

Bureau of the Steering Committee on Media and Information Society



22/11/2016

CDMSI-BU (2016)02

Report of the 10th meeting (13-14 October 2016)
(Strasbourg, Council of Europe Offices, Agora building, room GO4)

1. Opening of the meeting

The CDMSI Chair, Elfa Ýr Gylfadóttir (Iceland) opened the meeting. The gender distribution among 7 attendants was 4 women (57%) and 3 men (43%).

Jan Kleijssen, Director of Information Society and Action against Crime, welcomed the Bureau to its second meeting under the new mandate of the CDMSI. He emphasised the important topics on the agenda of the committees of experts subordinated to the CDMSI and in particular that of the Committee of experts on Internet Intermediaries (MSI-NET): the issue of roles and liabilities of Internet intermediaries, which is also high on the legislative agenda of the EU and its work on algorithms. The latter is a good basis for the CDMSI to continue to reflect on technological developments such as artificial intelligence, its growing impact on people's lives and its potential consequences. He drew attention to the EC Annual Colloquium on Fundamental Rights' topic of Media Pluralism and Democracy (17-18 November 2016, Brussels), in which the Secretary General would participate. He also recalled the CDMSI's interest in the current legislative agenda of the EU, inter alia, proposals on the reform of the Audio-visual Media Directive, and the Copyright Directive revision.

Mr Kleijssen informed the Bureau about up-coming events: a Conference on "Public Service Media and Democracy", 10-11 November in Prague (see item 4); the Cybercrime Convention Committee (T-CY) and OCTOPUS conference, 14-18 November in Strasbourg; a meeting between Internet companies and Council of Europe, 25 November in Paris (see item 5.5); the IGF, 6-9 December in Guadalajara (Mexico), where the Council of Europe will primarily promote the Cybercrime Convention, and a Seminar about the role and powers of National Human Rights Institutions, 15 December in Strasbourg (see item 5.1).

2. Adoption of the agenda

The Bureau adopted the agenda of its meeting in view of the preparation of the 11th CDMSI meeting, which will take place from 29 November to 2 December 2016. The annotated agenda appears in Appendix 1. The list of participants appears in Appendix 2.

3. Standard setting

3.1 *Committee of experts on media pluralism and transparency of media ownership (MSI-MED)*

The Bureau took note of the information provided by Urška Umek, Secretary of the MSI-MED, on its second meeting (27-28 September 2016) and the committee's progress on its deliverables. It discussed the draft texts, made comments and gave guidance to the Secretariat as to further work.

Draft Recommendation on media pluralism and transparency of media ownership. The Bureau confirmed its interest in the topic, particularly in the light of the new media landscape which requires innovative approaches to ensure media pluralism. In that respect, the Bureau pointed out possible links to the work of the MSI-NET, notably on intermediaries and algorithms. It confirmed the main objectives of the document, especially the need for concrete requirements to ensure transparency of media ownership. Some members pointed out the need for accountability of media and to appropriately address beneficial ownership and transnational ownership. The Bureau also emphasised the need for a clear and concise document and suggested joining certain chapters. The same structure should be applied to the future recommendation.

Draft feasibility study on the use of the Internet in electoral campaigns. The Bureau was informed that the objective of this feasibility study is to analyse challenges raised by the Internet with regard to regulation of communications and content and to provide a recommendation as to the feasibility of policy responses. The Bureau acknowledged that the draft included all the main issues to be addressed. It encouraged CDMSI members to provide available data on the topic, together with possible best practices or other documents produced at the national level. However, it advised a cautious approach in addressing this transversal issue, which also touches upon the financing of political parties and of electoral campaigns, and a need for the harmonisation of the guidance to be given in conjunction with other relevant departments of the Council of Europe.

Draft Feasibility study on gender equality in media coverage of elections. The Bureau was informed about the structure of the study, which is currently at a development stage. The Bureau gave guidance to the Secretariat, notably by proposing that quantitative elements be complemented with qualitative elements, such as visual portrayal in media (and possible biases) of female candidates. Information about possible relevant materials to be used was also provided.

3.2 *Committee of experts on Internet intermediaries (MSI-NET)*

The Bureau took note of the information provided by Charlotte Altenhöner-Dion, Secretary of the MSI-NET, on its second meeting (29-30 September 2016) and the committee's progress on its deliverables. It examined the drafts texts, made comments and gave the Secretariat some guidance as to further work.

Draft recommendation on Internet intermediaries. The Bureau stressed the need to streamline the structure of the draft and to define the focus of the guidelines in a more clear and concise manner. In particular, the Bureau suggested

formulating more clearly the obligations of states and the responsibilities that they should place on intermediaries. The Bureau also discussed the necessity to better articulate the intersection between editorial-like roles of Internet companies and their intermediary functions. The Bureau raised questions about some of the formulations of the draft with regard to issues of jurisdiction, highlighting potential conflicts with national legislation as well as the complexity of jurisdictional issues in general.

Draft report on human rights dimensions of algorithms. The Bureau expressed great interest both in the topic and the draft report; it acknowledged the relevance of the work being done by the Council of Europe as there is need for guidance in member states. It made observations and comments on the need to more clearly identify the specific human rights impacts resulting from the use of algorithms in different sectors of private and public life. It further suggested to include some guidance on regulatory options with regard to algorithms, and to also focus on the editorial-like roles performed by algorithms. In this context, the Bureau took note of information provided on the upcoming Parliamentary Assembly report on technological convergence, artificial intelligence and human rights (due in March 2017).

In respect of the question of a possible up-date of the 2008 Human Rights Guidelines for Internet Service Providers, as discussed by the CDMSI at its 9th meeting (8-11 December 2015), the Bureau was informed about the discussions at the MSI-NET meeting. The Bureau noted the proposal of the European Association of Internet Service Providers (EuroISPA), that its concerns about updating the 2008 Guidelines be addressed in the framework of the draft recommendation on Internet intermediaries currently under preparation. EuroISPA will continue to participate in this process.

4. Co-operation activities

The Bureau took note of the information by the Secretariat on on-going and future co-operation programmes and activities, as reflected in document MEDIA-COOP(2016)02. In particular, detailed information was given on the JUFREX project (a 3 year project funded by the European Union, aimed at South East European countries and mostly devoted to human right training of judiciary), the continued project in Ukraine on Promoting freedom of expression and access to information.

It also noted an up-coming conference co-organised with the Parliamentary Assembly and EBU and hosted by the Chamber of Deputies of the Parliament of the Czech Republic on 10 and 11 November in Prague, on Public Service Media and Democracy, which will address the role of parliamentarians in supporting public service media.

The Secretariat reiterated its call made to Bureau and CDMSI members to support co-operation activities by taking part in them. On that subject, Emir Powlakić informed the Bureau of his participation in a freedom of expression conference in Ukraine on 21-22 September 2016. He will send his report to be shared with the CDMSI.

The Bureau was also consulted on and agreed to a presentation during the 11th CDMSI plenary meeting by a Moroccan delegation on recent amendments to their media laws. The Secretariat recalled that, since this year, Morocco has regularly sent observers to the meeting of the committees of experts.

5. Implementation of Council of Europe adopted standards

5.1 *High level Seminar Freedom of Expression – role and powers of national human rights institutions and other national mechanisms – 15 December 2016, Strasbourg (previously called “workshop”)*

The Secretariat presented the project of a high level seminar, stemming from the Secretary General's Report on the State of Democracy, Human Rights and then Rule of Law in Europe 2016, to be held on 15 December 2016 in Strasbourg.,. Its aim will be to present the Council of Europe's freedom of expression related work to the national human rights institutions, to exchange experiences and practices and to identify common interests and concerns. This should enable targeted and more permanent dialogue and possible future partnerships with those institutions in the implementation and awareness raising related to the Council of Europe standards and activities. The Bureau showed great interest in the event.

5.2 *Initiatives in member States*

The Secretariat recalled the decision taken by the CDMSI for delegates to report, on a voluntary basis, on developments and initiatives in their countries which are related to the work of the Committee.

The Bureau took note of following information:

- The Netherlands: Pien van den Eijnden shared information on reports on *The Public Core of the Internet* and on *The Internet, a Global Free Space with a Limited State Control* and the Dutch reply to these reports;
- France: Joanna Chansel informed the Bureau about a new law aiming at reinforcing media freedom, independence and pluralism (non official translation), adopted on 6 October
- Bosnia and Herzegovina: Emir Povlakić shared information on the country national IGF meeting and SEEDIG.

Furthermore, the Secretariat informed the Bureau about a recent translation by Germany of the Committee of Ministers Recommendation on protecting and promoting the right to freedom of expression and the right to private life with regard to network neutrality, and of the Committee of Ministers recommendation on Internet freedom (being finalised).

Recalling that the translation of adopted texts is both the first step to their implementation and indispensable for co-operation activities, the Bureau encouraged member states to do such work and share it with the Secretariat.

5.3 *Defamation*

The Bureau took note of the publication of the study of case-law of the ECtHR and received a copy of the book. CDMSI members will be invited to provide the Secretariat with possible amendments to the relevant legislation for the second

stage of the project, which will be to update the comparative section of the 2012 study on defamation legislation in the member states

5.4 Fear in journalism

The Secretariat recalled the project of a study, titled "*Journalists at Risk: Part of the Job?*" on fear and self-censorship by journalists, which is a follow-up to the Recommendation on protection of journalism and safety of journalists and other media actors. The commission was appointed to Prof Marilyn Clark, from the University of Malta, who conducted a survey by sending a questionnaire to approximately 1,000 journalists via professional organisations, and covering all Council of Europe member states. The results, both quantitative and qualitative are being scrutinised and analysed. They show worrying results with high percentages of fear and self-censorship.

The Bureau took note of the state of play of the study and welcomed the Secretariat's proposal to invite the author of the study Prof Marilyn Clark for a presentation and exchange of views at the 11th CDMSI plenary meeting.

5.5 Internet governance

The Bureau took note of information by the Secretariat on the state of play of the implementation of the Council of Europe Strategy on Internet Governance 2016-2019, adopted on 30 March 2016 by the Committee of Ministers. An up-dated follow-up table will be available at the 11th CDMSI plenary meeting.

In the framework of the implementation of the Strategy, the Bureau was also informed about a meeting between Council of Europe staff and Internet companies, to be held in Paris on the morning of 25 November 2016, to discuss respect for human rights and rule of law on the Internet with particular regard to the issues violent extremism and radicalisation on the Internet, child protection, hate speech online, and action against cybercrime.

The Bureau took note of the next meeting of EuroDIG, 6 and 7 June 2017 (tentative dates) in Tallinn. A call for issues to be addressed is open until end of December 2016, and that the "*Messages from Brussels*" stemming from the previous EuroDIG are on-line at the EuroDIG web site.

The Bureau was also informed of the up-coming Internet Governance Forum, to take place from 6 to 9 December 2016 in Guadalajara (Mexico), under the overarching theme "*Enabling Inclusive and Sustainable Growth*".

Members of the Bureau insisted that the outcome of national and regional IGFs, as well as national Internet governance meetings such as SEEDIG are better taken into account in meetings of EuroDIG and IGF meetings; this is often the only way for some countries to be represented and heard at these events.

Finally, the Bureau was informed about the up-coming meeting of ICANN (3-9 November 2016, Hyderabad), one important topic being the protection of children in the context of domain names. It also took note of a written expert report commissioned by the Council of Europe titled *The future of community top-level domains (TLDs) and ICANN: Opportunities and challenges for not-for-*

profit communities from a human right perspective. This expert report considers how domain names handle different communities' needs, and will be released in the coming weeks.

5.6 Internet Freedom Conference (9 September 2016)

The Secretariat and the Bureau members who attended the event, reported on the Internet Freedom Conference, held on 9 September 2016 in Strasbourg, and co-organised with the Estonian Chairmanship of the Committee of Ministers and the German Chairmanship of the OSCE. The conference's success was wide-reaching, with about 200 participants, great interest in the webcast and interaction through the Twitter account. The objective of the Conference was to promote the Committee of Ministers Recommendation on Internet freedom. The Report of the Conference will be available at the 11th plenary meeting.

In respect of the implementation of the Recommendation on Internet freedom, Matthias Traimer (Austria) and Emir Povelakić (Bosnia and Herzegovina) had an exchange on how they are preparing their Internet freedom reports. The Bureau expressed strong support for follow-up work suggesting similar events to the conference in the future, especially in conjunction with OSCE.

The Bureau also agreed on a suggestion by its chairperson to invite ECHR Judge Spano, who was one of the panellists of the 9 September conference, to an exchange of views with the CDMSI at its 11th plenary meeting.

6. CDMSI Workshop on "The future of news: media and journalism in the age of digital convergence", 1 December 2016, during the 11th CDMSI plenary meeting

The Secretariat presented the workshop project to be held during the 11th CDMSI plenary meeting on Journalism and media in the age of digital convergence. Such an activity is part of the third activity section of the CDMSI terms of reference, namely "Reflection and dialogue on freedom of expression in the age of digital convergence". A background paper was commissioned to the Reuters Institute for the Study of Journalism. It describes the situation with hard data and will be attached to the CDMSI draft agenda. The objective of the workshop is to discuss challenges to media and journalism in the age of digital convergence and media's embracing of these challenges in order to adapt to them; the new opportunities that this brings will also be explored. Some of the existing policy responses in member States and the European Union will be discussed and the CDMSI members will be invited to share their practices and experiences. The Chairperson thanked the Secretariat for the excellent draft concept note. The Bureau discussed the concept note and gave valuable input which Secretariat will incorporate into it.

7. Data Protection

The Bureau took note with interest of the information provided by the Secretariat on the on-going work in the field of data protection:

- *Modernisation of Convention 108*: a draft amending protocol of Convention 108 has been finalised by the CAHDATA and was considered by the Committee of Ministers group of rapporteurs on legal co-operation (GR-J) on 13 September 2016, together with the abridged report of the meeting of the CAHDATA, which mentions objections formulated by the Delegation of the Russian Federation. The Delegations took note of a proposal for amendment tabled by the RF which should be discussed on 2 November. In general, several other delegations as well as the Presidency of the European Union supported the CAHDATA's proposals and highlighted the need for rapid finalisation of the up-date of the convention. As some delegations proposed that other options for the modernisation of the Convention be explored, the Secretariat was tasked with preparing a document on such possible options, notably a revised Convention and its possible consequences. The issue of the voting rights of the Parties to the Convention in the Committee of the Convention will also be discussed at the next meeting of the GR-J.

- *Work of the Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (T-PD)*:
 - *The opinion of the T-PD on "the Data protection implication of the processing of Passenger Name Records (PNR)"* was finalised and adopted on 15 September 2016;
 - *Draft guidelines on the protection of individuals with regard to the processing of personal data in a world of big data*: it is expected that the draft be adopted by written procedure before the end of 2016;
 - *The Draft CM Recommendation on the protection of health data* was discussed and the T-PD will come back to it at its next plenary meeting in 2017. Once approved by the T-PD, the draft will be submitted to the CDMSI for its consideration and further transmission to the Committee of Ministers.

The Secretariat also emphasised the synergies between the work of the T-PD representative and of the MSI-NET

8. Work of other Council of Europe institutions and bodies

8.1 Secretary General's initiatives

2016 Secretary General's Report on Democracy, Human Rights and the Rule of Law in Europe

The Secretary General's 3rd Annual Report on the State of Democracy, Human Rights and the Rule of Law 2016 was presented to the Committee of Ministers. The chapter on freedom of expression had been prepared by the Media and Internet Division, which has started working on the next edition.

Comparative Study on Blocking, Filtering and Take-down of illegal Internet content in the 47 member States of the Council of Europe

The Bureau took note of information by the Secretariat on a proposal by the Secretary General, which was submitted to the Committee of Ministers in the context of its discussion of the Secretary General's 3rd Annual Report (mentioned above), to draft a set of common standards for all member States on blocking

and filtering of Internet sites by the end of 2016. The Committee of Ministers had discussed the proposed follow-up without taking a concrete decision. In the meantime the Secretariat has started work on a compilation of existing standards on the protection of the right to freedom of expression with regard to blocking, filtering and removal of Internet content. Furthermore the Secretariat is looking at possibilities to update the information of the Comparative Study.

8.2 Committee of Ministers

8.3 Parliamentary Assembly of the Council of Europe

The Secretariat has nothing to report on these items but informed members that issues may be raised between the meeting of the Bureau and of the plenary.

8.4 Commissioner for Human Rights

The Bureau took note of a Commissioner's report on Croatia which contains a chapter on media freedom. It was also informed that, until end 2016, the Commissioner will closely consider media freedom and safety of journalist's issues in Turkey.

8.5 Conference of INGOs of the Council of Europe

The Chairperson informed the Bureau of a request by the INGOs to hold an exchange with the CDMSI to discuss possible synergies and issues of common interest.

As such an exchange appears relevant to both sides, the Bureau agreed to invite Anna Rurka, President of the Conference of INGOs, to the next plenary meeting of the CDMSI.

8.6 Committee of Experts on Terrorism (CODEXTER)

Maja Raković (Serbia) reported on her participation in the CODEXTER working group on special investigation measures. The intention of the CODEXTER is to invite other relevant committees at an early stage rather than waiting for comments on advanced drafts. The CODEXTER aims to have a draft recommendation on the topic approved at the next plenary meeting of the European Committee on Legal Co-operation (CDCJ). According to Maja Raković, the draft is balanced and takes on board freedom of expression as well as the rights covered by article 8.

The Bureau welcomes the information and agreed that the Secretary of CODEXTER be invited to the 11th CDMSI meeting for an exchange of views.

8.7 European Audio-visual Observatory

The Bureau agreed that Maja Cappello, Head of Department for Legal Information of the Observatory, be invited to up-date the CDMSI on the work of the Observatory.

8.8 European Committee on Legal Co-operation (CDCJ)

The Bureau noted that the CDMSI comments on the draft Recommendation on the legal regulation on lobbying activities in the context of public decision-making were transmitted to the CDCJ. The draft recommendation was approved by the CDCJ and is now before the Committee of Ministers for adoption. The Bureau expressed its strong disappointment that its comments were not taken into consideration.

8.9 Participation of CDMSI members in meetings and events

Elfa Ýr Gylfadóttir (Iceland) reported on her participation in a PACE conference on Media Freedom as a cornerstone for democratic elections (4 July 2016, Berlin).

The Bureau noted that none of its members could attend the "Culture 4D: Digitization, Data, Disruption, Diversity" event.

Furthermore, it noted that, during the 11th CDMSI plenary meeting, Maja Zarić, CDMSI gender equality rapporteur, will report on her participation at the Conference "Are we there yet? Assessing progress, inspiring action – the Council of Europe Gender Equality strategy 2014-2017" (30 June – 1 July 2016, Tallinn); Elfa Ýr Gylfadóttir on her future participation in the Annual 2016 EU Colloquium of Fundamental Rights (17-18 November 2016, Brussels), and the 1st Global Internet and Jurisdiction conference (14 November 2016, Paris).

9. Other organisation

European Union

The Bureau decided to invite the Slovak delegation to present a stock-taking of the out-going Presidency of the European Union to the 11th CDMSI meeting, in particular with link to the progress of the reform of the Audio-visual Media Service Directive (AVMSD).

It also decided to invite the delegate of Malta to introduce the future EU Presidency.

10. CDMSI work programme and working methods

10.1 Reflection on a future ministerial conference

The Bureau engaged in substantive discussions on possible items for a future ministerial conference and the challenge in finding a host country. It tasked the Secretariat to prepare a discussion paper for the plenary meeting on the basis of these discussions.

10.2 Dates for 2017 CDMSI and Bureau meeting

The Bureau took note of the dates booked for the CDMSI and the Bureau meetings in 2017. These dates will be communicated to the plenary meeting in November/December for information as follows:

11th CDMSI Bureau: 11 and 12 May 2017

12th CDMSI plenary: 20 (afternoon) to 23 (morning) June 2017

12th CDMSI Bureau: 19 and 20 October 2017

13th CDMSI plenary: 5 (afternoon) to 8 (morning) December 2017

11. Draft agenda of the 11th CDMSI meeting (29 November–2 December 2016)

The Bureau considered the draft provisional agenda for the 11th plenary meeting of the CDMSI and approved it with a few additions. It expressed the wish for annotations to be more precise.

12. Any other business

Pursuant to CM Resolution (2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods, the Bureau took note of the need for the CDMSI to hold elections to its Chair, its Vice-Chair as well as for a member of the Bureau.

The meeting was closed at 13:16.

Appendix I Meeting agenda

*Bureau of the Steering
Committee on Media
and Information Society
– CDMSI -BU*

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

1. Opening of the meeting by Jan Kleijssen, Director, Information Society and Action against Crime

2. Adoption of the agenda

3. Standard setting

3.1 Committee of experts on Media Pluralism and Transparency of Media Ownership (MSI-MED)

3.2 Committee of experts on Internet Intermediaries (MSI-NET)

4. Cooperation activities

5. Implementation of Council of Europe adopted standards and best practices

5.1 Workshop: Freedom of expression – the role and powers of national human rights institutions – Strasbourg, 15 December 2016

5.2 Initiatives in member States

5.3 Defamation

5.4 Fear in journalism

5.5 Internet governance

5.6 Internet Freedom Conference

5.7 Regional Conference with EBU in Prague on “Public Service Media and Democracy”

6. CDMSI Workshop on “Journalism and media in the age of digital convergence”, 1 December 2016, during 11th CDMSI plenary meeting

7. Data protection

8. Work of other Council of Europe institutions and bodies

8.1 Secretary General's initiatives

8.2 Committee of Ministers

8.3 Parliamentary Assembly of the Council of Europe (PACE)

8.4 Commissioner for Human Rights

8.5 Conference of INGOs of the Council of Europe

8.6 Committee of Experts on terrorism (CODEXTER)

8.7 European Audio-visual Observatory

8.8 European Committee on Legal co-operation (CDCJ)

8.9 Participation of CDMSI members in meetings and events

9. Other organisations

European Union

10. CDMSI work programme and working methods

Reflection on a future ministerial conference

11. Draft agenda of the 11th CDMSI meeting (28 November – 2 December 2016)

12. Any other business

Appendix II – list of participants

10th meeting of CDMSI Bureau meeting
Thursday 13 and Friday 14 October 2016

Room G04, Agora

Participants

The gender distribution among 7 attendants was 4 women (57%) and 3 men (43%).

Ms Elfa Ýr Gylfadóttir, Iceland (Chair)
Media Commission, Ministry of Education, Science and Education, Reykjavik

Mr Emir Povlakić, Bosnia-Herzegovina (Vice-Chair)
Head of Division for Licensing, Digitalization and Coordination in Broadcasting,
Communications Regulatory Agency, Sarajevo

Ms Joanna Chansel, France
Bureau des affaires européennes et internationales, Direction générale des médias et des
industries culturelles, Ministère de la culture et de la communication, Paris

Mr. Christoffer Lärkner, Sweden
Department of Culture, Stockholm

Ms Maja Raković, Serbia
Ministry of Foreign Affairs, Belgrade

Mr Matthias Traimer, Austria
Federal Chancellery, Head of Department, Media Affairs and Information Society, Federal
Chancellery, Constitutional Service, Vienna

Ms Pien van den Eijnden, the Netherlands
Senior legal adviser, Ministry of the Interior and Kingdom Relations, The Hague

Secretariat

Mr Jan Kleijssen, Director of Information Society and Action against Crime, 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 Ana Gascón Marcén, Administrator, Media and Internet Division, Directorate General
Human Rights and Rule of Law

Ms Charlotte Altenhoener-Dion, Administrator, 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 Christina Lamprou, 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 Urška Umek, 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

CDMSI -BU(2016)02

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

Interpreters

Angela BREWER

Cynera JAFFREY

Clarissa WORSDALE