

# **Steering Committee on Media and Information Society – CDMSI**

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

**CDMSI(2018)012**

**30/11/2018**

**15th meeting of Steering Committee on Media and Information Society  
(CDMSI)**

**27-30 November 2018**

**(Strasbourg, Council of Europe, Agora, room G02)**

**Abridged meeting report**

The CDMSI held its 15<sup>th</sup> meeting from 27 to 30 November 2018 in Strasbourg, chaired by Ambassador Thomas Schneider (Switzerland). The CDMSI adopted the agenda as it is set out in Appendix I. The list of participants appears in Appendix II. Gender distribution: 70 participants, 35 women (50%) and 35 men (50%).

## **Items submitted to the Committee of Ministers for decision**

### Draft Recommendation on the Protection of Health-related Data

The CDMSI took note of the approval of the draft Recommendation on the protection of health-related data by the Committee of Convention 108, by written procedure, noting that it had already commented on the draft Recommendation earlier in 2018, and decided to transmit it to the Committee of Ministers for possible adoption (Appendix III).

### Draft Declaration of the Committee of Ministers on the manipulative capabilities of algorithmic processes

The CDMSI considered the draft declaration prepared by the subordinate expert committee MSI-AUT and expressed wide support. Following some textual amendments introduced during the discussion, it approved the draft declaration and decided to transmit it to the Committee of Ministers for possible adoption (Appendix IV).

### Draft Declaration on the financial sustainability of quality journalism in the digital age

Following a number of textual amendments, the CDMSI finalised the draft declaration in two versions with and without footnotes (Appendix V and Appendix VI respectively). The version with footnotes will be considered approved in so far as the

Russian delegation shall not express a reservation to the text by 14 December 2018 and will then be transmitted to the Committee of Ministers. If, alternatively, by that date, the Russian Federation will express a reservation to the text, the version without footnotes will be considered as approved, and will be transmitted to the Committee of Ministers together with the reservation.

### **Items submitted to the Committee of Ministers for information**

#### Expert Committee on Quality Journalism in the Digital Age (MSI-JOQ)

The Plenary took note of the information provided by the Secretariat on the second meeting of the MSI-JOQ (24-25 September 2018). It discussed the draft deliverables and provided comments on the texts. The CDMSI welcomed the work undertaken on the draft Recommendation on promoting a favourable environment for quality journalism in the digital age and provided additional information and suggestions, notably on the possibility of redistribution mechanisms between internet intermediaries and producers of media content that will be considered by the Expert Committee in its further work. In respect of the draft Study on media and information literacy in the digital environment, the Plenary supported the work carried out thus far, including the questionnaire that will be used for collecting data on case-studies of valuable practices.

#### Expert Committee on Human Rights Dimensions of Automated Data Processing and Different Forms of Artificial Intelligence (MSI-AUT)

The CDMSI took note of the information provided by the Secretariat on the second meeting of the MSI-AUT (17-18 September 2018) and welcomed the on-going work. The CDMSI suggested, inter alia, that the guidelines avoid excessive detail, as this could diminish their applicability and usefulness in national contexts; and that they should also address the specific challenges for freedom of expression, stemming from the use of algorithmic systems. The draft Study of the Implications of Advanced Digital Technologies (including AI systems) for the Concept of Responsibility within a Human Rights Framework and the draft Study on forms of liability and jurisdictional issues in the application of civil and administrative defamation laws in Council of Europe member states were welcomed as timely and significant contributions to on-going debates. The CDMSI made a number of comments and decided to consider these studies at its June 2019 plenary with a view to bringing them to the attention of the Committee of Ministers.

#### Co-operation activities

The Plenary took note of the information provided by the secretariat on on-going and future co-operation programmes and activities, as reflected in document MEDIA-COOP(2018)01rev3. Appreciation was expressed towards the cooperation activities

undertaken and comments and clarifications were made by a number of delegations. The Moroccan delegation presented their activities in the field of freedom of expression and the media.

### Privacy and data protection

The CMSI took note of information related to the 37th plenary meeting of the Committee of Convention 108 held in Strasbourg from 20 to 22 June 2018. The CDMSI was informed about the total number of Parties to Convention 108 (53 countries) with the latest accessions, effective on 1 October 2018, of Cabo Verde and Mexico. It was also informed that, since the opening for signature on 10 October 2018, 22 signatures to the Amending Protocol (CETS 223) to Convention 108 have been received. The CDMSI further noted the following on-going work of the Committee of Convention 108: the draft explanatory memorandum of the Recommendation on the protection of health-related data; the draft guidelines on Artificial Intelligence; the development of an evaluation and follow-up mechanism under Convention 108+; the dissemination of the Privacy and data protection principles guide for ICANN; its involvement in the drafting of the Second Additional Protocol to the Budapest Convention.

### Safety of journalists

The CDMSI welcomed the on-going work on a qualitative study on fear as a factor affecting choices between self-censorship and ethical journalism in Europe, as a follow-up to the 2017 Council of Europe publication "Journalists under Pressure". It took note that, as per the decision taken by the CDMSI in June 2018, the Implementation Strategy of Recommendation CM/Rec(2016)4 was published on the Freedom of Expression website on 14 September 2018. It also took note of the on-going work on the Implementation Guide to CM/Rec(2016)4 and was informed that, upon its completion, a questionnaire aimed at identifying best practices on the implementation of CM/Rec(2016)4, with regards to the protection and prosecution pillars, will be sent to Member States. The responses will further complement the Implementation Guide and will also inform the work on the Ministerial Conference. The CDMSI heard a presentation regarding the set-up of a "Steering Committee on Violence and Aggression against Journalists" in the Netherlands by the Government to protect journalists against violence and aggression.

### Platform to Promote the Protection of Journalism and the Safety of Journalists

The CDMSI was briefed about the developments and trends registered by the Platform to Promote the Protection of Journalism and the Safety of Journalists in the area of safety of journalists and held an exchange of views with the Director of Democratic Participation, DG Democracy, Matjaz Gruden.

### Internet governance

The Plenary discussed 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. The CDMSI took note of information provided on CoE involvement in the preparation, organization and carrying out of five events at the Internet Governance Forum organized in Paris. The Plenary was equally informed of the CDMSI Chair's and the CoE Secretariat's participation at the ICANN 63 meeting in Barcelona.

The CDMSI held an exchange of views with the Thematic Coordinator on Information Policy (TC-INF), Ambassador of the Republic of Moldova Corina Călugăru on relevant activities, and in particular, on an exchange of views with the departments of the Council of Europe Secretariat that dealt with AI, coordinated by Jan Klejssen, Director of the Information Society and Action against Crime Directorate; and on the intention to further strengthen relations between the Council of Europe and internet companies.

Members took note of information provided by Patrick Penninckx, Head of Information Society Department, including with regards to the up-coming conference on 26 and 27 February 2019 in Helsinki under the Finnish CoE Chairmanship: "Artificial Intelligence: Governing the Game Changer – Impacts of AI development on human rights, democracy and the rule of law", which will discuss challenges and opportunities arising from AI developments in the different fields of action of the CoE and in respect of which the Media and Internet division is playing a leading role. Furthermore, the CDMSI noted the Global Internet and Jurisdiction Conference in Berlin on 3 to 5 June, the RightsCon Summit in Tunis on 11 to 14 June 2019 and EURODIG in the Hague on 19 to 20 June 2019.

#### European Convention on Transfrontier Television

The Committee took note of the latest replies to the consultation, launched in March 2017, on member states' views regarding a possible revision of the Transfrontier Television Convention.

The Committee held an exchange with Anna Herold, Head of Unit, Audiovisual and Media Policy from the European Commission (DG CONNECT) on the revision of the EU Audio-visual Media Services Directive to enter into force 19 December 2018, its transposition until 19 September 2020 and, more generally, on possible synergies with the EU Commission.

The CDMSI took note of the fact that, while the European Convention on Transfrontier Television is in force, its Standing Committee (T-TT) is not resourced, and no budgetary resources are available for the revision of the Convention. The CDMSI agreed that, following the transposition of the EU Audio-visual Media Services Directive into EU member states' legal order, members will send the Secretariat written information on their experience of the transposition, notably with regard to video sharing platforms, in order to explore the way forward as concerns a possible revision process.

#### Parliamentary Assembly

The Plenary took note of the state of play of CDMSI comments on a series of PACE recommendations and on CM replies, where appropriate. With reference to the PACE Recommendation on "Legal challenges to hybrid war and human rights obligations", the CDMSI was informed that the CM draft reply fully took into account and reflected the CDMSI comments and has tasked the CDMSI to work on a new recommendation concerning media coverage of election campaigns.

### Ministerial Conference

The CDMSI welcomed the Committee of Minister's acceptance on 28 November 2018 of the Proposal for a Conference of Ministers responsible for Media and Information Society and again thanked its member Cyprus for hosting this important conference planned for 28 and 29 May 2020 in Nicosia. The CDMSI was informed of a first introductory meeting of the Drafting Group that was held in the margins of the Plenary in order to agree on the way forward. It noted that background papers will be commissioned to experts on the topics included in the Proposal, to be delivered in spring 2019. These will provide the starting point for the resolutions and final declaration, will be drafted by the drafting group and discussed in a first meeting to be held back to back with the Bureau meeting (11 and 12 April), possibly on 10 April. In this context, the CDMSI discussed priority areas of work based on the proposal for the ministerial conference and with a view to shaping its future terms of reference. Members were invited to make proposals for future terms of reference in writing until 31st January 2019.

### Application for CDMSI observer status

Following a presentation and a round of questions, the CDMSI approved the applications for observer status of the Committee to Protect Journalists (CPJ) and of International Media Service (IMS).

### Election of the Chair, Vice-Chair and one Plenary member

The election of the Chair, Vice-Chair and one Plenary member for a term of one year, until end of 2019, was held. Mr Thomas Schneider (Switzerland) was re-elected as Chair for a term of one year, Ms Elfa Ýr Gylfadóttir (Iceland) was re-elected vice-Chair for a term of one year, Mr Serge Robillard (Monaco) was elected as a member of the Bureau for a term of one year, all of them unanimously.

### **In addition, the CDMSI took note of and discussed the following items:**

- The Secretary General's decision not to prepare a 2019 Annual Report on the State of Democracy, Human Rights and the Rule of Law and his decision to focus instead on the preparation of the Helsinki Summit and the related report on the reform of the CoE for the next ten years. The CDMSI was also informed of the Department of Information Society's plans to issue a media freedom report, in parallel with the platform for the safety of journalists which will publish its annual report.

- A meeting convened by the Secretary General with the Chairs of intergovernmental committees in order to address the importance of their work and strengthen their cooperation with other CoE bodies and institutions. Mr. Penninckx stressed that the Council of Europe is the only organisation which has developed a comprehensive set of standards on freedom of expression and freedom of the media, which apply at the pan-European level and this prominent role has been recognised by the European Union.
- Presentations on a number of initiatives communicated to the Secretariat, including, but not limited to: Austria's self-evaluation report under the Internet Freedom recommendation (CM/Rec(2016)5); France's bill on disinformation; the United Kingdom's Internet Safety Strategy and fund to help stimulate the provision and plurality of public service original UK content; Ukraine's and Slovakia's translation of a number of CM Recommendations into its national language, Iceland's preparation of four laws related to freedom of expression (addressing hate speech, decriminalisation of defamation, breach of confidentiality in public administration, ISPs and hosts); Latvia's setting up of an ethics related media council; Switzerland's efforts to draft a new law on electronic media; Montenegro's draft law on National Service Broadcaster and Media Law which benefited from Council of Europe assistance; Serbia's media literacy programs in schools; Monaco's draft law on electronic communication.
- information provided by Lennig Pedron from the ICON IONG and Didier Schretter, Conference of INGOs of the Council of Europe, on activities within civil society to enhance digital trust, in particular as regards cyber security and AI development. Information was provided on the ICON conference "The Journey to Digital Trust", held on 13 September 2018 in Geneva, addressing cybercrime related issues.
- On-going preparation of an Implementation Handbook on Children's Rights in the Digital Environment. This work has been initiated by the Council of Europe Ad Hoc Committee for the Rights of the Child (CAHENF) following the adoption of the Committee of Ministers' Recommendation on Guidelines for member States to respect, protect and fulfil children's rights in the digital environment. A first preparatory meeting with consultants was held on 20 September 2018 in Strasbourg. Mr Thomas Schneider, Chair of the CDMSI, and a representative of the Secretariat attended this meeting. A first draft of the Implementation Handbook is expected by the end of the year 2018 and the CDMSI will be invited to comment.
- A draft questionnaire for the evaluation of the implementation of Recommendation CM/Rec(2013)1 on gender equality and media which will be carried out together with the Gender Equality Commission. The delegates will receive the draft questionnaire by email with a deadline to provide comments, whereupon the Secretariat will finalise the text, distribute it among the four groups of addressees (member states authorities, media organisations, media regulatory authorities and press councils) and provide a deadline of at least 12 weeks for answers. Based on the answers, a report will be drafted in 2019

including conclusions and practical recommendations for a better implementation of the Recommendation.

- Information provided by the Commissioner for Human Rights Dunja Mijatović, followed by a fruitful exchange of views, including on possible synergies. The CDMSI was briefed in particular about the Commissioner for Human Rights' work since she has taken up office, with a focus on human rights defenders and her work on the issue of safety of journalists.
- Information provided on the CDCT's CoE Counter-Terrorism Strategy (2018 - 2022) as approved by the CM on 4 July 2018 and its plan to establish a compilation of best practices based on States' experience on responsible conduct for the media and internet service providers and other relevant actors to prevent the spread of terrorism and its ideology. The CDMSI agreed that the participation of a CDMSI delegate in the work of the CDCT on this specific topic could be envisaged.
- Information on the CDDH's "Guide to good national practices on how to reconcile freedom of expression with other rights and freedoms, in culturally diverse societies". The CDMSI noted that Member States have received a detailed questionnaire with a specific section on hate speech and that the CDDH should conclude its work at the end of 2019.
- information delivered by the Representative of Austria on the out-going Presidency of the Council of the EU;
- Information provided by the Executive Director of the European Audiovisual Observatory, Susanne Nikoltchev, and the Head of the Department for Market Information, Gilles Fontaine on the European Audio-visual Observatory's activities and publications, notably a new monthly newsletter and a report on legal consequences of Brexit for the audio-visual sector of November 2018, which was discussed in connection with the AVMS Directive and the European Convention on Transfrontier Television.
- Information provided by Emmanuelle Machet, EPRA Secretariat on: the outcome of the 48th EPRA Meeting (Bratislava 10-12 October 2018); the adopted guidance "On how to encourage stakeholders' involvement" and on "Evaluating Media Literacy Projects" of the EPRA Media Literacy Taskforce; a comparative report on Gender equality and broadcasting, mapping out the role of audio-visual regulators to promote greater gender representation and portrayal on- and off screen.
- Information provided by the Secretariat on the UNESCO Internet Universality Indicators, which includes the Council of Europe Internet Freedom Recommendation. The CDMSI agreed to have an exchange of views on this topic with Mr Guy Berger, Director for Freedom of Expression and Media Development at UNESCO, during the up-coming June 2019 Plenary with a focus on potential synergies in the implementation of the CoE

recommendation and the new UNESCO instrument. In preparation of this exchange the CDMSI was invited to submit suggestions in writing by the end of February 2019.

- The attendance and reports of Emir Povelakić (Bosnia and Herzegovina) of the Cybercrime Convention Committee (T-CY) Plenary and the Octopus conference held in Strasbourg, from 9-13 July 2018.
- information delivered by the secretariat on Council of Europe's Directorate (DIO) of three Internal Oversight evaluations, namely the "Council of Europe support to the protection and promotion of freedom of expression"; the "Evaluation of Intergovernmental Committees" and the "evaluation on CoE support in the fight against corruption".
- finally, the CDMSI took note that the Russian Federation will not pay its contribution to the Council of Europe for 2019, highlighting its implications for the Council of Europe's budget and its human resources.

The CDMSI noted that the dates of the next meetings are set for 4 to 6 June and for 3 to 5 December 2019 in Strasbourg.

Noting the absence of a quorum, the CDMSI finalised the abridged report of the meeting and agreed that in the absence of reactions by 14 December 2018 end of working day, it will be considered adopted by the plenary.



## APPENDIX I - Agenda

<b>1. Opening of the meeting</b>
<b>2. Adoption of the agenda</b>
<b>3. Standard setting</b>
<i>3.1 Committee of experts on Human Rights Dimensions of Automated Data Processing and Different Forms of Artificial Intelligence (MSI-AUT)</i>
<i>3.2 Committee of experts on Quality Journalism in the Digital Age (MSI-JOQ)</i>
<b>4. Cooperation activities</b>
<b>5. Implementation of Council of Europe adopted standards and best practices</b>
<i>5.1 Initiatives in member states</i>
<i>5.2 Internet governance</i>
<i>5.3 Implementation of the CM Recommendation on protection of journalism and safety of journalists and other media actors</i>
<i>5.4 Platform to Promote the Protection of Journalism and the Safety of Journalists</i>
<i>5.5 Implementation of Recommendation CM/Rec(2013)1 on gender equality and media</i>
<b>6. European Convention on Transfrontier Television</b>
<b>7. Data protection</b>
<b>8. Work of other Council of Europe institutions and bodies</b>
<i>8.1 Secretary General's initiatives</i>
<i>8.2 Committee of Ministers</i>
<i>8.3 Parliamentary Assembly of the Council of Europe</i>
<i>8.4 Commissioner for Human Rights</i>
<i>8.5 Conference of INGOs of the Council of Europe</i>
<i>8.6 Council of Europe Counter-Terrorism Committee (CDCT)</i>
<i>8.7 Steering Committee for Human Rights (CDDH)</i>
<i>8.8 European Audio-visual Observatory and EPRA</i>
<i>8.9 Participation of CDMSI members in meetings and events</i>
<b>9. Other organisations</b>
<i>9.1 European Union</i>
<i>9.2 UNESCO</i>
<b>10. CDMSI work programme and working methods</b>
<i>10.1 Reflection on a future conference of ministers responsible for media and information society</i>
<i>10.2 Evaluation by the Directorate of Internal Oversight (DIO)</i>
<b>11. Application for CDMSI observer status</b>
<b>12. Election of the Chair, Vice-Chair and one Bureau member</b>
<b>13. Any other item</b>

## **Appendix II – List of participants**

Total number of participants : 70

Gender distribution : 35 men (50%) / 35 women (50%)

### **ALBANIA / ALBANIE**

Mr Glevin Dervishi

Adviser, Ministry of Foreign Affairs

### **ARMENIA / ARMENIE**

Ms Kima Khachatryan

Ministry of Justice of Armenia

### **AUSTRIA / AUTRICHE**

Mr Matthias Traimer

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

### **AZERBAIJAN**

Ms Jeyran Amiraslanova

Senior Adviser of the Administration of the President

### **BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE**

Mr Emir Povelakić

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

### **CROATIA / CROATIE**

Ms Nives Zvonarić

Head of Media Sector, Independent Media Sector, Ministry of Culture

### **CYPRUS / CHYPRE**

Ms Sofia (Sunny) Papadimitriou Tofa

Press and Information Officer, Ministry of Interior

Mrs Sophia A. Michaelides

Director, Press and Information Office, Ministry of Interior

### **CZECH REPUBLIC / REPUBLIQUE TCHEQUE**

Mr Artus Rejent

Media and Audio-vision Department, Ministry of Culture

### **FRANCE**

Ms Joanna Chansel

Bureau des affaires européennes et internationales

Direction Générale des Médias et des Industries Culturelles, Ministère de la Culture et de la  
Communication

M. Julien Plubel

Sous-Direction de la Culture et des Médias

Direction générale de la Mondialisation, de la culture, de l'enseignement et du  
développement international

**GEORGIA / GEORGIE**

Mr George Paniashvili  
Deputy Director  
International Law Department, Ministry of Foreign Affairs

**GERMANY / ALLEMAGNE**

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

Ms Christiane Semar  
Internationale Zusammenarbeit im Medienbereich; Deutsche Welle; Rundfunk  
Die Beauftragte der Bundesregierung für Kultur und Medien

Ms Sara Diefenbach  
Internationale Zusammenarbeit im Medienbereich; Deutsche Welle; Rundfunk  
Die Beauftragte der Bundesregierung für Kultur und Medien

**GREECE / GRECE**

Mr Iordanis Giamouridis  
Head of Department for Audiovisual and Electronic Media  
Directorate for Media, Secretariat General for Communication & Media, Ministry for Digital  
Policy and Media

**HUNGARY / HONGRIE**

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

**ICELAND / ISLANDE**

Ms Elfa Ýr Gylfadóttir (Vice-Chair)  
Media Commission, Ministry of Education, Science and Education

**IRELAND / IRLANDE**

Ms Triona Quill  
Head of Broadcasting and Media Division  
Department of Communications, Climate Action and Environment

**ITALY / ITALIE**

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

**LATVIA / LETTONIE**

Mr Andris Mellakauls  
Information Space Integration, Ministry of Culture

**LITHUANIA**

Ms Rasa Zdanevičiūtė  
Media and Copyright Policy Division, Ministry of Culture

**LUXEMBOURG**

Ms Céline Flammang

Conseillère  
Ministère d'État, Service des médias et des communications

**MOLDOVA / MOLDOVIE**

Mr Artur Cozma  
Member of Coordinating Council of the Audiovisual of the Republic of Moldova

**MONACO**

M. Serge Robillard  
Délégation Interministérielle pour la Transition Numérique  
Chargé des relations institutionnelles, Principauté de Monaco

**MONTENEGRO**

Mr Ranko Vujovic  
Executive Director, UNEM

**THE NETHERLANDS / PAYS-BAS**

Ms Inge Welbergen  
Senior Legal Officer Media, Ministry of Education, Culture and Science

Dr Khalid El Aassaoui  
Programmamanager  
Ministerie van Binnenlandse Zaken en Koninkrijksrelaties

**RUSSIAN FEDERATION / FEDERATION RUSSIE**

Mr Alexander Fedorinov  
Ministry of Foreign Affairs of Russia

Ms Veronika Kryuchkova  
Ministry of Foreign Affairs of Russia

**SERBIA / SERBIE**

Ms Maja Zarić  
Ministry of Culture and Information  
Media and Information Department

**SLOVENIA / SLOVENIE**

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

**SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE**

Ms Viktória Knappová  
Ministry of Culture of the Slovak Republic, advisor at Media, Audiovisual and Copyright  
Department

**SWEDEN / SUEDE**

Mr Christoffer Lärkner  
Division for Media and Film, Ministry of Culture

**SWITZERLAND / SUISSE**

Mr Thomas Schneider (Chair)  
Ambassador

Director of International Affairs  
Federal Department of the Environment, Transport, Energy and Communication DETEC  
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Ms Livia Walpen  
International Relations, Federal Department of the Environment,  
Transport, Energy and Communications DETEC

Mr Oliver Gerber  
Media lawyer (lic. iur.)  
Division Media / Section Media Services  
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Mr Pierre Smolik  
Spécialiste des médias  
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**„FORMER YUGOSLAV REPUBLIC OF MACEDONIA „/ „EX-REPUBLIQUE  
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Ms Vesna Poposka  
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**TURKEY / TURQUIE**

Mr Mehmet Bora Sönmez  
Expert, International Relations Department, Radio and Television Supreme Council

Mr East Çiplak  
Deputy Chairperson of Regulatory Authority

Mr İlhan Taşci  
Member of Regulatory Authority

Mr Taha Yücel  
Member of Regulatory Authority

**UKRAINE**

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

**UNITED KINGDOM / ROYAUME-UNI**

Ms Kathleen Stewart  
Head of International Broadcasting Policy

Mr Mark Carvell  
International Online Policy  
Security and Online Harms Directorate

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**OBSERVERS/PARTICIPANTS**

**ASSOCIATION OF EUROPEAN JOURNALISTS (AEJ) / MEDIA FREEDOM REPRESENTATIVE**

Mr William Horsley

**BELARUS**

Mr Anatoly Glaz

Senior Counsellor of the Chief Department of Multilateral Diplomacy of MFA Belarus

**COMMITTEE TO PROTECT JOURNALISTS (CPJ)**

Mr Tom Gibson

EU Representative

**COMMUNITY MEDIA FORUM EUROPE**

Ms Nadia Bellardi

Mr Jean Ngendahimana

**CONFERENCE OF INTERNATIONAL NON-GOVERNMENTAL ORGANISATIONS OF THE COUNCIL OF EUROPE / CONFÉRENCE DES ORGANISATIONS INTERNATIONALES NON GOUVERNEMENTALES DU CONSEIL DE L'EUROPE**

Mr Didier Schretter

INGO representative to the CDMSI

Ms Lennig Pedron

Co-founder and President of ICON-NGO, member of the INGO network

**EUROPEAN BROADCASTING UNION (EBU)**

Mr Michael Wagner

Deputy Director, Legal Department

Mr Giacomo Mazzone

Head of Institutional Relations

**EUROPEAN COMMISSION**

Ms Anna Herold

Head of Unit, Audiovisual and Media Policy (DG Connect)

**EUROPEAN FEDERATION OF JOURNALISTS (EFJ)**

Mr Marc Gruber

European Director

**HOLY SEE / SAINT SIEGE**

Dr Michael Lukas - Episcopal Press Office

**IFEX**

Ms Silvia Chorocco-Marcesse

Global Advocacy Strategist

**INTERNATIONAL MEDIA SUPPORT**

Ms Gulnara Akhundova

Head of Department for Global Response

Ms Antonina Cherevko

**MOROCCO / MAROC**

Ms Chanaz El Akrichi

Ms Meriem Khatouri

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**COUNCIL OF EUROPE / CONSEIL DE L'EUROPE**

**THEMATIC CO-ORDINATOR ON INFORMATION POLICY (TC-INF)**

Ms Corina Călugăru

Ambassador, Permanent Representative of the Republic of Moldova to the Council of Europe

**THE COUNCIL OF EUROPE COMMISSIONER FOR HUMAN RIGHTS**

Ms Dunja Mijatović

Ms Anne Weber, Advisor

**DIRECTORATE OF DEMOCRATIC PARTICIPATION, DIRECTORATE GENERAL OF DEMOCRACY / DIRECTION DE LA PARTICIPATION DEMOCRATIQUE, DIRECTION GENERALE DE LA DEMOCRATIE**

Mr Matjaz Gruden

Director

**CHILDREN'S RIGHTS / DROITS DES ENFANTS**

**DIRECTORATE GENERAL OF DEMOCRACY / DIRECTION GENERALE DE LA DEMOCRATIE**

Ms Maren Lambrecht-Feigl

**ADVISORY COUNCIL ON YOUTH OF THE COUNCIL OF EUROPE / CONSEIL CONSULTATIF SUR LA JEUNESSE DU CONSEIL DE L'EUROPE**

Mr Dominik Scherrer

Federation of Swiss Youth Parliaments

**EUROPEAN AUDIO-VISUAL OBSERVATORY**

Ms Susanne Nikoltchev, Executive Director

M. Gilles Fontaine, Head of Department for Market Information

**EPRA**

Ms Emmanuelle Machet

\* \* \*

**INTERPRETERS / INTERPRETES**

Ms Pascale Michlin

Ms Bettina Lidewig

M. Jean-Jacques Pedussaud

\* \* \*

**SECRETARIAT**

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

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

Ms Urška Umek, Head of Media Unit, Media and Internet Division, Directorate General Human Rights and Rule of Law

Ms Charlotte Altenhöner-Dion, Head of Internet Governance Unit, Media and Internet Division, Directorate General Human Rights and Rule of Law

Ms Ivan Nikoltchev, Head of Cooperation Unit, Media and Internet Division, Directorate General Human Rights and Rule of Law

Ms Elena Dodonova, Administrator, Media and Internet Division, Directorate General Human Rights and Rule of Law

Ms Francesca Montagna, Administrator, Media and Internet Division, Directorate General Human Rights and Rule of Law

Ms Małgorzata Pełk, Project officer, Media and Internet Division, Directorate General Human Rights and Rule of Law

Mr Peter Kimpiàn, Administration, Data Protection Unit, Information Society Department, Directorate General Human Rights and Rule of Law

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

Ms Aliisa Siivonen, Trainee, Media and Internet Division, Directorate General Human Rights and Rule of Law



### Appendix III

#### **Recommendation CM/Rec(2018).... of the Committee of Ministers to member States on the protection of health-related data**

*(adopted by the Committee of Ministers ... 2018, at the ... meeting of the Ministers' Deputies)*

Having regard to the provisions of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data<sup>1</sup> of 28 January 1981 (ETS No. 108, hereinafter "Convention 108") and of its Additional Protocol regarding supervisory authorities and transborder data flows of 8 November 2001 (ETS No. 181), the Committee of Ministers is convinced of the desirability of facilitating the application of those principles to the processing of health-related data.

States face major challenges today, relating to the processing of health-related data, which now takes place in an environment that has changed considerably since the adoption of Recommendation (97)5 on the protection of medical data.

This changed environment is due to the phenomenon of data digitisation, made possible by the growing computerisation of the professional sector and particularly of activities relating to health care and prevention, to life sciences research and to health system management and to the proliferation of exchanges of information arising from the development of the Internet.

The benefits of this increasing digitisation of data can be found in numerous occasions, such as in the enhancement of public health policies, medical treatment or patients' care. The prospects of such benefits require that the advent and never-ending increase of the quantity of data, coupled to the technical analysis capacities linked to personalised health care be accompanied by legal and technical measures enabling an effective protection of every individual.

People's desire to have more control over their personal data and the decisions based on the processing of such data, the increasing involvement of patients in understanding the manner in which decisions concerning them are being taken, are additional features of this change.

Besides, geographical mobility accompanied by the development of mobile health applications, medical devices and connected objects is also contributing to new uses and to the production of a rapidly growing volume of health-related data processed by more diverse stakeholders.

This assessment shared by the member States has prompted to propose a revision of Recommendation (97)5 on the protection of medical data, with the more general term "health-related data" being preferred, while reaffirming the sensitivity of health-related data and the importance of regulating their use so as to guarantee due regard for the rights and fundamental freedoms of every individual, in particular the right to protection of privacy and personal data.

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<sup>1</sup> The Amending Protocol CETS n°223 has been adopted on 18 May 2018 and the modernised Convention is currently subject to ratification process.

Health-related data are among the data belonging to a special category which, under Article 6 of Convention 108, enjoy a higher level of protection due notably to the risk of discrimination which may occur with their processing.

Everyone is entitled to the protection of her or his health-related data. The individual receiving care is entitled, when dealing with a professional operating in the health and medico-social sector, to respect for privacy and the confidentiality of the information.

The processing of health-related data shall always aim at serving the data subject or at enhancing the quality and efficiency of care, possibly also enhancing health systems, while respecting individuals' fundamental rights.

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe, recommends that the member States:

- take steps to ensure that the principles set forth in the appendix to this Recommendation, which replaces Recommendation (97)5 above-mentioned, are reflected in their law and practice;
- ensure, to that end, that this Recommendation and its appendix are brought to the attention of the authorities responsible for healthcare systems, with the latter being responsible for promoting their transmission to the various actors who process health-related data, in particular healthcare professionals, data protection officers or persons having similar duties;
- promote acceptance and application of the principles set forth in the appendix to this Recommendation, using additional instruments such as codes of conduct, while ensuring that these principles are well-known, understood and applied by all players who process health-related data and taken into account in the design, deployment and use of the information and communication technologies (ICTs) in that sector.

## **Appendix to Recommendation CM/Rec(2018)...**

### **Chapter I. General provisions**

#### **1. Purpose**

The purpose of this Recommendation is to provide member States with guidance for regulating the processing of health-related data in order to guarantee respect for the rights and fundamental freedoms of every individual, particularly the right to privacy and to protection of personal data as required by Article 8 of the European Convention on Human Rights. It highlights the importance of developing secured interoperable information systems.

#### **2. Scope**

This Recommendation is applicable to the processing of personal data relating to health in the public and private sectors. To this end, it also applies to the exchange and sharing of health-related data by means of digital tools. It should not be interpreted as limiting or otherwise affecting the possibility for law to grant data subjects a wider protection.

The provisions of this Recommendation do not apply to health-related data processing performed by individuals in the context of purely personal or household activities.

#### **3. Definitions**

For the purposes of this Recommendation, the following expressions are defined as follows:

- The expression "personal data" refers to any information relating to an identified or identifiable individual ("data subject").
- The expression "data processing" means any operation or set of operations which is performed on personal data, such as the collection, storage, preservation, alteration, retrieval, disclosure, making available, erasure, or destruction of, or the carrying out of logical and/or arithmetical operations on such data.
- The expression "anonymisation" refers to the process applied to personal data so that the data subjects can no longer be identified either directly or indirectly.
- The expression "pseudonymisation" means the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information kept separately and subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable individual. Pseudonymised data are personal data.
- The expression "health-related data" means all personal data concerning the physical or mental health of an individual, including the provision of healthcare services, which reveals information about this individual's past, current and future health.
- The expression "genetic data" means all data relating to the genetic characteristics of an individual which have been either inherited or acquired during prenatal development, as they result from an analysis of a biological sample from the individual concerned, in particular

chromosomal, DNA or RNA analysis or analysis of any other element enabling equivalent information to be obtained.

- The expression "controller" means the natural or legal person, public authority, service, agency or any other body which, alone or jointly with others, has the decision-making power with respect to data processing.

- The expression "processor" means a natural or legal person, public authority, service, agency or any other body which processes data on behalf of the controller.

- The expression "reference framework" denotes a coordinated set of rules and/or processes kept constantly state-of-the-art, adapted to practice and applicable to health information systems, covering the areas of interoperability and security. Such frameworks may be given a binding nature by law.

- The expression "interoperability" denotes the ability of different information systems to communicate and exchange data.

- The expression "mobile applications" denotes a set of means accessible in a mobile environment making it possible to communicate and manage health-related data remotely. It covers different forms such as connected medical objects and devices which can be used for diagnostic, treatment or wellbeing purposes among other things.

- The expression "health professionals" covers all professionals recognised as such by law practising in the health, medical welfare or social welfare sector, bound by a confidentiality obligation and involved in providing health care.

- The expression "external data hosting" denotes the use of third party data service providers irrespective of the platform used for the secure and lasting digital storage of data.

## **Chapter II. The legal conditions for the processing of health-related data**

### **4. Principles concerning data processing**

4.1 Anyone processing health-related data should comply with the following principles:

a. the data must be processed in a transparent, lawful and fair manner.

b. the data must be collected for explicit, specific and legitimate purposes as prescribed in principle 5 and must not be processed in a manner which is incompatible with these purposes. Further processing for archiving purposes in the public interest, for scientific or historical research purposes or statistical purposes is not regarded as incompatible with the initial purposes, where appropriate guarantees enable rights and fundamental freedoms to be respected.

c. The processing of data should be necessary and proportionate in relation to the legitimate purpose pursued and should be carried out only on the basis of consent of the data subject as laid down in principle 5.2 or on other legitimate basis as laid down in other paragraphs of principle 5.

d. Personal data should, in principle and as far as possible, be collected from the data subject. Where the data subject is not in a position to provide the data and such data are

necessary for the purposes of the processing, they can be collected from other sources in accordance with the principles of this Recommendation.

e. The data must be adequate, relevant and not excessive in relation to the purposes for which they are processed; they must be accurate and, if necessary, kept up to date.

f. Appropriate security measures, taking into consideration the latest technological developments, the sensitive nature of health-related data and the assessment of potential risks, should be established to prevent risks such as accidental or unauthorised access to, destruction, loss, use, unavailability, inaccessibility, modification or disclosure of personal data.

g. The rights of the individual whose data are processed must be respected, particularly the rights of access to the data, information, rectification, objection, and deletion as provided for in principles 11 and 12 of this Recommendation.

4.2 Personal data protection principles should be taken into account by default (privacy by default) and incorporated right from the design of information systems which process health-related data (privacy by design). Compliance with these principles should be regularly reviewed throughout the life cycle of the processing. The controller should carry out, before commencing the processing and at regular intervals, an assessment of the potential impact of the processing of data foreseen in terms of data protection and respect for privacy, including of the measures aimed at mitigating the risk.

4.3 Data controllers and the processors acting under their responsibility should take all appropriate measures to fulfil their obligations with regard to data protection and should be able to demonstrate in particular to the competent supervisory authority that the processing is in line with those obligations.

4.4 Data controllers and their processors who are not health professionals should only process health-related data in accordance with rules of confidentiality and security measures that ensure a level of protection equivalent to the one imposed to health professionals.

## **5. Legitimate basis of health-related data processing**

Processing is only lawful if and to the extent that the controller can rely on at least one of the legitimate basis described in the following paragraphs:

5.1 Without prejudice to the situations covered by the subsequent paragraphs, health-related data may only be processed where appropriate safeguards are enshrined in law and the processing is necessary for:

- a. preventive medical purposes and purposes of medical diagnosis, administration of care or treatment, or management of health services by health professionals and those of the social and medico-social sector, subject to the conditions provided for by law;
- b. reasons of public health, such as for example protection against health hazards, humanitarian action or in order to ensure a high standard of quality and safety for medical treatment, health products and medical devices, subject to the conditions provided for by law;
- c. the purpose of safeguarding the vital interests of the data subject or of

another individual where consent cannot be collected;

- d. reasons relating to the obligations of the controllers and to the exercise of their rights or those of the data subject regarding employment and social protection, in accordance with law or any collective agreement complying with the said law;
- e. reasons of public interest in the field of managing claims for social welfare and health insurance benefits and services, subject to the conditions provided for by law;
- f. processing for archiving purposes in the public interest, for scientific or historical research purposes or statistical purposes subject to the conditions defined by law in order to guarantee protection of the data subject's fundamental rights and legitimate interests (see in particular the conditions applicable to the processing of health-related data for scientific research under Chapter V);
- g. reasons essential to the recognition, exercise or defence of a legal claim;
- h. reasons of substantial public interest, on the basis of law, which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.

5.2 Health-related data may be processed if the data subject has given her or his consent, except in cases where law provides that a ban on health-related data processing cannot be lifted solely by the data subject's consent. Where consent of the data subject to the processing of health-related data is required, in accordance with law, it should be free, specific, informed and explicit. The data subject shall be informed of her or his right to withdraw consent at any time and be notified that such withdrawal shall not affect the lawfulness of the processing carried out on the basis of her or his consent before withdrawal. It shall be as easy to withdraw as to give consent.

5.3 Health-related data may be processed where the processing is necessary for the execution of a contract entered into by the data subject or on his or her behalf with a health professional subject to conditions defined by law, including the obligation of secrecy.

5.4 Health-related data manifestly made public by the data subject can be processed.

5.5 In all cases, appropriate safeguards should be established in order to guarantee, in particular, the security of the data and respect for the rights of the individual. Any other guarantees may be provided for by law with a view to safeguarding respect for rights and fundamental freedoms.

## **6. Data concerning unborn children**

Health-related data concerning unborn children, inter alia such as data resulting from a prenatal diagnosis or from the identification of the genetic characteristics of such children should enjoy an appropriate protection.

## **7. Health-related genetic data**

7.1 Genetic data should only be collected subject to appropriate safeguards and where it is either prescribed by law or on the basis of the consent expressed by the data subject in accordance with the provisions of paragraph 5.2, except where consent is excluded by law as legal basis for the processing of genetic data. The provisions of Recommendation (2015)<sup>5</sup> of the Committee of Ministers on the processing of personal data in the context of employment are to be taken into consideration where the processing of genetic data occurs in an employment context.

7.2 Genetic data processed with a preventive aim, for diagnosis or for treatment of the data subject or a member of her or his biological family or for scientific research should be used only for these purposes or to enable the persons concerned by the results of such tests to take an informed decision on these matters.

7.3 Processing of genetic data for the purpose of a judicial procedure or investigation should be used only when there are no alternative or less intrusive means to establish whether there is a genetic link in the context of the production of evidence, to prevent a real and immediate danger or to for the prosecution of a specific criminal offence, subject to appropriate procedural safeguards. Such data should not be used to determine other characteristics which may be linked genetically, except where appropriate safeguards are provided for by law.

7.4 Processing of genetic data can be used for the purpose of identification of individuals in humanitarian crisis or action where appropriate safeguards are provided for by law.

7.5 Existing predictive data resulting from genetic tests should not be processed for insurance purposes, except where this is specifically provided for by law. In that case, their processing should only be authorised in full respect of the applicable criteria defined by law, in light of the type of test used and the particular risk concerned. The provisions of Recommendation (2016)<sup>8</sup> on the processing of personal health-related data for insurance purposes, including data resulting from genetic tests are also to be taken into consideration in that regard.

7.6 The data subject is entitled to know any information relating to her or his genetic data subject to the provisions of principles 11.6 and 12.7. Nevertheless, the data subject may have her or his own reasons for not wishing to know about certain health aspects and anyone should be informed, prior to any analysis, of the possibility of not being informed of the results, including of unexpected findings. Her or his wish not to know may, in exceptional circumstances, have to be restricted as foreseen by law, notably in the data subject's own interest or in light of the doctors' duty to provide care.

## **8. Sharing of health-related data for purposes of providing and administering health care**

8.1 Where health-related data are shared by different professionals for purposes of providing and administering health care of an individual, the data subject shall be informed beforehand, except where this proves to be impossible due to an emergency or in accordance with principle 11.4. Where the sharing is based on the consent of the data subject, such consent can be withdrawn at any time in accordance with principle 5.2. Where

the sharing is authorised by law, the data subject can object to the sharing of her or his health-related data.

8.2 Professionals operating on a particular individual case in the health and medico-social sector and sharing data in the interests of greater co-ordination to ensure the quality of health care should be subject to professional confidentiality incumbent upon a health-care professional, or to equal rules of confidentiality.

8.3 The exchange and sharing of data between health professionals should be limited to the information strictly necessary for the co-ordination or continuity of care, prevention or medico-social and social follow-up of the individual, with the respective actors only able in this case to share or receive data lying within the scope of their tasks and depending on their authorisations. Appropriate measures should be taken to ensure the security of the data.

8.4 The use of an electronic medical file and of an electronic mailbox allowing for the sharing and exchange of health-related data should respect those principles.

8.5 In the exchange and sharing of health-related data, physical, technical and administrative security measures should be adopted, as well as those necessary to guarantee the confidentiality, integrity and availability of health-related data.

## **9. Communication of health-related data for purposes other than providing and administering health care**

9.1 Health-related data may be communicated to recipients where the latter are authorised by law to have access to the data.

9.2 Insurance companies cannot be regarded as recipients authorised to have access to the health-related data of individuals unless law provides for this with appropriate safeguards and in accordance with principle 5.

9.3 Employers cannot be regarded as recipients authorised to have access to the health-related data of individuals except in the conditions provided for by Recommendation (2015)5 of the Committee of Ministers on the processing of personal data in the context of employment.

9.4 Health-related data can, unless other appropriate safeguards are provided for by law, only be communicated to an authorised recipient who is subject to the rules of confidentiality incumbent upon a health-care professional, or to equivalent rules of confidentiality.

## **10. Storage of health-related data**

The data should not be stored in a form which permits identification of the data subjects for longer than is necessary for the purposes for which they are processed unless they are used for archiving purposes in the public interest, for scientific or historical research purposes or for statistical purposes and where appropriate measures enable to safeguard the rights and fundamental freedoms of the data subject. In this case, data should in principle be anonymised as soon as the research, the archiving activity or the statistical study enables it.

## **Chapter III. The rights of the data subject**



## **11. Transparency of processing**

11.1 The controller must inform the data subject of the processing of her or his health-related data.

The information must include:

- the identity and contact details of the controller and of the processors where relevant,
- the purpose for which the data are processed, and where appropriate the relevant legal basis for it,
- the length of preservation of the data,
- the recipients or categories of recipients of the data, and planned data transfers to a third country, or an international organisation,
- the possibility, if applicable, of objecting to the processing of her or his data, in the conditions prescribed in principle 12.2,
- the conditions and the means made available to her or him for exercising via the controller her or his rights of access, of rectification and to erasure of her or his health-related data.

The information must where necessary, with a view to ensuring a fair and transparent processing, also include:

- that her or his data may subsequently be processed for a compatible purpose, in accordance with appropriate safeguards provided for by law and in the conditions prescribed in paragraph 4.1.b,
- the possibility of lodging a complaint with a supervisory authority,
- the existence of automated decisions, including profiling which is only permissible where prescribed by law and subject to appropriate safeguards.

11.2 This information should be provided prior to data collection or at the first communication.

11.3 The information must be intelligible and easily accessible, in a clear and plain language and suited to the circumstances to allow a full understanding of the processing by the data subject. In particular, where the data subject is physically or legally incapable of receiving the information, it may be given to the person legally representing her or him. If a legally incapacitated person is capable of understanding, he or she should also be informed before the data are processed.

11.4 The controller is not required to provide this information where the data subject already has the necessary information. Moreover, where the personal data are not collected directly from the data subject, the controller is not required to inform her or him where the processing is expressly prescribed by law or this proves to be impossible, for instance where the contact details of the individual have changed and the individual cannot be found or is not reachable, or it involves disproportionate efforts from the controller, in particular for processing for archiving purposes in the public interest, for scientific or historical research purposes or for statistical purposes.

11.5 An individual's wish to be kept in ignorance of a diagnosis or prognosis should be complied with, except where this constitutes a serious risk for the health of third parties.

11.6 The controller is not required to inform the data subject where this is provided for by law and is necessary and proportionate in a democratic society for the reasons specified in Article 9 of Convention 108.

## **12. Access to data, rectification, erasure, objection to the processing and data portability**

12.1 The data subject has the right to know whether personal data which concern her or him are being processed, and, if so, to obtain - without excessive delay or expense and in an intelligible form - communication of her or his data and to have access in the same conditions to at least the following information:

- the purpose or purposes of the processing,
- the categories of personal data concerned,
- the recipients or categories of the recipients of the data and the envisaged data transfers to a third country, or an international organisation,
- the preservation period,
- the reasoning underlying data processing where the results of such processing are applied to her or him, notably in the case of profiling.

12.2 The data subject has the right to erasure of data processed in violation of this Recommendation. The data subject is entitled to obtain rectification of data concerning her or him. The data subject furthermore has the right to object on grounds relating to her or his personal situation to the processing of her or his health-related data, unless it is anonymised or the controller demonstrates an overriding and legitimate reason for pursuing the data processing.

12.3 If the request to rectify or erase the data is refused or if the data subject's objection is rejected, he or she should be able to have a remedy.

12.4 The data subject shall have the right not to be subject to a decision significantly affecting her or him based solely on an automated processing, including profiling<sup>2</sup>, of her or his health-related data. This prohibition can only be derogated to where the law provides that such a processing can be based on the consent of the data subject or that the processing is necessary for reasons of substantial public interest, such a law should be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific safeguards to protect the fundamental rights and freedoms of the data subject.

12.5 Data subjects should be able to obtain from the controller, subject to conditions prescribed by law, where the processing is performed by automatic means, the transmission - in a structured, interoperable and machine-readable format - of their personal data with a view to transmitting them to another controller (data portability). The data subject should also be able to require from the controller that he or she transmits directly the data to another controller.

12.6 Health professionals have to put in place all necessary measures in order to ensure respect for the effective exercise of such rights as an element of their professional deontology.

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<sup>2</sup> See notably Recommendation (2010)13 of the Committee of Ministers on the protection of individuals with regard to automatic processing of personal data in the context of profiling.

12.7 The rights of the data subject can be subject to restrictions where such restrictions are provided for by law and are necessary and proportionate measures in a democratic society for the reasons specified in Article 9 of Convention 108.

12.8 The law should provide for appropriate safeguards ensuring the respect for the data subject's rights.

## **Chapter IV. Security and interoperability**

### **13. Security**

13.1 The processing of health-related data is to be made secure. In this regard, security measures adapted to the risks for human rights and fundamental freedoms must be defined and implemented to ensure that all stakeholders observe high standards guaranteeing the lawfulness of the processing and security and confidentiality of such data.

13.2 Data security provisions, provided for by law or other regulations, and which may be contained in reference frameworks, should result in state-of-the-art technical and organisational measures, which are regularly reviewed, so as to protect personal health-related data from any illegal or accidental destruction, any loss or any impairment, and to guard against any unauthorised access or unavailability or inaccessibility. In particular, the law should make provision for organising and regulating procedures concerning the collection, storage and restitution of health-related data.

13.3 System availability – i.e. the proper functioning of the system – should be ensured by measures enabling the data to be made accessible in a secure way and with due regard for the level of permission of authorised persons.

13.4 Guaranteeing integrity presumes verification of the actions carried out on the data, any changes made to or deletion of data, including the communication of data. It also requires the establishment of measures to monitor access to the data base and the data themselves, ensuring that only authorised persons are able to access the data.

13.5 Auditability should lead to a system making it possible to trace any access to the information system and modifications made and for any action carried out, to be able to identify its author.

13.6 Activity entailing hosting externally health-related data and making them available for users should comply with the security reference framework and principles of personal data protection.

13.7 Professionals who are not directly involved in the individual's health care, but by virtue of their assigned tasks ensure the smooth operation of the information systems, may have access, insofar as this is necessary for the fulfilment of their duties and on an ad hoc basis, to personal health-related data. They must have full regard for professional secrecy and comply with appropriate measures laid down in law to guarantee the confidentiality and security of the data.

### **14. Interoperability**

14.1 Interoperability may help address important needs in the health sector and may provide technical means to facilitate the updating of information or to avoid storage of identical data in multiple databases and contribute to data portability.

14.2 It is however necessary that interoperability be carried out in full compliance with the principles provided for by this Recommendation, in particular the principles of lawfulness, necessity and proportionality and that data protection safeguards be put in place when using interoperable systems.

14.3 Reference frameworks based on international norms, offering a technical frame which, facilitates interoperability, should ensure that a high level of security is guaranteed while providing for such interoperability. The monitoring of the implementation of such reference frameworks can be done through certification schemes.

## **Chapter V. Scientific research**

### **15. Scientific research**

15.1 The processing of health-related data for the purposes of scientific research should be subject to appropriate safeguards provided for by law, complementing the other provisions of this Recommendation, and be carried out with a legitimate aim and be in compliance with the rights and fundamental freedoms of the data subject.

15.2 The need to process health-related data for scientific research should be evaluated in light of the purposes of the research project and the risks to the data subject and, as concerns the processing of genetic data, in light of the risk to the biological family.

15.3 Health-related data should, in principle be processed in a scientific research project if the data subject has consented to it in accordance with the provisions of principle 5.2. However, the law may provide for the processing of health-related data for scientific research without the data subject's consent. Such a law should be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific safeguards to protect the fundamental rights and freedoms of the data subject. These safeguards should especially include the obligation to put in place technical and organisational measures to ensure the respect for the principle of data minimisation.

15.4 The data subject should, in addition to what is foreseen in Chapter III be provided with prior, transparent and comprehensible information that is as precise as possible with regard to:

- the nature of the envisaged scientific research, the possible choices that he or she could exercise as well as any relevant conditions governing the use of the data, including re-contact and feedback;
- the conditions applicable to the storage of the data, including access and possible communication policies; and
- the rights and safeguards provided for by law, and specifically of her or his right to refuse to participate in the research and withdraw at any time.

15.5 The controller should not be obliged to provide the information if the conditions laid down in principle 11.4 are fulfilled. Moreover, and without prejudice to the provisions of Recommendation (2016)6 of the Committee of Ministers on research on biological materials of human origin, law may provide for derogations from the controller's obligation to inform

the data subject if the health-related data have not been obtained from the data subject and the obligation to inform the data subject is likely to render impossible or seriously impair the achievement of the specific research purposes. In such cases the controller should take appropriate measures to protect the data subject's rights and freedoms and legitimate interests, including making the information publicly available.

15.6 As it is not always possible to determine beforehand the purposes of different research projects at the time of the collection of data, data subjects should be able to express consent for certain areas of research or certain parts of research projects, to the extent allowed by the intended purpose, with due regard for recognised ethical standards.

15.7 The conditions in which health-related data are processed for scientific research must be assessed, where necessary, by the competent independent body (e.g. an ethics committee).

15.8 Healthcare professionals who are entitled to carry out their own medical research and scientists in other disciplines should be able to use the health-related data which they hold as long as the data subject has been informed of this possibility beforehand in compliance with paragraph 15.4 and subject to complementary safeguards determined by law such as requiring explicit consent or the assessment of the competent body designated by law.

15.9 Where scientific research purposes allow, data should be anonymised and where research purposes do not allow, pseudonymisation of the data, with intervention of a trusted third-party at the separation stage of the identification, is among the measures that should be implemented to safeguard the rights and fundamental freedoms of the data subject. This must be done where the purposes of the scientific research can be fulfilled by further processing which does not permit or no longer permits the identification of data subjects.

15.10 Where a data subject withdraws from a scientific research, her or his health-related data processed in the context of that research should be destroyed or anonymised in a manner not to compromise the scientific validity of the research and the data subject should be informed accordingly.

15.11 Personal data used for scientific research should not be published in a form which enables the data subject to be identified, except:

- a. where the data subject has consented to it, or
- b. where law permits such publication under the condition that this is indispensable for the presentation of research findings on contemporary events and only to the extent that the interest in publishing the data overrides the interests and fundamental rights and freedoms of the data subject.

## **Chapter VI. Mobile applications**

### **16. Mobile applications**

16.1 Where the data collected by these applications, whether implanted on the individual or not, may reveal information on the physical or mental state of an individual in connexion with her or his health and well-being or concern any information regarding health care and medico-social provision, they constitute health-related data. In this connection they enjoy the same legal protection and confidentiality applicable to other health-related data

processing as defined by this Recommendation and, where applicable, supplemented by the law.

16.2 Individuals using such mobile applications, as soon as they involve the processing of their personal data, must enjoy the same rights as those provided for in Chapter III of this Recommendation. They must notably have obtained beforehand all necessary information on the nature and functioning of the system in order to be able to control its use. To this effect clear and transparent information on the intended processing should be drafted by the controller with the participation of the software designer and the software distributor whose respective roles have to be determined in advance.

16.3 Any use of mobile applications must be accompanied by specific, tailored and state-of-the-art security measures which notably provide for the authentication of the person concerned and the encryption of the transmission of data.

16.4 The external hosting of health-related data produced by mobile applications must obey security rules providing for the confidentiality, integrity and restitution of the data upon request of the data subject.

## **Chapter VII. Transborder flows of health-related data**

### **17. Protecting health-related data flows**

17.1 Transborder data flows may only take place where an appropriate level of data protection is secured in accordance with the safeguards provided for in Convention 108, or on the basis of the following derogatory regime aimed at allowing a transfer to a recipient which does not ensure such an appropriate level of protection:

- a. the data subject has given explicit, specific and free consent to the transfer, after being informed of risks arising in the absence of appropriate safeguards; or
- b. the specific interests of the data subject require it in the particular case; or
- c. prevailing legitimate interests, in particular important public interests, are provided for by law and such transfer constitutes a necessary and proportionate measure in a democratic society; or
- d. the transfer constitutes a necessary and proportionate measure in a democratic society for freedom of expression.

## **Appendix IV**

### **Draft Declaration of the Committee of Ministers on the manipulative capabilities of algorithmic processes**

1. Council of Europe member States have committed themselves to build societies based on the values of democracy, human rights and the rule of law. This commitment remains and should be honoured throughout the ongoing process of societal transformation that is fuelled by technological advancements. Member States must ensure the rights and freedoms enshrined in the European Convention on Human Rights to everyone within their jurisdiction, equally offline and online, in an environment of unprecedented political, economic and cultural globalisation and connectedness.
2. Digital services are used today as an essential tool of modern communication, including political communication between governments and between public institutions and citizens. Moreover, they are fundamental for a growing number of users for news consumption, education, entertainment, commercial transactions and multiple other forms of everyday activities. This results in unprecedented amounts of new data that are constantly created with mounting speed and scale.
3. Advanced technologies play a pivotal role in maintaining the efficiency and public service value of digitisation, in strengthening individual autonomy and self-determination, and in enhancing human flourishing by creating optimal conditions for the exercise of human rights. Reference is made in this context to Recommendation CM/Rec(2007)16 on measures to promote the public service value of the internet; Recommendation CM/Rec(2014)6 on a guide to human rights for internet users; and Recommendation CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries.
4. Technology is an ever growing presence in our daily lives and prompts users to disclose their relevant, including personal, data voluntarily and for comparatively small awards of personal convenience. Public awareness, however, remains limited regarding the extent to which everyday devices collect and generate vast amounts of data. These data are used to train machine-learning technologies to prioritise search results, to predict and shape personal preferences, to alter information flows, and, sometimes, to subject individuals to behavioural experimentation.
5. Current discussions regarding the application and strengthening of data protection laws must consider the particular risks for and interests of those persons that may be especially unaware of the dangers of data exploitation. This includes children as well as persons belonging to marginalised communities who may face language barriers or other structural disadvantages. It may also include those who, because of their particularly large digital footprint, are especially exposed to new forms of data-driven surveillance.
6. Increasingly, computational means make it possible to infer intimate and detailed information about individuals from readily available data. This supports the sorting of individuals into categories, thereby reinforcing different forms of social, cultural, religious,

legal and economic segregation and discrimination. It also facilitates the micro-targeting of individuals based on profiles in ways that may profoundly affect their lives.

7. Moreover, data-driven technologies and systems are designed to continuously achieve optimum solutions within the given parameters specified by their developers. When operating at scale, such optimisation processes inevitably prioritise certain values over others, thereby shaping the contexts and environments in which individuals, users and non-users alike, process information and make their decisions. This reconfiguration of environments may be beneficial for some individuals and groups while detrimental to others, which raises serious questions about the resulting distributional outcomes. The effects of the targeted use of constantly expanding volumes of aggregated data on the exercise of human rights in a broader sense, significantly beyond the current notions of personal data protection and privacy, remain understudied and require serious consideration.

8. Contemporary machine learning tools have the growing capacity not only to predict choices but also to influence emotions and thoughts and alter an anticipated course of action, sometimes subliminally. The dangers for democratic societies that emanate from the possibility to employ such capacity to manipulate and control not only economic choices but also social and political behaviours, have only recently become apparent. In this context, particular attention must be paid to the significant power that technological advancement confers to those – be they public entities or private actors – who may use such algorithmic tools without adequate democratic oversight or control.

9. Fine grained, sub-conscious and personalised levels of algorithmic persuasion may have significant effects on the cognitive autonomy of individuals and their right to form opinions and take independent decisions. These effects remain underexplored but cannot be underestimated. Not only may they weaken the exercise and enjoyment of individual human rights, but they may lead to the corrosion of the very foundation of the Council of Europe. Its central pillars of human rights, democracy and the rule of law are grounded on the fundamental belief in the equality and dignity of all humans as independent moral agents.

In view of the foregoing, the Committee of Ministers:

- draws attention to the growing threat to the right of human beings to form opinions and take decisions independently of automated systems, which emanates from advanced digital technologies. Attention must be paid particularly to their capacity to use massive amounts of personal and non-personal data to sort and micro-target people, to identify individual vulnerabilities and exploit accurate predictive knowledge, and to reconfigure social environments in order to meet specific goals and vested interests;
- encourages member states to assume their responsibility to address this threat by
  - a) ensuring that adequate priority attention is paid at senior level to this inter-disciplinary concern that often falls in between established mandates of relevant authorities;



- b) considering the need for additional protective frameworks related to data that go beyond current notions of personal data protection and privacy and address the significant impacts of the targeted use of data on societies and on the exercise of human rights more broadly;
  - c) initiating, within appropriate institutional frameworks, open-ended, informed and inclusive public debates with a view to providing guidance on where to draw the line between forms of permissible persuasion and unacceptable manipulation. The latter may take the form of influence that is subliminal, exploits existing vulnerabilities or cognitive biases, and/or encroaches on the independence and authenticity of individual decision-making;
  - d) taking appropriate and proportionate measures to ensure that effective legal guarantees are in place against such forms of illegitimate interference; and
  - e) empowering users by promoting critical digital literacy skills and robustly enhancing public awareness of how many data are generated and processed by personal devices, networks, and platforms through algorithmic processes that are trained for data exploitation. Specifically, public awareness should be enhanced of the fact that algorithmic tools are widely used for commercial purposes and, increasingly, for political reasons, as well as for ambitions of anti- or undemocratic power gain, warfare, or to inflict direct harm.
- underlines equally the responsibility of member States to lead and support the exploration and research into the autonomy, equality and welfare enhancing potential of advanced data processing and machine learning technologies. In particular should incentives be created to develop services that strengthen equal access to and enjoyment of human rights, and create broad value for society, among others by encouraging the catering to the needs of historically marginalised or thus far underserved communities. To this end, structural diversity in innovation and research must be promoted.
  - acknowledges the need to consider, at both national and international levels, the growing onus on the industry across sectors to live up to their important functions and influence with commensurate levels of increased fairness, transparency and accountability, in line with their responsibility to respect human rights and fundamental freedoms, and under the guidance of public institutions.
  - stresses the societal role of academia in producing independent, evidence-based and interdisciplinary research and advice for decision-makers regarding the capacity of algorithmic tools to enhance or interfere with the cognitive sovereignty of individuals. This research should take account of existing diversity in societies, and should include all backgrounds and ages of users not only regarding their behaviours as consumers but including wider impacts on their emotional well-being and personal choices in societal, institutional and political contexts.

- draws attention to the necessity of critically assessing the need for stronger regulatory or other measures to ensure adequate and democratically legitimated oversight over the development, deployment and use of algorithmic tools with a view to ensuring that there is effective protection against unfair practices or abuse of monopolies.
- emphasises in particular the need to assess the regulatory frameworks related to political communication and electoral processes to safeguard the fairness and integrity of elections offline as well as online in line with established principles. In particular it must be ensured that voters have access to comparable levels of information across the political spectrum, that voters are aware of the dangers of political redlining, which occurs when political campaigning is limited to those most likely to be influenced, and that voters are protected effectively against unfair practices and manipulation.
- underlines the vital role played by independent and pluralistic media in overseeing public affairs and processes on behalf of the electorate, thereby acting as public watchdogs and contributing to meaningful and informed debate.
- encourages member States to maintain an open and inclusive dialogue with all relevant stakeholders globally with a view to avoiding path dependencies and fully considering all available options towards effectively addressing this emerging and thus far understudied, and possibly underestimated, concern.

## Appendix V

### Draft Declaration on the financial sustainability of quality journalism in the digital age

*(Adopted by the Committee of Ministers on XXXXX at the XX meeting of the Ministers' Deputies)*

1. A democratic society requires citizen participation in public decision-making. This presupposes that individuals have available to them relevant and credible information from diverse sources enabling them to form and express their opinions and make informed choices about their government and society. Independent and pluralistic media play a vital public watchdog role by overseeing public affairs and political structures and processes at both local and national level. Furthermore, they report on a wide range of other matters of public interest and provide a shared forum for meaningful debate, within and between all communities in a society.
  
2. The right to freedom of expression and media freedom, as guaranteed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, "the Convention"), is wide in scope and contributes to promoting and protecting the principles of democracy, human rights and the rule of law on which the Council of Europe is built and which it is committed to uphold. This right is a prerequisite for a favourable environment for quality journalism, which serves an important democratic function. Quality journalism extends the range of diverse, credible, interesting and timely information available to the public and counteracts propaganda<sup>3</sup>, misinformation<sup>4</sup> and disinformation<sup>5</sup> proliferating on social media in particular.
  
3. Quality journalism is upheld by journalistic practices that serve the public interest and are based on good faith and the ethics of the profession. Such practices, irrespective of whether performed by professional journalists or other authors, seek to provide accurate and reliable information that complies with the principles of fairness, independence and transparency, public accountability and humanity. Journalism committed to these principles should be acknowledged as a public good, so as to emphasise its key role and value for societies and to encourage a wide range of stakeholders, including member states, to join efforts in ensuring its promotion and support, also through financial means.

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<sup>3</sup> Propaganda is a statement that demonstrates a reckless disregard for verifiable information (see Joint declaration on freedom of expression and "fake news", disinformation and propaganda of the United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information (2017)).

<sup>4</sup> Misinformation is information that is false, but not created with the intention of causing harm (see Wardle, C. and Derakhshan, H. (2017) Information disorder: Toward an interdisciplinary framework for research and policy making, Council of Europe, DGI(2017)09).

<sup>5</sup> Disinformation is information that is false and deliberately created to cause harm (see *ibid.*).

4. The technological evolution of the past decades has radically changed how news and other media content are produced, circulated and received. News is now extensively distributed online, with a few platforms acting as powerful intermediaries and with many individuals accessing news through social media, search engines and similar online services and resources, and increasingly via mobile devices and applications.
5. The digitisation process has, in turn, transformed the economic reality of journalism, compromising its traditional business model based on revenues from sales and/or advertising, and causing disruption in the media sector. The growing digital and mobile consumption of news has been a catalyst for the decrease in the circulation of print media, often coupled with a decline in their subscription revenues. Furthermore, the vast audience reach of major online platforms and corresponding economies of scale, their data-driven business models and potential for personalised, targeted messaging make these actors very attractive for the advertising industry. As a result, advertising spending has shifted to a very significant degree from traditional media companies to these platforms, rewarding distribution of content more than its creation.
6. Sustainability of media outlets, the largest investors in news content, is at great risk, as their resource-intensive and costly production does not carry a commensurate economic value or financial rewards. The decline of the media industry and accompanying cut-backs have resulted in reduced news coverage, significant job losses and deterioration of journalists' working conditions, all of which hinders all media in their public watchdog role, but weighs particularly heavily on the local, investigative and cross-border journalism. These factors render journalists vulnerable to pressures from powerful news sources and their employers, impinge on their investigative capacities and create a climate conducive to both censorship and self-censorship. Moreover, the weakened sustainability has contributed to a growing concentration of media ownership and may lead to a less diverse news environment.
7. Some media outlets have responded to these pressures by changing their journalistic practices to prioritise speed and volume over substance, harnessing the possibilities of the digital environment, including online platforms' algorithms, for engaging the attention of the audience. A "clickbait" culture is developing, the main purpose of which is to attract attention by using exaggerated and emotional headlines. Such reporting favours content produced without sufficient regard for accuracy, fact-checking and separation of fact and opinion. It inclines towards sensationalism, with a negative effect on the overall quality of journalism and trust therein.
8. New organisations are emerging to fill some of the gaps left by the traditional media outlets. However, these organisations face similar challenges. They, too, struggle to find sustainable business models for quality journalism. Moreover, in this age of growing scepticism towards democratic institutions, the media are vulnerable to being labelled as partisan or "fake", even where they are committed to high standards of journalism. Lacking the brand recognition of their established counterparts, the new organisations in the media ecosystem must work particularly hard and more innovatively to gain the trust of their target audiences.

9. Furthermore, even though internet intermediaries were not created with the explicit purpose of serving the news needs of society, some online platforms have become major distributors of news and have progressively assumed curatorial or editorial-like functions, thus shaping the users' experience of journalism while acquiring great power in the digital economy. Their content moderation and ranking is supported by non-transparent policies – in the form of algorithms that may result in content being filtered out despite being lawful – and their personalised selection, organisation and recommendations of news are based on expressed or inferred users' preferences and adapted to their profiles. Such recommendations, although useful for navigating a vast amount of available sources, are designed for maximum engagement of the target audience and with little consideration for the public interest, promoting both quality sources and other, even misleading or false, content. They also negatively affect the diversity of individuals' news exposure, reinforcing individuals' choices within their established preferences, and thus may contribute to political, social and/or cultural fragmentation.
10. The digital environment provides new opportunities for free expression and diversity of opinions, but is also susceptible to manipulation, disinformation and spread of hateful messages. In order to redeem its promise of fostering a culture of informed public debate and active participation in the democratic process, it is of the utmost importance that individuals are empowered to understand this environment and its challenges. This allows them to effectively access relevant and credible news and information and makes them aware of the risks of engaging with, and spreading, deceptive, malicious, or blatantly false content. To this end, individuals need to develop a wide range of skills for media and information use and an awareness of their rights and responsibilities in relation to the use of digital tools and technologies.
11. The media are exploring alternative formats for delivering content in order to (re)build interest in quality journalism; to direct advertising revenue back to their industry, including through branded or sponsored content; to create new revenue streams, and to reduce their dependence on any one form of funding. While new digital technologies enable innovative journalistic approaches, solutions range from consolidation of media's operations into larger networks, not-for-profit and foundation-supported forms of organisation, to funding models based on reader payment such as donations, subscriptions and membership fees. Notwithstanding these measures, continued targeted investments in the media ecosystem are indispensable to restore and maintain journalism that combines editorial quality, integrity, independence and a high level of ethics with sustainable technological and economic development.
12. States' support and commitment to providing a pluralist media ecosystem in accordance with their positive obligations under Article 10 of the Convention should take into account all sectors and types of media, bearing in mind their different purposes, functions, affordances and geographical reach. Support mechanisms should include measures for ensuring the basic financial sustainability of this ecosystem. Public service media, as an essential feature of pluralistic communication and provider of varied and high-quality content, should remain accessible to everyone online as well as offline and should enjoy sustainable public financing, in accordance with a number of Council of

Europe instruments, the latest being Recommendation CM/Rec(2018)1 of the Committee of Ministers to member states on media pluralism and transparency of media ownership. In addition, there is a need to develop and strengthen public policy measures at European, as well as at local levels to ensure that community media, as well as other types of media serving local and rural communities, have financial and legal resources and space to operate on all distribution platforms.

In view of the foregoing, the Committee of Ministers:

Affirms that a favourable environment for freedom of expression and media freedom presupposes advantageous political, legal, social and economic conditions for quality journalism in the public interest, recognising that such journalism is a public good and has substantial benefits for democracy;

Alerts member states to the importance of promoting, through an enabling regulatory and policy framework that facilitates the operation of all media ranging from established to innovative forms, long-term financial sustainability of quality journalism produced in line with the editorial and ethical standards of the profession, while establishing effective safeguards for ensuring that such a framework does not constrain editorial and operational independence of the media;

Reiterates member states' commitment to ensure stable, sustainable, transparent and adequate funding for public service media in line with the principles and standards of the Council of Europe, notably Recommendation CM/Rec(2018)1 of the Committee of Ministers to member states on media pluralism and transparency of media ownership;

Encourages member states to include in their media regulatory and policy frameworks a variety of measures which may include, but are not limited to the following:

- a) A beneficial tax regime for the production and distribution of journalistic content;
- b) Financial support schemes for media sectors besides public service media, in particular for regional, local, hyperlocal and not-for-profit community media, with accompanying safeguards for their independent administration and oversight and for equitable and non-discriminatory distribution of such support in line with the principles of transparency and accountability and standards of the Council of Europe;
- c) Media and journalism development measures financed through a variety of funding schemes including by private-public partnerships and aimed at (i) supporting investigative journalism, including cross-border journalism, and innovative journalistic projects, (ii) developing viable business models for hyperlocal journalism and freelance journalists, (iii) supporting the transition of printed publications to the digital environment, (iv) building a digital presence for small, particularly local media outlets, (v) developing journalistic skills and training and media literacy programmes for newsrooms, (vi) strengthening

journalistic ethics and principles such as fact-checking or reflecting a plurality of views present in society, (vii) encouraging and promoting careers in journalism, (viii) developing business skills of media practitioners adapted to the digital economy, including skills for audience measurement and analysis, or (ix) supporting the development of new technologies for newsrooms, as well as funding and increased capacity building for the use of the existing technologies, based on the needs of individual newsrooms and those of their audiences;

- d) The possibility for media outlets to operate as not-for-profit organisations and be able to receive donations from local, national and international philanthropic programmes;

Acknowledges the necessity to consider the growing responsibilities of those internet intermediaries, notably online platforms, which through their wide geographical reach and user engagement act as main gateways for news dissemination and generate important revenue from online news. Their active role in providing services of public value and their influence in the media ecosystem should be accompanied by public interest responsibilities developed through self-regulatory mechanisms or other appropriate and proportionate regulatory or co-regulatory frameworks, aimed to ensure, *inter alia* that:

- a) With due regard to their status as important sources of information and communication, the intermediaries' criteria by which they curate, categorise and rank online content and thus influence, through automated or human-directed processes, the visibility, accessibility and promotion of news and other journalistic publications, are transparent and applied in line with freedom of expression principles, notably the right to receive and impart information. Such criteria should be applied without discrimination against individual news sources and/or preventing access to legal journalistic content based on political or other opinion or on the form of expression, so as to stimulate diverse media choices;
- b) In the exercise of their curatorial or editorial-like functions whereby they categorise, rank or display content, they develop, in collaboration with media actors, civil society and other relevant stakeholders, mechanisms and standards for assessing credibility, relevance and diversity of news and other journalistic content. Content that complies with such standards should be promoted over disinformation and other manipulative, malicious or blatantly false content, notably through improved distribution processes and clear information to the users on how to find and access credible news sources. Online platforms should also commit to improve the transparency and oversight of advertisement placement on their websites, so as to avoid diverting revenues from credible news sources to sources of disinformation and false content;
- c) Revenues arising from the monetisation of news and other journalistic content in the digital environment are equitably shared and, if necessary, redistributed from online platforms to news content providers, ensuring a balancing effect of such monetisation on the economics of the media industry. Any such contribution

schemes can be made through voluntary programmes or state-mandated mechanisms and should be developed in cooperation with the relevant stakeholders. They should be overseen by an independent body and guided by the principles of transparency and accountability; they should ensure that the gains are used to sustain news and other content produced in line with editorial and ethical standards of the profession. A level playing field between the media and online platforms should also be facilitated through appropriate procedures for equitable access to and sharing of data collected in the process of distributing individual media companies' online products, in order to prevent that the platforms' dominant position in the data economy is perpetuated and reinforced to the detriment of online news media;

Highlights the importance of providing everyone with effective access to quality journalistic content, irrespective of income levels and any other barriers. Such access should be complemented by media and information literacy programmes including data literacy designed to raise awareness among the audience about the importance for democracy of freedom of expression and media freedom, the right to access information in the public interest and quality journalism, to educate the public on the skills and knowledge required to recognise quality journalistic products and to encourage them to engage with such products, which should be available and accessible to all groups, including through affordable technological solutions;

Encourages continued dialogue between all relevant stakeholders, and invites media and journalists to be fully engaged in the development of international and national regulatory and policy frameworks related to the operation of the media sector; to be attentive to new opportunities of diversifying funding sources; to join efforts in developing collaborative and innovative projects supporting investigative journalism, also through alternative financing structures; and to strengthen audience engagement and (re)gain the users' trust through transparent editorial processes that provide insight in how news is gathered, written, edited and presented, through increased interaction with the users and through education programmes in media and information literacy intended for both early school level students and adults;

Undertakes to continue its standard-setting work to provide further guidance to member states on these issues.



## Appendix VI

### **Draft Declaration on the financial sustainability of quality journalism in the digital age**

*(Adopted by the Committee of Ministers on XXXXX at the XX meeting of the Ministers' Deputies)*

1. A democratic society requires citizen participation in public decision-making. This presupposes that individuals have available to them relevant and credible information from diverse sources enabling them to form and express their opinions and make informed choices about their government and society. Independent and pluralistic media play a vital public watchdog role by overseeing public affairs and political structures and processes at both local and national level. Furthermore, they report on a wide range of other matters of public interest and provide a shared forum for meaningful debate, within and between all communities in a society.

2. The right to freedom of expression and media freedom, as guaranteed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, "the Convention"), is wide in scope and contributes to promoting and protecting the principles of democracy, human rights and the rule of law on which the Council of Europe is built and which it is committed to uphold. This right is a prerequisite for a favourable environment for quality journalism, which serves an important democratic function. Quality journalism extends the range of diverse, credible, interesting and timely information available to the public and counteracts propaganda, misinformation and disinformation proliferating on social media in particular.

3. Quality journalism is upheld by journalistic practices that serve the public interest and are based on good faith and the ethics of the profession. Such practices, irrespective of whether performed by professional journalists or other authors, seek to provide accurate and reliable information that complies with the principles of fairness, independence and transparency, public accountability and humanity. Journalism committed to these principles should be acknowledged as a public good, so as to emphasise its key role and value for societies and to encourage a wide range of stakeholders, including member states, to join efforts in ensuring its promotion and support, also through financial means.

4. The technological evolution of the past decades has radically changed how news and other media content are produced, circulated and received. News is now extensively distributed online, with a few platforms acting as powerful intermediaries and with many individuals accessing news through social media, search engines and similar online services and resources, and increasingly via mobile devices and applications.

5. The digitisation process has, in turn, transformed the economic reality of journalism, compromising its traditional business model based on revenues from sales and/or advertising, and causing disruption in the media sector. The growing digital and mobile consumption of news has been a catalyst for the decrease in the circulation of print media,

often coupled with a decline in their subscription revenues. Furthermore, the vast audience reach of major online platforms and corresponding economies of scale, their data-driven business models and potential for personalised, targeted messaging make these actors very attractive for the advertising industry. As a result, advertising spending has shifted to a very significant degree from traditional media companies to these platforms, rewarding distribution of content more than its creation.

6. Sustainability of media outlets, the largest investors in news content, is at great risk, as their resource-intensive and costly production does not carry a commensurate economic value or financial rewards. The decline of the media industry and accompanying cut-backs have resulted in reduced news coverage, significant job losses and deterioration of journalists' working conditions, all of which hinders all media in their public watchdog role, but weighs particularly heavily on the local, investigative and cross-border journalism. These factors render journalists vulnerable to pressures from powerful news sources and their employers, impinge on their investigative capacities and create a climate conducive to both censorship and self-censorship. Moreover, the weakened sustainability has contributed to a growing concentration of media ownership and may lead to a less diverse news environment.

7. Some media outlets have responded to these pressures by changing their journalistic practices to prioritise speed and volume over substance, harnessing the possibilities of the digital environment, including online platforms' algorithms, for engaging the attention of the audience. A "clickbait" culture is developing, the main purpose of which is to attract attention by using exaggerated and emotional headlines. Such reporting favours content produced without sufficient regard for accuracy, fact-checking and separation of fact and opinion. It inclines towards sensationalism, with a negative effect on the overall quality of journalism and trust therein.

8. New organisations are emerging to fill some of the gaps left by the traditional media outlets. However, these organisations face similar challenges. They, too, struggle to find sustainable business models for quality journalism. Moreover, in this age of growing scepticism towards democratic institutions, the media are vulnerable to being labelled as partisan or "fake", even where they are committed to high standards of journalism. Lacking the brand recognition of their established counterparts, the new organisations in the media ecosystem must work particularly hard and more innovatively to gain the trust of their target audiences.

9. Furthermore, even though internet intermediaries were not created with the explicit purpose of serving the news needs of society, some online platforms have become major distributors of news and have progressively assumed curatorial or editorial-like functions, thus shaping the users' experience of journalism while acquiring great power in the digital economy. Their content moderation and ranking is supported by non-transparent policies – in the form of algorithms that may result in content being filtered out despite being lawful – and their personalised selection, organisation and recommendations of news are based on expressed or inferred users' preferences and adapted to their profiles. Such recommendations, although useful for navigating a vast amount of available sources, are

designed for maximum engagement of the target audience and with little consideration for the public interest, promoting both quality sources and other, even misleading or false, content. They also negatively affect the diversity of individuals' news exposure, reinforcing individuals' choices within their established preferences, and thus may contribute to political, social and/or cultural fragmentation.

10. The digital environment provides new opportunities for free expression and diversity of opinions, but is also susceptible to manipulation, disinformation and spread of hateful messages. In order to redeem its promise of fostering a culture of informed public debate and active participation in the democratic process, it is of the utmost importance that individuals are empowered to understand this environment and its challenges. This allows them to effectively access relevant and credible news and information and makes them aware of the risks of engaging with, and spreading, deceptive, malicious, or blatantly false content. To this end, individuals need to develop a wide range of skills for media and information use and an awareness of their rights and responsibilities in relation to the use of digital tools and technologies.

11. The media are exploring alternative formats for delivering content in order to (re)build interest in quality journalism; to direct advertising revenue back to their industry, including through branded or sponsored content; to create new revenue streams, and to reduce their dependence on any one form of funding. While new digital technologies enable innovative journalistic approaches, solutions range from consolidation of media's operations into larger networks, not-for-profit and foundation-supported forms of organisation, to funding models based on reader payment such as donations, subscriptions and membership fees. Notwithstanding these measures, continued targeted investments in the media ecosystem are indispensable to restore and maintain journalism that combines editorial quality, integrity, independence and a high level of ethics with sustainable technological and economic development.

12. States' support and commitment to providing a pluralist media ecosystem in accordance with their positive obligations under Article 10 of the Convention should take into account all sectors and types of media, bearing in mind their different purposes, functions, affordances and geographical reach. Support mechanisms should include measures for ensuring the basic financial sustainability of this ecosystem. Public service media, as an essential feature of pluralistic communication and provider of varied and high-quality content, should remain accessible to everyone online as well as offline and should enjoy sustainable public financing, in accordance with a number of Council of Europe instruments, the latest being Recommendation CM/Rec(2018)1 of the Committee of Ministers to member states on media pluralism and transparency of media ownership. In addition, there is a need to develop and strengthen public policy measures at European, as well as at local levels to ensure that community media, as well as other types of media serving local and rural communities, have financial and legal resources and space to operate on all distribution platforms.

In view of the foregoing, the Committee of Ministers:

- Affirms that a favourable environment for freedom of expression and media freedom presupposes advantageous political, legal, social and economic conditions for quality

journalism in the public interest, recognising that such journalism is a public good and has substantial benefits for democracy;

- Alerts member states to the importance of promoting, through an enabling regulatory and policy framework that facilitates the operation of all media ranging from established to innovative forms, long-term financial sustainability of quality journalism produced in line with the editorial and ethical standards of the profession, while establishing effective safeguards for ensuring that such a framework does not constrain editorial and operational independence of the media;
- Reiterates member states' commitment to ensure stable, sustainable, transparent and adequate funding for public service media in line with the principles and standards of the Council of Europe, notably Recommendation CM/Rec(2018)1 of the Committee of Ministers to member states on media pluralism and transparency of media ownership;
- Encourages member states to include in their media regulatory and policy frameworks a variety of measures which may include, but are not limited to the following:
  - e) A beneficial tax regime for the production and distribution of journalistic content;
  - f) Financial support schemes for media sectors besides public service media, in particular for regional, local, hyperlocal and not-for-profit community media, with accompanying safeguards for their independent administration and oversight and for equitable and non-discriminatory distribution of such support in line with the principles of transparency and accountability and standards of the Council of Europe;
  - g) Media and journalism development measures financed through a variety of funding schemes including by private-public partnerships and aimed at (i) supporting investigative journalism, including cross-border journalism, and innovative journalistic projects, (ii) developing viable business models for hyperlocal journalism and freelance journalists, (iii) supporting the transition of printed publications to the digital environment, (iv) building a digital presence for small, particularly local media outlets, (v) developing journalistic skills and training and media literacy programmes for newsrooms, (vi) strengthening journalistic ethics and principles such as fact-checking or reflecting a plurality of views present in society, (vii) encouraging and promoting careers in journalism, (viii) developing business skills of media practitioners adapted to the digital economy, including skills for audience measurement and analysis, or (ix) supporting the development of new technologies for newsrooms, as well as funding and increased capacity building for the use of the existing technologies, based on the needs of individual newsrooms and those of their audiences;

- h) The possibility for media outlets to operate as not-for-profit organisations and be able to receive donations from local, national and international philanthropic programmes;
- Acknowledges the necessity to consider the growing responsibilities of those internet intermediaries, notably online platforms, which through their wide geographical reach and user engagement act as main gateways for news dissemination and generate important revenue from online news. Their active role in providing services of public value and their influence in the media ecosystem should be accompanied by public interest responsibilities developed through self-regulatory mechanisms or other appropriate and proportionate regulatory or co-regulatory frameworks, aimed to ensure, *inter alia* that:
- d) With due regard to their status as important sources of information and communication, the intermediaries' criteria by which they curate, categorise and rank online content and thus influence, through automated or human-directed processes, the visibility, accessibility and promotion of news and other journalistic publications, are transparent and applied in line with freedom of expression principles, notably the right to receive and impart information. Such criteria should be applied without discrimination against individual news sources and/or preventing access to legal journalistic content based on political or other opinion or on the form of expression, so as to stimulate diverse media choices;
- e) In the exercise of their curatorial or editorial-like functions whereby they categorise, rank or display content, they develop, in collaboration with media actors, civil society and other relevant stakeholders, mechanisms and standards for assessing credibility, relevance and diversity of news and other journalistic content. Content that complies with such standards should be promoted over disinformation and other manipulative, malicious or blatantly false content, notably through improved distribution processes and clear information to the users on how to find and access credible news sources. Online platforms should also commit to improve the transparency and oversight of advertisement placement on their websites, so as to avoid diverting revenues from credible news sources to sources of disinformation and false content;
- f) Revenues arising from the monetisation of news and other journalistic content in the digital environment are equitably shared and, if necessary, redistributed from online platforms to news content providers, ensuring a balancing effect of such monetisation on the economics of the media industry. Any such contribution schemes can be made through voluntary programmes or state-mandated mechanisms and should be developed in cooperation with the relevant stakeholders. They should be overseen by an independent body and guided by the principles of transparency and accountability; they should ensure that the gains are used to sustain news and other content produced in line with editorial and ethical standards of the profession. A level playing field between the media and online platforms should also be facilitated through appropriate procedures for

equitable access to and sharing of data collected in the process of distributing individual media companies' online products, in order to prevent that the platforms' dominant position in the data economy is perpetuated and reinforced to the detriment of online news media;

- Highlights the importance of providing everyone with effective access to quality journalistic content, irrespective of income levels and any other barriers. Such access should be complemented by media and information literacy programmes including data literacy designed to raise awareness among the audience about the importance for democracy of freedom of expression and media freedom, the right to access information in the public interest and quality journalism, to educate the public on the skills and knowledge required to recognise quality journalistic products and to encourage them to engage with such products, which should be available and accessible to all groups, including through affordable technological solutions;
- Encourages continued dialogue between all relevant stakeholders, and invites media and journalists to be fully engaged in the development of international and national regulatory and policy frameworks related to the operation of the media sector; to be attentive to new opportunities of diversifying funding sources; to join efforts in developing collaborative and innovative projects supporting investigative journalism, also through alternative financing structures; and to strengthen audience engagement and (re)gain the users' trust through transparent editorial processes that provide insight in how news is gathered, written, edited and presented, through increased interaction with the users and through education programmes in media and information literacy intended for both early school level students and adults;
- Undertakes to continue its standard-setting work to provide further guidance to member states on these issues.