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## COMMITTEE ON CULTURE, SCIENCE, EDUCATION AND MEDIA

### Regulating content moderation on social media to safeguard freedom of expression

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#### Freedom of expression on the internet: texts adopted since 2019 by the Parliamentary Assembly of the Council of Europe

##### 1. [Resolution 2144](#) *'Internet governance and human rights'* (adopted on 23 January 2019)

1. The committee's report and the resolution adopted on its basis advocate a critical reflection on internet governance and underline the importance of governments, the private sector, civil society, the academic and technical internet community and the media continuing "to engage in an open and inclusive dialogue, with a view to developing and implementing a shared vision of a digital society that is based on democracy, the rule of law and fundamental rights and freedoms" (§ 8 of Resolution 2144).

2. The Assembly therefore called upon the member States of the Council of Europe to focus their internet governance work more effectively on the protection of human rights, fully implementing the recommendations of the Committee of Ministers in this domain and, in this context, asked inter alia that they:

- "consider holistic policies for combating computer crime and abuse of the right to freedom of expression and information on the internet; such policies should draw not only on up-to-date criminal legislation but also on strengthened means of prevention, including the setting-up of police forces specialised in detecting and identifying online criminals and equipped with appropriate technical resources; awareness raising and improved education for users; enhanced co-operation with internet operators and greater accountability on their part" (§ 9.3 of Resolution 2144)
- "ensure, at the same time, that any national decisions or actions involving restrictions on the right to freedom of expression and information comply with Article 10 of the European Convention on Human Rights (ETS No. 5) and prevent user protection and security requirements from becoming pretexts for silencing dissenting views and undermining media freedom" (§ 9.4 of Resolution 2144).

##### 2. [Resolution 2281](#) *'Social media: social threads or threats to human rights?'* (adopted on 12 April 2019)

3. The committee's report and the resolution adopted on its basis deal, inter alia, with the risks that an abusive use of the internet and social media may engender for freedom of expression, including freedom of information, and highlighted "the need to further explore the responsibilities that social media should bear in this respect and the duty that public authorities have to ensure that such fundamental rights are fully respected" (§ 3 of Resolution 2281).

4. The Assembly therefore recommends that the Council of Europe member States "fully comply with relevant international obligations concerning the right to freedom of expression, in particular those arising from Article 10 of the European Convention on Human Rights (ETS No. 5), when developing the legal framework of this right, and deliver national regulations requiring that social media providers ensure a diversity of views and opinions and refrain from silencing controversial political ideas and content" (§ 9.1 of Resolution 2281).

5. Moreover, these texts also relate to the content of self-regulation and call on social media companies to, among other things:

- “define in clear and unambiguous terms the standards regarding admissible or inadmissible content, which must comply with Article 10 of the European Convention on Human Rights and should be accompanied, if need be, by explanations and (fictional) examples of content banned from dissemination” (§ 11.1 of Resolution 2281);
- “take an active part not only in identifying inaccurate or false content circulating through their venues but also in warning their users about such content, even when it does not qualify as illegal or harmful and is not taken down(...)” (§ 11.2 of Resolution 2281);
- “make systematic use of a network analysis approach to identify fake accounts and bots (...)” (§ 11.3 of Resolution 2281);
- “encourage collaborative evaluation of the sources of information and items of news distributed (...) and put in place mechanisms of editorial oversight by professionals to detect and flag misleading or inaccurate content” (§ 11.4 of Resolution 2281);
- “strongly engage in fact-checking initiatives which are intended to counter the dissemination of deceptive and misleading information through social media” (§ 11.5 of Resolution 2281).

**3. [Resolution 2334](#) ‘Towards an internet ombudsman institution’ (adopted on 21 February 2020)**

6. The committee’s report and the resolution adopted on its basis highlight that: “With the emergence of social media platforms, harmful content on the internet has become more and more widespread”, but also that “the idea of controlling content published on social media poses a serious challenge in terms of preserving freedom of expression, in particular since the internet is a global medium connecting people with different histories, traditions and legal cultures” (§ 1 of Resolution 2334).

7. Therefore, “In order to avoid freedom of expression being limited in a discriminatory manner while at the same time making efforts to fight against illegal content on the internet, the Parliamentary Assembly is proposing that consideration be given to establishing an ombudsman institution (or equivalent) with the requisite independence, powers and authority to assess whether internet content is legal or illegal (...)” (§ 2 of Resolution 2334).

**4. [Resolution 2382](#) ‘Media freedom, public trust and the people’s right to know’ (adopted on 22 June 2021)**

8. In the context of a broader analysis of all the issues relating to the recognition and effective implementation of a citizen’s “right to know”, the committee’s report and the resolution adopted on this basis call on the member States of the Council of Europe, inter alia, to “bring their legislation and practice into line with Recommendation [CM/Rec\(2020\)1](#) of the Committee of Ministers to member States on the human rights impacts of algorithmic systems, and organise debates on the transparency of algorithms used by social media companies, bringing together relevant stakeholders, to discuss how to ensure parliamentary and citizen oversight of these algorithms” (§ 16.12 of Resolution 2382).

**5. [Resolution 2454](#) ‘The control of online communication: a threat to media pluralism, freedom of information and human dignity’ (adopted on 23 June 2022)**

9. The committee’s report and the resolution adopted on this basis address the issue of public regulation of freedom of expression on digital platforms, taking into account the concentration of media power and the risk of voter manipulation. These texts unequivocally remind internet intermediaries of “their duty of care where they produce or manage the content available on their platforms, or where they play a curatorial or editorial role” (§ 8 of Resolution 2454).

10. They also highlight that “(...) While increased democratic oversight is necessary, regulation enacted in practice often entails overly broad powers and the discretion of government authorities over information flows,

which endanger freedom of expression. Lawmakers should aim at reinforcing transparency and focus on companies' due processes and operations, rather than on content itself (...)" (§ 10 of Resolution 2454).

11. The guidelines given by the Assembly (§ 17 of Resolution 2454) appear in extenso below:

"17. Consequently, the Assembly calls on Council of Europe member States to:

17.1 bring their legislation and practice into line with Recommendation CM/Rec(2020)1 on the human rights impacts of algorithmic systems, and Recommendation CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries;

17.2 consider whether the concentration of economic and technological power in the hands of a few internet intermediaries can be properly dealt with via general and already existing competition regulations and tools;

17.3 use antitrust legislation to force monopolies to divest a part of their assets and reduce their dominance in the digital markets;

17.4 develop a gradual regulatory approach to accommodate different types of regulations to different types of internet intermediaries, with the aim to avoid pushing new actors outside the market or to enable them to enter the market;

17.5 address the issue of anticompetitive conduct in digital markets by strengthening the enforcement of regulations on merging and abuse of monopolistic positions;

17.6 guarantee that any legislation imposing duties and restrictions on internet intermediaries with an impact on users' freedom of expression is exclusively aimed at dealing with "illegal content", thus avoiding broader notions such as "harmful content";

17.7 ensure that mere automated content moderation is not allowed by legislation; in this context, encourage internet intermediaries, via legal and policy measures, to:

17.7.1 allow users to choose means of direct and efficient communication which do not solely rely on automated tools;

17.7.2 ensure that where automated means are used, the technology is sufficiently reliable to limit the rate of errors where content is wrongly considered as illegal;

17.8 guarantee that legally mandated content moderation provides for the necessary presence of human decision makers, and incorporates sufficient safeguards so that freedom of expression is not hampered;

17.9 encourage, via legal and policy measures, the participation of users in the establishment and assessment of content moderation policies;

17.10 ensure that regulations enacted to ensure transparency of automated content moderation systems are based on a clear definition of information that is necessary and useful to disclose and of the public interest that legitimises the disclosure;

17.11 support the drafting of, and respect for, a general framework of internet intermediaries' ethics, including the principles of transparency, justice, non-maleficence, responsibility, privacy, rights and freedoms of users;

17.12 encourage internet intermediaries, via legal and policy measures, to counteract hate speech online by issuing warning messages to persons who spread hate speech online or by inviting users to review messages before sending them; encourage internet intermediaries to add such guidelines to the codes of conduct dealing with hate speech;

17.13 consider adapting election legislation and policies to the new digital environment by reviewing provisions on electoral communication; in this respect, reinforce accountability of internet intermediaries in terms of transparency and access to data, promote quality journalism, empower voters to evaluate electoral communication critically and develop media literacy."