC is already working on the question of public service media governance which may provide some elements of response in this connection.
10. The CDMC encourages member states, civil organisations and the media to pay due attention to media literacy as a fundamental competence for citizens of all ages in the

new, complex and sometimes controversial media environment. Media education and training can boost professionalism and sensitivity of the media and enable media consumers to recognise and deal with gender stereotypes and discrimination in all media formats. In the online environment, it can help Internet users and young people in particular to comprehend better the complexities of the virtual reality and its risks, especially those connected to gender equality.

11. The CDMC is ready to participate in cross-sectoral initiatives to explore more profoundly matters related to the intersection between gender and media, as already proposed in the texts adopted at the last Council of Europe specialised ministerial conference on equality between men and women. In this context, the CDMC is determined to explore the gender perspective in its work. This extends also to reviewing previously adopted standard-setting texts from a gender perspective. The CDMC counts on the support from the Committee of Ministers for this.

Appendix VI

Comments on PACE Recommendation 1933 (2010) on fight against extremism: achievements, deficiencies and failures

1. The CDMC welcomes Parliamentary Assembly Recommendation 1933 (2010) on the fight against extremism: achievements, deficiencies and failures and its preceding resolution. The recommendation is well-timed, especially in the light of recent developments, whereby certain political parties have been elected to European parliaments on what could be described as an extremist platform.
2. The timing of the recommendation is particularly apt given the current global financial crisis and recession, which has led to a growing number of manifestations of racism and xenophobia.
3. The CDMC shares the view that, in multicultural societies, it is often necessary to reconcile freedom of expression and freedom of thought, conscience and religion as indicated, for example, in PACE Recommendation 1805 (2007) on Blasphemy, religious insults and hate speech against persons on the ground of their religion, and as in the instant Recommendation at paragraphs 2 and 4.
4. The CDMC also acknowledges that in particular circumstances, restrictions on these fundamental freedoms may be necessary, but these must be prescribed by law, necessary in a democratic society and proportionate to the legitimate aims pursued. Any restrictive measures should be narrowly circumscribed and be of limited duration. When addressing extremism, a controversial issue which may be open to different interpretations, strict application of the rule of law is essential for the protection of freedom of expression and opinion. The CDMC would in particular recall that, according to the case law of the European Court of Human Rights, subject to the conditions of paragraph 2 of Article 10 of the European Convention on Human Rights, the right to freedom of expression is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb.
5. The Recommendation rightly urges (5.1) the Council of Ministers to evaluate member states' compliance with Recommendation (97)20 on "hate speech". Although in the instant Recommendation there is no specific mention of the media, R(97)20 affirms that public authorities and institutions have a "special responsibility to refrain from statements [...], speech [...] and other forms of discrimination or hatred based on intolerance" (Principle 1), especially when it is disseminated through the media.
6. The CDMC welcomes the invitation (5.2) to the relevant Council of Europe bodies to monitor compliance of anti-extremism legislation with international human rights standards. In this context there could be synergies with the CDMC's work on a follow-up to the Reykjavik Ministerial Conference 2009 Resolution on Developments in anti-terrorism legislation in Council of Europe member states and their impact on freedom of expression and information.
7. It should not be forgotten that 27 of the 47 Council of Europe member states are also Member States of the European Union. In this context, the CDMC would recall that the work programme of the EU's Fundamental Rights Agency includes the first priority project "Reporting on the situation concerning racism, xenophobia, anti-Semitism, Islamophobia, related intolerance and other fundamental rights issues". The CDMC

suggests that synergies could be achieved by drawing upon the experience and research findings of the FRA which have a bearing on the Recommendation under discussion.

(www.fra.europa.eu/fraWebsite/attachments/AWP_2011_final_clear_EN.pdf)

8. Noting the Assembly's call for various Council of Europe bodies to take on a greater work load (5.1 – 5.5), the CDMC would emphasise the need to ensure adequate resources, both financial and human, to pursue these activities. The CDMC would also suggest that the monitoring tasks envisaged in the Recommendation be coordinated to avoid possible overlap and duplication. This might be achieved through an annual or bi-annual meeting of the relevant Council of Europe bodies and other stakeholders.
9. Finally, the CDMC considers this recommendation and the resolution upon which it is based to be a timely and useful reminder to member states that much still needs to be done in the fight against extremism. Subject to an adequate response to the resource question mentioned in paragraph 8, the Council of Europe can play a very important role in accompanying and promoting member states' efforts in this regard.

Appendix VII

Comments on PACE Recommendation 1934 (2010) on child abuse in institutions: ensure full protection of the victims

The CDMC welcomes the opportunity to provide comments on Parliamentary Assembly (PACE) Recommendation 1934 (2010) on child abuse in institutions: ensuring full protection of the victims. While the subject matter is not within the remit of the CDMC, this is an opportunity to give concrete meaning to some of its comments on a previous PACE Recommendation (Recommendation 1916 (2010) on the protection of whistle-blowers).

As has been clearly stated by the Assembly “No authority or institution should be exempt from critical review”. The watchdog function of the media and the importance of freedom of expression and the right of access to information are of capital importance in this respect. In this area more than in any other, freedom of expression and its corollary, freedom of the media, has to be exercised with full regard to the responsibilities that accompany these rights.

Journalists ethics and self-regulation will be decisive in ensuring accurate and balanced reporting in the public interest while, at the same time, respecting the presumption of innocence and the dignity, the security and the right to privacy of both victims or claimants on the one hand, and suspects, accused, convicted persons and witnesses on the other hand. The interests of children are fundamental in this connection. The 2003 Committee of Ministers Declaration on the provision of information through the media in relation to criminal proceedings and the related Recommendation Rec(2003)13 provide useful guidance in this respect.

Comprehensive legislation and guidelines designed to protect whistleblowers, as suggested by the Parliamentary Assembly in its Recommendation 1916 (2010), would assist in uncovering and preventing child abuse in institutions. The CDMC would underline, once again, the relationship between whistleblowers and media. They are natural partners in the process of exposing wrongdoings and ensuring the accountability of both public officials and private citizens, as well as of the organisations within which they operate. Recent disclosures have abundantly demonstrated the positive value for society of whistleblowing, including in the context of security agencies and religious communities.

Whistleblowing journalism related to human rights and fundamental freedoms, which also refers to violations of children’s rights in institutions, as well as in respect of issues of broad or even global interest, merits particular attention and protection. This extends to situations where whistleblowers are the victims of retaliation and reprisals from within or outside the institution or organisation in question. The relationship of trust, based on the understanding that journalistic sources will not be disclosed, must be preserved.

This matter has been addressed in broad terms in several media-related Council of Europe documents, for example the Committee of Ministers 2007 Declaration on the protection and promotion of investigative journalism, the Recommendation No. R (2000)7 on the right of journalists not to disclose their sources of information and the 2003 Declaration on freedom of communication on the Internet. The CDMC would stress, in particular, that the

effective protection of journalists' sources is an essential tool for the media to uncover child abuse in institutions. Whistleblowing and investigative journalism are powerful means for sustaining good governance, transparency, accountability and rule of law in all institutions.

The CDMC is determined to explore the gender perspective in all its work and output. In this particular context, beyond the specific vulnerability of girls and young females in institutions, the CDMC wishes to signify that female whistleblowers usually risk greater levels of retaliation than their male equivalents because of their lower status in corporate culture. Particular attention should therefore be paid to the desirability for female staff to be both in post in sufficient numbers in institutions for children and to be adequately protected against harassment, retaliation or abuse as a means of preventing the uncovering of abuse of children.

The CDMC supports the recommendation concerning "raising awareness about child abuse in the institutional context, including through public information campaigns" while respecting media's editorial independence. With vigorous (including financial) support from Council of Europe member states, Europe-wide, all-platform action could be promoted in this respect in a public service media context with the assistance of the European Broadcasting Union.

Moreover, media and new communication services, including the Internet, can help children inform themselves about their rights; they can also help empower children both to resist and protect themselves from abuse and to complain about abuse and ensure that those responsible are brought to account. Reference can be made in this respect to Committee of Ministers adopted standard-setting instruments such as Recommendation Rec(2006)12 on empowering children in the new information and communications environment or Recommendation CM/Rec(2009)5 on measures to protect children against harmful content and behaviour and to promote their active participation in the new information and communications environment. These matters could be explored further with the European Network of Ombudspersons for Children (ENOC) given that their recent annual meeting focused on "Listening to children and involving them in the promotion and implementation of their rights". The role of human rights defenders might also be usefully considered in this context.

Appendix VIII

Comments on PACE Recommendation 1936 (2010) on human rights and business

1. The Steering Committee on the Media and New Communication Services (CDMC) is thankful to the Parliamentary Assembly for providing this opportunity to comment on Recommendation 1936 (2010) on human rights and business, which is timely and very relevant to ongoing developments and debates in respect of the information society and media.

2. The CDMC shares the view that the Council of Europe is well placed to promote corporate responsibility in the area of human rights. In this context, the CDMC recalls that many of the Committee of Ministers' standard-setting instruments concerning Internet and information society underline the roles and responsibilities of private sector in respecting human rights.³

3. Internet governance is perhaps an exemplary area in the Council of Europe activities where the relationship between human rights and roles and responsibilities of business has been articulated in an authoritative way. The notion of the public service value of the Internet as laid down in the CM/Rec(2007)16⁴ provides inspiration for the development of Internet governance policies.⁵ The Declaration of the Committee of Ministers on network neutrality and the Declaration on the management of Internet protocol addresses in the public interest signal the need for action to protect human rights in respect of management of the Internet.

4. Partnerships with the business community have produced tangible results such as the *Human Rights Guidelines for ISPs* and *Human Rights Guidelines for Online Games Providers* – developed by the Council of Europe in cooperation with the European Association of Internet Services Providers (EuroISPA) and the Interactive Software Federation in Europe (ISFE). Similar guidelines are under preparation in respect of Internet social network services and search engines. Further, the Council of Europe recently joined as observer the Governmental Advisory Committee of the Internet Corporation for Assigned Names and Number⁶ which is responsible for the management of critical Internet resources

³ Recommendation of the Committee of Ministers to member states on promoting freedom of expression and information in the new information and communications environment (CM/Rec(2007)11), Recommendation of the Committee of Ministers to member states on measures to promote the respect for freedom of expression and information with regard to Internet filters (CM/Rec(2008)6), etc.

⁴ Recommendation of the Committee of Ministers CM/Rec(2007)16 to member states on measures to promote public service value of the Internet

⁵ The Internet Governance Forum (IGF) and the European Dialogue of Internet Governance (EuroDIG) two multi-stakeholder dialogue platforms play an important role in shaping common views on Internet governance policies. ICANN's multi-stakeholder structural set-up is also merits consideration. The Internet governance processes, which are examples of organisational innovation and mutual adaptation between society and technology around the world, facilitate the development and application of shared principles, norms, rules, decision-making procedures and programmes that shape the evolution and use of the Internet by governments, the private sector and civil society in their respective roles.

⁶ Declaration of the Committee of Ministers on the management of the Internet protocol address resources in the public interest (2010), Declaration of the Committee of Ministers on enhanced participation of member states in Internet governance matters – Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (2010)

for the global Internet community, as a means of bringing the Organisation's core values into relevant discussions and decision-making processes.

5. In the new media environment, the responsibility of businesses in terms of protection of privacy and freedom of expression both in online and offline environments is of utmost importance. Internet users must be thoroughly and fairly informed about various services and goods, as well as the risks of data retention, processing of personal data and privacy settings, and of surreptitious, subliminal or otherwise manipulative practices. Special attention has to be paid to the sensitivity and health of children. The CDMC shares the view that the modernisation of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS no.108) should be a priority (paragraph 2.5) and refers to its Comments on the draft Recommendation on the protection of individuals with regard to automatic processing of personal data in the context of profiling as finalised by the Bureau of the European Committee on Legal Co-operation (CDMC(2010)009rev).

6. The recommendation to "examine the feasibility of elaborating a complementary legal instrument, such as a convention or an additional protocol to the European Convention on Human Rights" advances a vision that could well bring a major shift not only in the system of corporate responsibility but also in the governance system of human rights. International regulation of corporations in respect of human rights as well as "direct human rights obligations on business that would be actionable in the same way as they are under the European Convention of Human Rights against states" (as explained in the Assembly's Doc. 12361) may lead to simultaneous public and private centres of governance (polycentric multi-level system of governance).

7. The CDMC considers that the Recommendation makes a remarkable step forward in promoting a shift in the thinking on corporate responsibility from the legally unenforceable concepts of corporate responsibility that we know today to a comprehensive transnational regulatory framework for business enterprises. The CDMC would have very serious concerns if such an approach were in any way to offer an alibi for shifting responsibility for protecting freedom of expression and information and other human rights away from the state, but would see merit in a construct that would strengthen the actual protection of human rights under international law by extending, rather than shifting, responsibility to non-state actors. The CDMC therefore looks forward to the outcome of consideration of how the vision embodied in the Recommendation can be articulated; it feels that the governance dimension should be part of the envisaged feasibility study.

8. The CDMC would welcome, from the perspective of its own responsibilities in respect of freedom of expression and information, a comprehensive study on corporate responsibilities in the area of human rights taking into account in particular the case law of the European Court of Human Rights and the decisions of the European Committee of Social Rights in order to provide necessary data for further actions, such as preparation of the intended recommendation on corporate responsibilities in the area of human rights and the guidelines for national authorities, businesses and other actors.

9. The CDMC is determined to explore the gender perspective in all its work and output. This is all the more relevant on this occasion as it has noted that the Steering Committee for Equality between Women and Men (CDEG) has not been invited to comment on this Parliamentary Assembly Recommendation. It therefore suggests that the gender perspective should be an integral part of any further work by the Council of Europe in light of the Assembly's Recommendation.

10. In conclusion, the CDMC welcomes the Assembly's Recommendation to the Committee of Ministers and stands ready to cooperate with all competent bodies in its follow up. In particular, the CDMC supports the recommendation to examine ways and means of developing partnerships with the business community in order to promote the Council of Europe's values and standards. As mentioned in paragraph 4, this approach has already rendered tangible results. Incorporating Council of Europe standards into corporate operational tools (and into corporate social responsibility related practice) is a highly desirable objective. Assisting businesses in this respect could be seen as a major opportunity for the Organisation to further enhance its relevance, added value and impact. The Council of Europe can play a very important role in this regard, provided that adequate resources are made available.