

Steering Committee on Media and Information Society – CDMSI



Strasbourg, 1 August 2017

CDMSI comments on the Parliamentary Assembly Recommendation 2106 (2017)

“Parliamentary scrutiny over corruption: parliamentary cooperation with the investigative media”

1. The CDMSI examined with interest the Parliamentary Assembly Recommendation 2106 (2017) “Parliamentary scrutiny over corruption: parliamentary cooperation with the investigative media”.

2. Freedom of expression and the right to receive and impart information as its inherent element are fundamental rights that underpin an informed public opinion, public debate and transparency in public affairs. The CDMSI acknowledges that access to public documents is a powerful tool for enhancing transparency and accountability of governments, strengthening anti-corruption safeguards and raising public awareness about governments’ performance. The CDMSI further underlines the relationship between whistleblowers and the media. They are natural partners in the process of exposing wrongdoings and ensuring accountability of both public officials and individuals, as well as of the institutions and organisations within which they operate. In this light, the CDMSI considers the PACE Recommendation 2106 (2017) a timely effort to explore possibilities for fostering legislative reforms aimed at ensuring better protection for whistleblowers and wider access to official documents.

3. The CDMSI observes that the protection of whistleblowers is rooted in the jurisprudence of the European Court of Human Rights on Article 10 of the European Convention on Human Rights. The Court has consistently held that in a democratic system the acts and omissions of government must be subject to close scrutiny not only of the legislative and judicial authorities but also of the media and public opinion. The public’s interest to have access to information, can sometimes be so strong as to override even a legally imposed duty of confidence.

4. The CDMSI recalls Recommendations CM/Rec(2014)7 on the protection of whistleblowers which sets out principles on the protection of whistleblowers, CM/Rec(2015)5 on the processing of personal data in the context of employment which provides that where employers implement internal reporting mechanisms the confidentiality of whistleblowers should be ensured as well as the protection of personal data of all parties involved, CM/Rec(2016)4 on the protection of journalism and safety of journalists and other media actors which requires that whistleblowers alongside with other media actors have access to protective measures when they

are threatened. The CDMSI further recalls the Committee of Ministers' Declaration on the protection of freedom of expression and freedom of assembly and association with regard to privately operated Internet platforms and online service providers (2011) which draws attention to the need to protect a variety of contributors in the public debate within a digital context and of the public value of alternative voices in the digital environment.

5. Taking into account the above, the CDMSI notes that there exists a rich body of standards covering various aspects of the protection of whistleblowers and stresses the need for their implementation at national level. Member states should be encouraged to conduct a self-assessment of their legal provisions to identify the effectiveness of domestic implementation and possible implementation gaps. Recalling Parliamentary Assembly Recommendation 2105 (2017) "Promoting integrity in governance to tackle political corruption" the CDMSI observes that the proposal to launch the process of negotiating a binding legal instrument in the form of a framework convention for the protection of whistleblowers is closely linked to an assessment of national legal provisions on the protection of whistleblowers.

6. The CDMSI observes that the Convention on Access to Official Documents (CETS No.205) is closely related to the questions arising when balancing the right to information and the right to privacy invoking the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (ETS No.108) and the "Guidelines on the protection of individuals with regard to the processing of personal data in a world of Big Data". The CDMSI is aware of the important revision currently underway for the Convention 108. It feels that it is necessary to first complete this revision process in order not to risk any inconsistencies with the reformed Convention 108.