

**3<sup>rd</sup> meeting,  
12-13 April 2021 Online meeting via KUDO**

## Meeting Report

### *Item 1. Opening of the meeting by the Chair*

1. María Rún BJARNADÓTTIR (Iceland), Chair to the ADI/MSI-DIS, opened the meeting. She informed participants that, after the Committee's December meeting, a substantial number of valuable contributions to the elaboration process of the future recommendation had been received by the co-Secretariat. Both Steering Committees, the CDADI and the CDMSI<sup>1</sup>, had been informed of the work progress and provided with an information note on the envisaged outline of the recommendation. This document covered a proposed definition of the notion of 'hate speech', information on the comprehensive approach underlying the future instrument, its structure and ways to address the online hate speech dimension. The two steering committees had been invited to provide any guidance that might be deemed necessary to the drafting process. The Drafting Rapporteurs, in co-operation with the co-Secretariat, have been working and exchanging on each section of the draft recommendation. Also, several additional internal coordination meetings had been convened to further align the draft with other relevant instruments of the Council of Europe. For these reasons it had been necessary to postpone this 3<sup>rd</sup> meeting of ADI/MSI-DIS for two weeks.

2. The Chair clarified that the aim of this 3<sup>rd</sup> meeting was to reach a provisional agreement on the draft recommendation, in particular the wording covering the main issues addressed by the future recommendation.

3. The Chair excused herself for the afternoon of the second day and thanked Bastiaan WINKEL (the Netherlands), Vice Chair to the ADI/MSI-DIS, for chairing the concluding sessions.

### *Item 2. Welcoming remarks*

4. Jeroen SCHOKKENBROEK, Director, Anti-Discrimination Directorate, Directorate General of Democracy and Jan KLEIJSEN, Director, Information Society – Action against Crime Directorate, Directorate General Human Rights and Rule of Law, welcomed the experts and participants in the meeting and stressed the importance

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<sup>1</sup> CDADI: Steering Committee on Anti-discrimination, diversity and inclusion; CDMSI: Steering Committee on Media and Information Society

and urgency of the committee's work and the need for a well-balanced approach to combatting hate speech.

5. Mr Schokkenbroek, referring to the recent annual report of the European Commission against Racism and Intolerance (ECRI), pointed to the alarming increase of reported racist and anti-LGBTI incidents, also during the Covid-19 pandemic. He explained that according to ECRI, hate speech is an essential part of these dynamics. Mr Schokkenbroek stressed that this escalation of hate speech, particularly online, illustrates the need for a comprehensive approach including a clear legal framework covering criminal, civil and administrative law to combat this phenomenon, but also non-legal measures focusing on awareness-raising, education and victim support, in order to strengthen inclusive societies. He highlighted the important role of civil society organisations in raising awareness and positively shaping the public debate and added that only a coordinated approach at the European level can be effective when it comes to preventing and combating hate speech. He mentioned recent case-law on hate speech of the European Court for Human Rights and recalled the European Commission's efforts to provide a legal framework at EU level for the online environment through the Digital Services Act and the initiative to include hate speech and hate crime in the list of EU crimes. He concluded that a comprehensive approach to preventing and combating hate speech ensures protection of all human rights.

6. Mr Kleijssen stressed the dangerous effect that hate speech can have on all values of the Council of Europe: human rights, democracy and the rule of law. He stated that online, hate speech can be even more devastating, as it can spread its 'poison' more rapidly, also in an anonymous manner, sometimes reaching millions of individuals instantly and making it very difficult to address. Mr Kleijssen then pointed to the Cybercrime Convention, celebrating its 20<sup>th</sup> anniversary this year, and its additional Protocol aimed at criminalising acts of racist and xenophobic nature committed through computer systems as important existing tools to build on, and informed the participants on the draft second Additional Protocol to the Convention on Cybercrime, which will help provide evidence of hate speech with the use of data, and will contribute to more effective action to tackle this phenomenon. Finally, Mr Kleijssen stressed the risk of unduly interfering with freedom of expression when fighting against hate speech and insisted upon the fact that measures adopted must not be misused to harm freedom of speech, free public debate and, ultimately, democratic societies.

### *Item 3. Adoption of the agenda*

7. The ADI/MSI-DIS adopted the agenda.

### *Item 4. Information by the co-Secretariat*

8. The co-Secretaries to the Expert Committee, Giulia LUCCHESI and Menno ETTEMA presented key developments within the Council of Europe in relation to the work of the Committee of Experts. Giulia LUCCHESI, Information Society Department, Media and Internet Division, gave information about the feedback received from the Steering Committee CDMSI through a written procedure on the information note (see § 1 above), which summarises the progresses made during the first and second meeting of the ADI/MSI-DIS and the outline of the draft recommendation. She also reported on the coordination work with the Committee

of Experts on Freedom of Expression and Digital Technologies (MSI-DIG). Menno ETTEMA, Anti-discrimination Department, No Hate Speech and Cooperation Programmes Unit, informed the ADI/MSI-DIS that the CDADI had elected Ms Laurence VILETTE RICHARD (France) as new member of the ADI/MSI-DIS. He also informed that the Chair of ADI/MSI-DIS had presented the progress of the Expert Committee's work and the information note on the draft recommendation during the plenary meeting of the CDADI. The CDADI gave guidance to the ADI/MSI-DIS' drafting work and invited the ADI/MSI-DIS to take into account the position of the ADI-ROM and of the 10<sup>th</sup> Meeting of the Council of Europe Dialogue with Roma and Traveller Civil Society.

9. Elena DODONOVA, Information Society Department, Media and Internet Division, informed the Committee about the outcomes of the recent second meeting of the MSI-DIG on 17-18 March 2021. The MSI-DIG is entrusted to prepare two documents: a draft recommendation on the impacts of digital technologies on freedom of expression and a draft guidance note on best practices towards effective legal and procedural frameworks for self-regulatory and co-regulatory mechanisms of content moderation. She explained that the members of the MSI-DIG agreed on the substance of the guidance note during the last meeting, which will go to the CDMSI Plenary for discussion and possible adoption. Subsequently, she briefly presented the parts of the draft guidance note that are the most relevant for the ongoing work of the ADI/MSI-DIS on the future recommendation on combating hate speech.

#### *Item 5. Information by the participants*

10. Participants were invited to update the Committee of Experts on key developments in the member States and other international organisations that are relevant for the work of the ADI/MSI-DIS. Participants were informed of the written comments received from the Russian delegation prior to the meeting on the above-mentioned Information note.

#### *Item 6. Discussion on the draft Recommendation on a comprehensive approach to combating hate speech*

11. The ADI/MSI-DIS subsequently examined and discussed the text of the draft Recommendation and provided inputs for the Explanatory Memorandum, which is to be finalised before the next meeting of the Expert Committee. The Chair invited the experts and participants to discuss the draft recommendation section by section and, where necessary, paragraph by paragraph, to focus both on the overall presentation of the relevant sections and on specific issues.

12. Experts and participants overall agreed on the structure and principal headlines of the future recommendation while proposing a number of changes within the chapters. It was decided not to overload the preamble, as the Explanatory Memorandum will offer an opportunity to explain some specific issues more in detail. The participants made several observations about the terminology used throughout the document: *inter alia*, when reflecting on the categories of individuals or groups targeted by hate speech, it was decided to replace "targeted" with the notion "affected" in a non-legal context, and "victim" in a legal context. Also, when making reference to certain individuals or groups exposed to hate speech, the participants agreed on replacing "because of characteristics that define

their identity” with “based on characteristics attributed to them”, which was seen as more neutral. Finally, the Committee stressed the importance to highlight throughout the recommendation the digitalisation of social interactions and how, while offering big opportunities in terms of freedom of expression and public participation, online platforms have also contributed, among other factors, to the increase of online hate speech in recent years.

13. The definition of hate speech, which is based on the case-law of the European Court of Human Rights and draws inspiration from ECRI’s General Policy Recommendation n°15, was the subject of a lively debate. The Expert Committee agreed that the definition should be concise, reflect a contemporary approach, and that the Explanatory Memorandum should be used for more precision. One delegation made a reservation to the use of the term’s “gender”, “gender identity” and “sexual orientation” in line with its standing position.

14. Further exchanges were held on the distinction between hate speech that is illegal and subject to criminal liability, illegal and subject to civil and administrative liability, and hate speech that is not illegal per se, but causes prejudice and hate and raises concerns in terms of tolerance, civility and inclusion, and the need to align the forthcoming recommendation with relevant ECtHR’s case-law.

15. In the Chapter on the legal framework, the different approaches that member States take in applying civil and administrative law to hate speech were discussed. The Expert Committee agreed to elaborate in the explanatory memorandum how tort law may apply and how legal liabilities under criminal, civil and administrative law might work in parallel.

16. With respect to online hate speech, the importance of coherence between the draft recommendation and the recommendation CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries, as well as the upcoming MSI-DIG Draft Guidance Note on content moderation (see before), while also taking into consideration EU policy and regulations (such as the proposal for a Digital Services Act of the European Commission) and the practical experiences of Member States. The experts discussed the role and duties of member States in elaborating clear legal frameworks that ensure the effective removal of online hate speech by internet intermediaries, and the latter’s responsibilities. The Committee held a lively exchange and insisted upon the clarity and transparency of the process for removing online hate speech, as well as the availability of appeal mechanisms and independent legal remedies.

17. Regarding the chapter on key actors in preventing and addressing hate speech, participants widely agreed to give greater prominence in the future recommendation to the role of civil society organisations. The Committee supported the idea that civil society organisations should be consulted, or even given an active role, in the drafting of regulations aiming to prevent and combat hate speech. It was furthermore agreed by the participants that the crucial role of the media in preventing and countering hate speech should be expressed with a stronger formulation. It was suggested to emphasise the obligation of public media organisations not only to avoid using or disseminating hate speech but to actively engage in counter-speech.

18. Regarding the chapter on victim support, the Expert Committee discussed the possibility for civil society organisations to bring a claim on behalf of victims and other relevant stakeholders.

19. With regard to the monitoring and analysis of hate speech, the participants proposed to mention civil society organisations and independent authorities as key actors who may cooperate with the member States and support them in fulfilling their obligation of identification, monitoring and analysis of hate speech.

20. The Committee of Experts preliminarily agreed on the revised version of the draft recommendation prepared by the co-Secretariat on 13 April, based on the discussions held during the meeting. The committee agreed that the co-Secretariat will further streamline the draft text and incorporate improvements proposed during the meeting, as well as editorial and minor comments sent as written contributions after the meeting by its members.

#### *Item 7. Discussion of the Roadmap for the ADI/MSI-DIS in 2021*

21. The ADI/MSI-DIS considered the text of the draft recommendation as preliminarily agreed. The members were invited to provide any further minor written comments and inputs until 16 April. The draft recommendation would then be presented to the two Steering Committees CDADI and CDMSI, before a public consultation will take place in the summer. The Expert Committee agreed to hold its next meeting in Autumn.

22. The Explanatory Memorandum will be drafted during the summer period and presented to the ADI/MSI-DIS in due time in view of its meeting in the Autumn.

#### *Item 8. Other business*

23. In line with the established practice, the co-Secretariat was instructed to send the draft meeting report to the Chair and Vice-Chair for consideration. Thereafter, the co-Secretariat will send the draft report to the ADI/MSI-DIS, allowing for comments within five full working days. In the absence of comments, the report will be deemed finalised, transmitted to the CDMSI and the CDADI for information and uploaded on the website of the ADI/MSI-DIS.