

Steering Committee on Media and Information Society – CDMSI



27/07/2017

CDMSI (2017)012

**12th meeting of the Steering Committee on Media and Information Society
20 – 23 June 2017**

(Strasbourg, Palais de l'Europe, room 5, 9 and 8)

Meeting report

1. Opening of the meeting

The CDMSI held its 12th meeting from 20 to 23 June 2017, in Strasbourg chaired by Elfa Ýr Gylfadóttir (Iceland). The CDMSI adopted the agenda as it is set out in Appendix I. The list of participants appears in Appendix II. Gender distribution: 66 participants, 35 men (53%) / 31 women (47%).

The meeting was opened by Patrick Penninckx, Head of the Information Society Department, who informed the plenary about the main events in the Council of Europe since its last meeting. In particular, he detailed the progress made in formalising collaboration with the internet industry, which could take the form of an exchange of letters to be proposed to the Committee of Ministers (see also item 5.5).

He emphasized again the need for the CDMSI to continue their strong engagement in promoting freedom of expression and freedom of the media as fundamental elements of democracy, drawing from the findings and conclusions of the *4th Report of the Secretary General on Democracy, Human Rights and the Rule of Law 2017 – Populism – How strong are Europe's checks and balances?*

Mr Penninckx mentioned a series of events organised by the Council of Europe and/or in which the Council of Europe took an active part, notably the ICANN58 meeting where the topics related to data protection were particularly emphasized.

2. Adoption of the agenda

The CDMSI adopted the agenda of the meeting without changes; it appears in appendix I.

3. Standard setting

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

Pierre-François Docquier, Vice-Chairperson of the Committee of Experts on media pluralism and transparency of media ownership, informed the CDMSI about its third meeting in March 2017 and progress of work in this committee.

Draft Recommendation on media pluralism and transparency of media ownership

Mr Docquier presented the current state of the draft recommendation and the most important changes since the last plenary meeting of the CDMSI. A final draft is expected to be presented for approval to the CDMSI at its 13th plenary meeting in December 2017. The CDMSI discussed the draft and gave guidance as to its further development and finalisation. The delegates emphasised the importance of adapting media pluralism guidelines to the digitalisation of the media environment. It was suggested that the draft should address in a more specific manner the impact of the digital giants on media pluralism. Moreover, the text should focus primarily on issues which have not yet been addressed in the existing instruments of the Council of Europe, and where relevant, reference should be made to previous relevant standard-setting instruments. Also, it was suggested to apply a broader concept of media literacy. Finally, some delegates expressed the view that the document should be less prescriptive so as not to place too heavy a burden on the member states. Most concrete comments were made with regard to the chapter on the transparency of media ownership. It was suggested that the recommendation should set realistic goals as to what can be achieved with regard to transparency of ownership, that online media should be addressed more specifically with regard to the issue of ownership transparency and that the processing of ownership data should be subject to data protection legislation. Written comments will be provided by a number of delegates by the end of August 2017.

Feasibility study on the use of internet in electoral campaigns

Pierre-François Docquier presented the significant changes brought to the draft, since its first version. The delegates discussed it and found it very relevant, in particular in the light of recent elections in a number of member states. They made suggestions for some amendments and will forward more comments in writing to the secretariat to be considered by the MSI-MED at its 4th meeting in September 2017. They also found that the conclusions might be framed in a more open-ended manner.

Feasibility study on gender equality in the media coverage of elections

A revised version of the study was also presented to the CDMSI. There again, delegates made comments and will send proposals in writing to be considered by the MSI-MED in September. They noted that this study could, if deemed necessary, be a source of inspiration for further standard setting work.

3.2 Committee of experts on internet intermediaries (MSI-NET)

The CDMSI took note of the information provided by the Vice-Chairperson of the Committee of experts on internet intermediaries, Karmen Turk, on progress made by the Committee since the last CDMSI meeting, notably with respect to the two draft deliverables.

Draft recommendation on the roles and responsibilities of internet intermediaries

Ms Turk presented the current state of the draft instrument, following the last meeting of the MSI-NET in March 2017 and the subsequent review process. A final draft recommendation is expected to be presented for approval to the

CDMSI at its 13th plenary meeting in December 2017. The CDMSI discussed the draft as presented and made comments and suggestions for further improvement. Delegates expressed their appreciation for the timeliness and value of this draft instrument given the on-going discussions in national and regional forums related to the responsibilities and liabilities of intermediaries and suggested to be mindful of possible overlaps and/or inconsistencies between the various discussion forums. They further agreed with the scope of the recommendation and its broad and function-based definition that encompasses a variety of services and functions performed by intermediaries, from traditional intermediary to more editorial-like /publisher-like functions. There was agreement among the CDMSI members that the chapter on responsibilities of intermediaries should be further strengthened and include also references to broader duties of care, taking due account of the public service value provided by intermediaries (particularly by large and market-dominant entities). Some delegates suggested that the recommendation should not or only very carefully address the highly complex issue of jurisdiction. It was further suggested to include more references to relevant existing standard-setting instruments that this recommendation builds on, either in the preamble or in an appendix.

The CDMSI agreed on the time frame proposed by the Secretariat for a multi-stakeholder consultation over the summer. Written comments will be sent by some delegates until the end of August to be taken into account by the Committee of Experts in its September meeting.

Study on the human rights dimensions of algorithms

Karmen Turk also presented the revised version of a draft study on the human rights dimensions of automated data processing techniques (in particular algorithms) and possible regulatory implications. While the study does not include recommendations for states, it draws attention to the main areas of concern and maps out important issues to be possibly addressed by further work. Delegates expressed their support and appreciation for the current revised version in its new structure and underlined the importance and timeliness of the study. Its conclusions should seek to formulate policy objectives for member states with respect to the operation of algorithms in the public and private sphere. Comments will be provided by some delegates in writing, which will be taken into account by the Committee of Experts in the on-going review process.

4. Co-operation activities

Accomplished and on-going projects in the field of media and freedom of expression

The CDMSI took note of the information by the secretariat on on-going and future co-operation programmes and activities, as reflected in document MEDIA-COOP (2017)01. Currently co-operation activities are carried out on a 7.5Mo€ budget, mostly funded by the European Union but also by other donors with 240 activities since January (approximately 30 to 35 per month). It also noted information on positive outcome of some of these activities as well as of a new project for Moldova.

The secretariat pointed out the numerous projects mentioned in the document that are still awaiting funding.

Some of the beneficiary countries expressed satisfaction and gratitude to the Council of Europe and praised the value of the work accomplished.

The Consul of Tunisia, Mr Mohamed Trabelsi, addressed the CDMSI and expressed his gratitude and appreciation to the Council of Europe for the co-operation activities carried out in Tunisia.

Colloquium on the role of media actors in confronting terrorism - 19 June 2017, Strasbourg

The CDMSI discussed the outcome of a Colloquium held on the eve of its meeting, on 19 July, on "The role of media actors in confronting terrorism" and commended the Council of Europe for the relevance, the high level and the quality of the event.

5. Implementation of Council of Europe adopted standards

5.1 Conference "Promoting dialogue between the ECtHR and the media freedom community"

The CDMSI took note of information provided by the secretariat on a conference "Promoting dialogue between the ECtHR and the media freedom community", held on 24 March 2017 and widely supported by the secretariat. Current and former judges of the Court together with media specialised lawyers, political decision-makers, academia and civil society analysed and discussed the ECtHR case law over the last 10 years in the field of media during three panels:

- Defamation, respect for privacy and personal data processing;
- Investigation journalism, access to information, protection of sources and of whistle-blowers;
- Right of protest and role of the media during demonstrations.

It took note of the outcomes of the conference and congratulated the Council of Europe for the event.

5.2 Initiatives in member states

The CDMSI took note of new initiatives taken in member states to implement Council of Europe standards and shared by

- Austria on work undertaken to comply with the CM Recommendation on internet freedom in assessing the level of internet freedom;
- Armenia on a new draft law on freedom of expression;
- Bosnia Herzegovina on an initiative on accessibility of information and communication technology and broadcasting content intended for persons with disabilities and special needs;
- Greece on gender mainstreaming in the media: signature of a Memorandum of Cooperation with the Research Centre for Gender Equality that includes the exchange of expertise and planning of concrete actions for the promotion of gender equality and the elimination of sex stereotypes in the media, and on media pluralism and transparency of media ownership by initiating the online media registry "e-media" addressed to all media owners with online presence,

encouraging them to register their activities online, thus ensuring a transparent, balanced and fair function of the media industry in the online environment; - Ukraine on its Doctrine on information security. It also took note of a Declaration adopted by the observer organisation IBRAF on the Role of media in promoting tolerance and combatting terrorism and islamophobia.

These initiatives will be posted on the corresponding section of the web page of the CDMSI.

5.3 Fear in journalism – new title: Journalists under Pressure – Unwarranted interference, fear and self-censorship in Europe

The CDMSI welcomed the publication of the study "*Journalists under Pressure – Unwarranted interference, fear and self-censorship in Europe*", which was thought very topical, and took note of the preparation of a second stage of the study, which will be a qualitative study on the same topic.

It also expressed concern about the absence of appointment of a new OSCE Representative on freedom of the media, which was seen as a form of interference with media freedom.

5.4 Platform to promote protection of journalism and safety of journalists

The CDMSI was informed on developments regarding the platform to promote protection of journalism and safety of journalists: two new organisations have joined the group of partner NGOs (International News Safety Institute and the Rory Peck Trust), the EBU will sign an agreement to join the Platform during its general assembly in July; and technical improvement on the data base with advanced search criteria (by alerts, states reply, year, country, categories, source of threats and partners).

It also expressed concern about the low number and the quality of replies by member states but also about the future of this useful instrument and was reminded that voluntary contributions are a good way to give concrete support.

In that respect, the Committee considered it helpful to have a report at regular intervals on the main issues regularly reported on the Platform to enable it to have a better knowledge of situations and concrete problems.

5.5 Internet governance

Council of Europe Internet Governance Strategy 2016-2019

The CDMSI discussed the state of implementation of the Council of Europe Internet Governance Strategy 2016-2019 and, in particular, the progress made in formalising collaboration with the Internet industry. This could take the form of an exchange of letters to be proposed to the Committee of Ministers. Regarding its possible collaboration with the industry, the Council of Europe chooses a dialogue rather than a prescriptive approach in order to find agreement on common values and consider specific sectors to translate these values into the policies and daily practices of the

internet companies. This would also give business opportunities to participate in standard setting activities in the same way as civil society organisations do, within specific areas of work.

European Dialogue for Internet Governance (EuroDIG)

The CDMSI took note of the important Council of Europe involvement and activities in the 2017 edition of EuroDIG (Tallinn, 6-7 June 2017) with a series of events organised or co-organised by the secretariat or in which it had a significant participation.

It also noted that the 2018 edition of EuroDIG will take place in Georgia.

Internet Governance Forum

The CDMSI took also note of the up-coming meeting of the Internet Governance Forum in Geneva, from 18 to 21 December 2017, under the overarching theme "*Shape your digital future*" and information was provided by the secretariat on the Council of Europe's involvement in it.

ICANN

The Committee also welcomed the information about the substantial input of the Council of Europe in ICANN, in particular on the topic of data protection and expressed satisfaction that human rights issues are now fully taken on board in its discussions.

It discussed the opportunity for the CDMSI of appointing one of its members to formally ensure the liaison with the ICANN and promote Council of Europe work within ICANN. It concluded that, as currently two of its members are officially involved in ICANN meetings and regularly report to the CDMSI (UK and Swiss delegates), there was no need for such a decision at this stage.

6. European Convention on Transfrontier Television

To answer repeated request to re-open the topic of the revision and the situation of the European Convention on Transfrontier Television, the CDMSI had, at its 11th meeting, invited member states to communicate their position on this matter at the next meeting and tasked the secretariat to prepare the discussions with an information note accompanied by questions for reflection. To that effect, a questionnaire was then drafted and sent in March and again in May 2017 to all members to collect their position. The secretariat presented a summary to the relatively low number of replies to the questionnaire.

In the subsequent debate in the presence of Marcel Boulogne, Head of Sector "Audiovisual Media Services" at the European Commission, most delegations including *inter alia* France, Monaco, Germany, Austria, Italy,

Greece, Latvia, Turkey, Iceland, Bosnia and Herzegovina, Montenegro, the former Yugoslav Republic of Macedonia, Hungary and Slovenia voiced the necessity and their support for re-starting the revision process, indicating relevance of the Convention for their respective countries. As an alternative solution, a new legal instrument referring to issues not being covered by the exclusive competence of the EU was mentioned. The Committee called on the Committee of Ministers to engage in a dialogue with the European Commission to overcome the standstill.

The Chairperson strongly encouraged all delegations which have not yet done so to respond to the questionnaire.

7. Data Protection

The CDMSI took note with interest of the information provided by Sophie Kwasny, Head of the Data Protection Unit, on the on-going work in the field of data protection, as follows.

Convention 108:

The global interest of the Convention is again being confirmed with Burkina Faso having received an official invitation to accede to the Convention and Argentina having expressed its interest, as well as Korea, Japan and the Philippines having requested observer status;

In respect of the modernisation of Convention 108, discussions are still on-going to try and overcome pending issues, with, hopefully, further progress at the next meeting of the competent Group of Rapporteurs of the Committee of Ministers early July.

On-going work of the Committee of the Convention (T-PD)

A draft practical guide on the use of personal data in the police sector will be finalised and adopted by the T-PD by written procedure.

A draft recommendation on the protection of health-related data was discussed during the 34th plenary meeting of the T-PD (19-21 June 2017) and will be sent to the CDMSI for comments before the next plenary meeting of the T-PD in November. Once approved, the draft will be transmitted to the CDMSI to be submitted to the Committee of Ministers.

Co-operation

Within the framework of the EU/CoE Partnership for Good Governance (ex-PCF), data protection activities are being carried out in the six countries of the programme, with, *inter alia*, activities on data protection and media in Georgia, with good co-operation with the CDMSI secretariat.

ICANN

The CDMSI also took note of the information provided by Peter Kimpian, Programme Officer the Data Protection Unit, on data protection related activities at ICANN. The data protection unit facilitated the organisation of a very successful high level “game changer” event titled “Privacy Day” on 13 March 2017 in Copenhagen (ICANN58) and will pursue its efforts at the next ICANN meeting in Johannesburg (ICANN59). This constitutes further steps in fostering human rights in internet governance policies.

8. Work of other Council of Europe institutions and bodies

8.1 Secretary General's initiatives

4th Secretary General's Annual report on Democracy, Human Rights and the Rule of Law 2017 - Populism? How strong are Europe's checks and balances?

The CDMSI took note of information provided by the secretariat on the *4th Secretary General's Annual Report on Democracy, Human Rights and the Rule of Law in Europe 2017, entitled 'Populism – How strong are Europe's checks and balances?* The chapter on freedom of expression was prepared by the Media and Internet Division, based on a quantitative assessment of the conditions in member states according to set measurement criteria. Findings show an overall deterioration in conditions and safeguards for the freedom of expression. While some positive developments are taking place, notably with respect to the protection of whistle-blowers, restrictions are increasing, often with the justification of national security concerns. This leads to a “chilling” atmosphere that makes access to information difficult for journalists and also very significantly affects not only their safety but also their working conditions. The report also highlights measures taken on the internet directly by states but also through arrangements that incentivise private actors to block and filter. The CDMSI took note of the link between an unfavourable environment for the freedom of expression and the rise of populism, which thrives on the silencing of opposing views and the loss of credit of the media as not trustworthy.

The report includes proposals for actions for member states.

8.2 Committee of Ministers

Conference: Freedom of Expression Online: Evolving European jurisprudence and standard setting activities in the digital age (28 April 2017, Nicosia)

The secretariat reported on the Conference *Freedom of Expression online: Evolving European jurisprudence and standard setting activities in the digital age* organised by the Supreme Court of Cyprus and the Council of Europe in the framework of the Cypriot Chairmanship of the Council of Europe's Committee of Ministers.

The CDMSI also took note of the report by the Austrian delegate, Matthias Traimer, who attended the conference on behalf of the Committee, and the delegate from Cyprus expressed appreciation for the event.

Thematic Co-ordinator on Information Policy

The CDMSI had an exchange of views with Ambassador Corina Călugăru, Committee of Ministers Thematic Co-ordinator on Information Policy, on her activities, in particular regarding possible co-operation with internet business as well as ways of implementing Council of Europe standards, and agreed on regular similar exchanges of information and on co-operation.

8.3 Parliamentary Assembly of the Council of Europe

The CDMSI held an exchange of views with a member of the secretariat to the PACE Committee on Culture, Science, Education and the Media on the activities of the Committee and its collaboration with the CDMSI.

Besides, it also took note of the state of play of comments on several PACE recommendations, prepared and finalised by written procedure at the invitation of the Committee of Ministers as follows:

- Comments on PACE Recommendation 2098(2017) "Ending cyber discrimination and online hate" and on PACE Recommendation 2102(2017) "Technological convergence, artificial intelligence and human rights" were forwarded to the secretariat of the Committee of Ministers within deadlines;
- Its comments were generally taken into account by the Committee of Ministers in their replies to PACE Recommendation 2085(2016) "Strengthening the protection and role of human rights defenders in Council of Europe member states", to PACE Recommendation 2087(2016) "Intellectual property rights in the digital age" and to PACE Recommendation 2097(2017) "Attacks against journalists and media freedom in Europe".

8.4 Congress of Local and Regional Authorities of the Council of Europe

Similarly, the CDMSI took note of the state of play of its comments prepared and finalised by written procedure on CPLRE Recommendation 398(2017) Open data for better public services? At the invitation of the Committee of Ministers.

8.5 Commissioner for Human Rights

The CDMSI was informed by the secretariat on the work of the Commissioner for Human Rights and notably the publication of his Annual

Activity report for 2016 as well as the procedure for the selection of his successor, after the end of his mandate in March 2018.

8.6. Conference on INGOs of the Council of Europe

The CDMSI held an exchange of views with Didier Schretter, representative of the Conference of INGOs, on outcomes of the Conference winter session and topics that will be addressed at the summer session and on future endeavours for mutual co-operation that would one the one hand, offer an extra channel for disseminating Council of Europe standards on freedom of expression and, on the other hand, foster input in the Conference work, when possible.

8.7 Committee of Experts on Terrorism (CODEXTER)

Kristian Bartholin, co-secretary of CODEXTER, thanked the CDMSI for its comments on a draft recommendation on Terrorists acting alone and informed it on the state of play of the draft as well as on current and future work.

8.8 Steering Committee for Human Rights (CDDH)

The CDMSI took note of the current and future work of the CDDH, in particular a draft analysis of relevant jurisprudence of the European Court of Human Rights regarding freedom of expression, which was judged a very good piece of work, and held an exchange of views with Merete Bjergaard, member of its secretariat. It agreed to continue to take part in its work by sending a representative.

8.9 Ad hoc Committee for the Rights of the Child (CAHENF)

The CDMSI took note of the state of play of its comments on a draft recommendation on [Comprehensive] Guidelines to empower, protect and support children's [safe access to their rights on the Internet] [rights in the digital environment] that was forwarded to the CAHENF. A revised version of the draft will be communicated to the Committee.

8.10 Steering Committee for Culture, Heritage and Landscape (CDCPP)

The CDMSI took note of the state of play of its comments prepared and finalised by written procedure on a draft recommendation on the Challenges of Big Data for Culture, Literacy and Democracy.

8.11 European Committee on Legal co-operation (CDCJ)

The secretariat informed the CDMSI of the adoption by the Committee of Ministers of a draft recommendation on the legal regulation of lobbying activities in the context of public decision making.

8.12 European Audio-visual Observatory

Maja Cappello, Head of the Legal Information Department of the Observatory, informed the CDMSI about on-going and future work as well as developments and had an exchange of views with the committee.

The CDMSI was informed that Greece left the EAO with effect of 1 January 2017 due to lack of funds to cover the membership fee. The EAO regretted this situation and stressed the possibility of Greece's re-joining the other 41 members at any time. Upon the invitation of the Chair to inform about the latest state of play, the Greek delegation regretted that currently no positive decision as to Greek membership appears to be possible.

8.13 Participation of CDMSI members in meetings and events

The CDMSI took note of information provided by CDMSI members on their participation in activities, meetings and events relating to media and Internet issues, as well as by the secretariat, in particular,

- Conference "Human Rights: a reality for all" 27-28 March 2017, Nicosia, Cyprus, attended by Elfa Ýr Gylfadóttir;
- The T-CY 17th Plenary meeting (7-9 June 2017), attended by Emir Povlakić, who agreed to continue following the work of the T-CY on behalf of the CDMSI;

9. Other organisations

European Union

9.1 Current and incoming chairmanship of the European Union

The delegate from Malta gave an overview of the topics addressed and activities carried out during the outgoing presidency of the Council of the EU.

On his turn, the Estonian delegate informed the CDMSI of the priorities of Estonia for its presidency, notably in terms of digitalization of Europe. The information can be obtained on the dedicated website EU2017.EE.

9.2 Audio Visual Media Services Directive

Mr Marcel Boulogne, Head of Sector "Audiovisual Media Services" at the European Commission, informed the CDMSI about the progress of the adoption of the revised Audiovisual Media Services Directive.

He presented key themes being addressed by the revision process; including enlarging the material scope of the directive to the new services such as video sharing platforms, jurisdiction criteria, derogation mechanisms, commercial communications, promotion of audiovisual

works, strengthening the role of independent audio-visual regulatory authorities in the implementation of the directive, protection of minors. In the subsequent debate delegations entered into a lively and engaged discussion on these issues.

10. CDMSI work programme and working methods

Reflection on a future conference of ministers responsible for media and information society

The CDMSI discussed possible topics for a Conference of Ministers responsible for Media and Information Society on the basis of suggestions made by the Bureau.

It agreed on the umbrella topic “Threats to democracy” and agreed that inspiration should be drawn from the Secretary General’s reports, notably his most recent one of 2017.

The Chair encouraged the delegations to send their suggestions for topics and format to the secretariat until end of September 2017.

The CDMSI gratefully welcomed the proposal by Cyprus to host it. It agreed to consider the time frame and all necessary requirements with the Cyprus delegation in the coming months in view of preparing a complete proposal.

Furthermore, the Committee also discussed future work topics to be addressed under its 2018-2019 terms of reference along the priorities of the *Secretary General’s 4th Annual report on Democracy, Human Rights and the Rule of Law 2017 – Populism, how strong are Europe’s checks and balances?*

In that connection, members emphasized the need to address the spread of misinformation, intolerant and hateful discourse notably through social networks and the role of media in counterbalancing such trends that erode inclusive societies. They mentioned the possibility to explore solutions through media ethics, quality journalism and an in-depth reflection on how to enhance media literacy in the new media environment. Furthermore, promoting a pluralistic, diverse and ethical information ecosystem as indispensable for strengthening democratic stability, protecting media and internet freedom while fighting terrorism, countering populism and promoting an active and positive contribution by the media to the integration of refugees and migrants should be at the core of future CDMSI activities. Work on safety of journalists should be continued.

Also, to continue in its efforts to keep pace with technological developments and trends, the CDMSI expressed the particular importance to address issues related to artificial intelligence, algorithms and emerging technologies.

Besides, the strategic approach of the Council of Europe to ensure an appropriate balance between standard-setting, implementation and enhanced reactivity to new challenges as reflected in the current terms of reference should be kept.

The Committee unanimously emphasized the need to be supported by expert committees allowing for in-depth substantive discussions and a structured maximum involvement of all stakeholders.

11. Application for observer status

The IFEX network of organisations engaged in defending and promoting freedom of expression as a fundamental human right has applied to requested observer status with the CDMSI.

The Committee had an exchange with a representative of the organisation IFEX and unanimously decided to grant IFEX observer status.

12. Any other issue

The secretariat informed the CDMSI on the upcoming World Forum for Democracy and its general theme "Media, friend or foe of democracy?" (Strasbourg, 8-10 November 2017) and strongly encouraged its members to get involved in it.

13. Abridged report

Noting the absence of a quorum, the CDMSI finalised the abridged report of the meeting and agreed that in the absence of reactions by 30 June 2017 end of working day, it will be considered adopted by the plenary.

APPENDIX I

Meeting agenda