

Steering Committee on Media and Information Society (CDMSI)



2nd Meeting - 27 to 30 November 2012 (Strasbourg, Palais de l'Europe, Room 2)

**Meeting report
CDMSI(2012)021
(14 February 2013)**

1 & 2. Opening of the meeting – adoption of the agenda

1. The CDMSI adopted the agenda and the order of business (Appendix I).

3. Information by the Secretariat

2. Jan Kleijssen, Director of Information Society and Action Against Crime, held an exchange of views with the CDMSI. He referred to the recent decisions of the Committee of Ministers concerning subordinate committees; the establishment of the MSI-DUI was exceptional and a sign of the high priority given to its work. Implementation of existing Council of Europe standards was increasingly considered essential, as were cooperation and synergies with other international organisations. The Internet Governance Strategy and platforms, such as the IGF and EURODIG, were important for furthering Council of Europe standards. The participation of the CDMSI in the UN Action Plan for safety of journalists was important. Mr Kleijssen thanked the Serbian authorities for having agreed to host the next Conference of Ministers responsible for media and information society and encouraged the CDMSI to agree on dates and a focused theme for this event.

4. Decisions of the Committee of Ministers

4.1 Adopted standard setting instrument

Declaration of the Committee of Ministers on the Desirability of International Standards dealing with Forum Shopping in respect of Defamation, "Libel Tourism", to Ensure freedom of Expression (adopted on 7 July 2012)

3. The CDMSI took note of the adoption of the Declaration. It also noted that this text had triggered broad press coverage and visibility.

4.2 Texts of the Parliamentary Assembly of the Council of Europe

"Violent and extreme pornography" – PACE Recommendation 1981 (2011), CDMC comments and Reply adopted by the Committee of Ministers on 12 April 2012.

4. The CDMSI discussed the feasibility of carrying out a comparative analysis of the laws and regulations applying to forms of violent and extreme pornography in member States. On the one hand, several delegations pointed out that this is a very important topic to deal with in the Council of Europe context and that a comparative analysis would be of great interest as the legal requirements in various member states differ extensively. On the other hand, delegations noted that such a comparative analysis would require a strong multidisciplinary approach, involving not only the CDMSI but also other pertinent committees and expertise of the Council of Europe. In the light of that and given the current work programme of the CDMSI and its limited resources available, the CDMSI concluded that currently it would not be feasible for it to carry out such a task without allocation of additional resources.

i) CDMSI comments on PACE Recommendation 1996(2012) Equality between women and men: a condition for the success of the Arab spring

ii) CDMSI comments on PACE Recommendation 1998(2012) on the protection of freedom of expression and information on the internet and online media

iii) CDMSI comments on PACE Recommendation 2001(2012) on protection of and access to the audio-visual cultural heritage.

5. The CDMSI noted that its comments in respect of the three PACE texts were pending before the Committee of Ministers.

5. Media

Standard setting activities

5.1 Initiatives to strengthen the protection of journalists, other media professionals and bloggers, both as regards preventive measures and effective investigation, taking into account the work conducted by other international organisations, and to foster ethical journalism

6. It was recalled that this task had been given to the CDMSI by the Committee of Ministers following its thematic debate on “media freedom” in 2012. CDMSI delegations expressed strong concern about the appalling and deteriorating situation of the protection and safety of journalists in a number of member states. The Committee was of the opinion that the current situation was totally unacceptable and that the Council of Europe should do its utmost to urgently address this situation in a constructive manner as it constitutes threats to the upholding of the very core principles of the Organisation.

7. Fully aware that other international bodies, such as the UN and the OSCE, as well as a number of NGOs were deeply involved in the topic of safety of journalists, it was considered important that any Council of Europe action should be complementary to their efforts. To this end, the case-law of the European Court of Human Rights (ECtHR) in respect of protection and safety of journalists (positive obligations etc) are a unique basis for developing standards and principles which would provide added value to the work already carried out by other organisations. It was noted in this respect that the UN had already requested the Council of Europe to develop instruments on positive obligations as a contribution to the UN Plan of Action on the Safety of Journalists and the issue of Impunity (adopted by UN in November 2012). The CDMSI also referred to recent work of the Commissioner for Human Rights and the Parliamentary Assembly of

the Council of Europe to be taken into account as well as the guidebook on safety of journalists by the OSCE etc.

8. The CDMSI discussed possible content of its work on the basis of a paper suggested by the Bureau (CDMSI(2012)011Rev). It agreed to follow the structure proposed by the Bureau, ie to initiate work on the “Protection of journalists/journalism”, focusing on three pillars i) “safety of journalists” (positive obligations of the state under Articles 2, 3, and 5 of the ECHR, combined with Article 10 ECHR; physical protection and impunity); ii) “support for investigative journalism” (freedom of movement, access to information, protection of journalists sources); and iii) “prevention of judicial intimidation by misuse of law” (defamation, anti-terrorism). The CDMSI was of the opinion that such a work should possibly go beyond the notion of “journalists”, having regard to the new media landscape (bloggers etc) and lead to the elaboration of legal instruments (declaration and/or recommendation).

9. The CDMSI strongly urged that this important work be entrusted to a distinct expert committee, subordinate to the CDMSI (preferably consisting of CDMSI members, legal experts and journalists). However, following information by the Secretariat on the current budget policy of the Committee of Ministers and its restrictive approach to the establishment of subordinate committees and given the urgency of the matter, the CDMSI agreed, in accordance with Article 14b of the appendix I to the Resolution CM/Res(2011)24, to entrust a limited number of Committee members (Andris Mellakauls, Maja Rakovic, Matthias Traimer together with William Horsley as observer) to conduct, in close cooperation with the Bureau and in consultation with other observers, preparatory work to be presented at its next meeting. Furthermore, the Secretariat was invited to consider other possible means for initiating this work as soon as possible (using consultants etc).

10. Moreover, the CDMSI was of the strong opinion that protection of journalism and safety of journalists should be given sufficient space in the Ministerial Conference (Serbia, 2013) and that this Conference should preferably adopt a resolution on this important matter.

Defamation

11. The CDMSI welcomed the draft Secretariat study on defamation and agreed that it should be published online for best dissemination and to be up-dated whenever changes occur in the legislation of a country. To this end, CDMSI delegations were to inform the Secretariat on changes in their legislation and practice which would have an impact on the content of the study.

5.2 Draft convention on broadcasters’ neighbouring rights

12. The CDMSI took note of the information provided by the Secretariat and agreed that the conditions of its terms of reference for carrying out this activity were not met.

5.3 Draft recommendation on gender equality and media

13. The CDMSI was informed that following expert consultations in September 2012, a draft recommendation on gender equality and media was under way and would be ready for discussion by the 3rd Bureau meeting (6 and 7 March 2013).

14. The Irish delegate informed the CDMSI about relevant activities that will take place during the Irish Presidency of the European Union (January-June 2013); the issue of Women in the Media is to be addressed under the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO). It was also planned that the Council Conclusions on this issue were to be adopted at the EPSCO Council on 20/21 June 2013.

Cooperation and outreach (capacity building, best practice in the field)

5.4 *On-going and future activities*

15. The CDMSI took note of the information provided by the Secretariat. In the field of media and freedom of expression, five cooperation projects with external funding were underway. Two of them were joint projects with the EU: one in Ukraine (2008-2012) and one in the South Caucasus and Moldova (2011-2012). Two projects - *Promoting professionalism and tolerance in the media in Bosnia and Herzegovina* and *Supporting the development of journalism teaching in Azerbaijan, Phase II* - were funded by voluntary contributions from Ireland and Norway. A fifth one – a conference on tackling online hate speech – was funded by the EEA and Norway Grants and the Council of Europe as part of a bigger project in which the Council of Europe Youth Department participates.

16. Furthermore, the media cooperation section had provided expert assistance to Hungary to align its media laws with Council of Europe standards. This expertise had been followed up by the Secretary General in a series of high-level meetings and exchanges of views with the Deputy Prime Minister of Hungary and expert meetings. Furthermore, the media cooperation section had provided expertise to “the Former Yugoslav Republic of Macedonia” to draft a civil defamation law. The Council of Europe also assisted in the creation of a regional network of journalistic self-regulatory bodies, including press councils from the South Caucasus, Moldova, the Russian Federation and Ukraine.

5.5 *Hate speech conference (27-28 November 2012)*

17. The Media division was responsible for organising the high-level Council of Europe Conference “*Tackling hate speech: Living together online*” (27-28 November 2012, Budapest) financed by Norway and the Council of Europe, which brought together around 100 participants and experts. The CDMSI followed the opening of this event live (webcast).

Council of Europe co-ordination

5.6 *Implementation of CM Declaration of 13 January 2010*

18. The CDMSI took note of the following information provided by the Secretariat: In May 2012, the Secretary General established the *Task Force on Freedom of Expression and Media* as an inter-Secretariat coordinating structure under the responsibility of the Media division. The Task Force consists of all pertinent Secretariats of various Council of Europe bodies and institutions. Without prejudice to the respective mandates and independence of these bodies, the Task Force is mandated to coordinate Council of

Europe efforts in the area of freedom of expression, to provide an early warning mechanism and in this respect to give (legal) advice and guidance in particular to the Secretary General. The Task Force holds regular meetings and its members communicate when there is a need. To facilitate the processing of information, a collaborative work space online was under construction. It was stressed that the Task Force is strictly an internal network and that it has no powers to deal with external complaints or the like.

19. The CDMSI welcomed the setting up of the Task Force for improved coordination of the activities of the various bodies in the Council of Europe. This approach was considered necessary and had already been suggested by the CDMC at the time. The CDMSI noted that the Secretary General was to report to the Committee of Ministers and the Parliamentary Assembly in early 2013 on the measures taken in order to implement the Declaration.

6. Information Society and Internet Governance

Standard setting activities

6.1 Draft declaration on risks to fundamental rights stemming from digital tracking and other surveillance technologies

20. The CDMSI noted that the draft Declaration had been submitted to the Committee of Ministers for consideration and possible adoption.

6.2 Compendium of existing human rights for Internet users (MSI-DUI)

21. Thomas Schneider, Vice Chair of the Committee MSI-DUI, reported on the work of the Committee. He gave an overview of the key issues that were discussed at the first meeting (13 and 14 September 2012), in particular the scope of rights to be included in the Compendium, their sources in existing standards and the type of instrument which could be considered for submitting the Compendium to the Committee of Ministers for possible adoption. He informed the CDMSI of the approach taken by the MSI-DUI to collect information on human rights problems that users face on the Internet and to map-out issues that should be considered to develop the content of the Compendium. Emphasis was placed on the multi-stakeholder outreach of the MSI-DUI, notably in the context of a dedicated workshop of the IGF (organised by the Council of Europe) where a number of MSI-DUI members participated. Furthermore, the CDMSI was informed that MSI-DUI would meet again on 13-14 December 2012 to prepare an outline preliminary draft Compendium and to build a framework for multi-stakeholder consultations.

22. The CDMSI took note of the information provided and welcomed the state of progress of this work.

6.3 Follow-up to specific instruments on the Internet adopted by the Committee of Ministers

6.4 Drafting of an instrument on cross-border flow of Internet traffic

23. Prior to the discussion on items 6.3 and 6.4, the CDMSI held an exchanges of views on how to ensure multi-stakeholder support for Council of Europe instruments and

the relevance of a wide reaching instrument on freedom of the Internet and on cross-border flow of Internet traffic. The invited experts were: Mr Bertrand de la Chapelle, Director of the Internet and Jurisdiction Project at the International Diplomatic Academy, Paris, Mr Patrik Fältström, Head of Research and Development, Netnod, Stockholm, Ms Joanna Kulesza, Assistant professor, Department of International Law and International Relations, University of Łódź, Mr Wolfgang Kleinwächter, Professor for Internet Policy and Regulation, University of Aarhus and Mr Bram Tullemans, Programme Manager, Broadband Technology and Online Services, EBU.

24. The following is a summary of the discussions:

25. The Council of Europe (CDMC) has been at the forefront in establishing human rights standards and principles for the Internet. The Internet is a shared space with no geographical borders; there is a growing discussion to move to a global level in order to create multi-stakeholder instruments covering states but also other stakeholders, the private sector, industry, Internet service providers, civil society etc. The challenge is to find forms (treaties or other arrangements) where all these players can agree on certain fundamental principles and rules. The classical type of multi-lateral treaties between states (based on the territorial principle for jurisdiction) is not sufficient in this respect and soft law and best practice do not appear to be sufficient for the protection of fundamental values. On the other hand, there are strong calls for leaving the Internet as free and unregulated as possible. The role of the Council of Europe cannot be isolated from the global context and it should contribute to the process, in particular, based on its specific expertise which is the area of human rights

i) Follow-up to specific instruments on the Internet adopted by the Committee of Ministers

26. It was recalled that at its 1st meeting (27 - 30 March 2012) the CDMSI had discussed questions on how to ensure multi-stakeholder support for follow-up to three specific instruments on the Internet adopted by the Committee of Ministers, namely the Declaration on Internet Governance principles; the Recommendation on the protection and promotion of the universality, integrity and openness of the Internet; and the Declaration on network neutrality. To the regret of the CDMSI, it was apparent that it would not be possible to establish a subordinate committee of experts to deal with these issues in the current situation. On the basis of that, the Secretariat, in close cooperation with the Bureau, suggested the following actions:

27. In respect of the Declaration on Internet Governance Principles and the Recommendation on the protection and promotion of the universality, integrity and openness of the Internet, it was highlighted that related actions would require multi-stakeholder input and validation. It would be important to develop a framework of understanding and/or commitments based on the Council of Europe core values and principles on Internet governance to protect the universality of the Internet, integrity and openness as means for safeguarding freedom of expression regardless of frontiers and Internet freedom. A first step towards such a "framework" could be to take stock of the implementation of these instruments through the elaboration of a questionnaire to be prepared by the Secretariat, with the assistance of experts. It was also envisaged to establish a collaborative mechanism, for example an observatory, an index or a clearinghouse of best practices relating to Internet governance principles. This is already proposed in the Council of Europe's Internet Strategy (Action V.). The Secretariat could

explore such possibilities further, possibly in cooperation with the European Audiovisual Observatory.

28. In respect of the Declaration on network neutrality, it was proposed that the Secretariat prepare a draft document on the possible content of net neutrality guidelines for member states, bearing in mind the findings of the BEREC report, the recent ETNO proposals as well as national initiatives (e.g. UK ISPs code of conduct). The CDMSI could possibly organise a multi-stakeholder consultation on net neutrality with the aim of establishing guidelines concerning emerging problems as well as market and technology changes that impact on the currency of the Declaration.

29. The CDMSI agreed with the proposals (endorsed by the Bureau) for follow-up action concerning the above instruments, i.e. to explore the possibility of establishing data collection on the implementation of these standards in member states and to organise a multi-stakeholder conference on the feasibility of drafting a “framework of understanding/commitments” on Internet governance principles and the Recommendation on the protection and promotion of the universality, integrity and openness of the Internet, possibly in 2013/2014.

ii) Drafting of an instrument on cross-border flow of Internet traffic

30. The CDMSI took note of a preliminary report on scenarios of interference with Internet traffic which may have an impact on access to information across borders (CDMSI(2012)015), prepared by the Secretariat. It also noted that, given the current budgetary situation, the preliminary report was prepared in the absence of a group of experts to deal with the issues under this topic.

31. The Secretariat also reported on discussions on this topic which took place during a dedicated workshop at the recent IGF (Baku, 6-9 November 2012). The workshop discussions had emphasised that further documenting of issues and challenges with regard to free flows of Internet traffic across borders were needed. It was also considered important to examine the extent to which commercial connectivity choices and technical solutions can address the identified challenges and to assess the desirability of policy responses in the form of international co-operation instruments/agreements. Another key issue is the lack of uniform conception internationally as to what is legal content. During the workshop it was noted that the principles of due diligence co-operation referred to in the CM recommendation on Internet’s universality, integrity and openness provide a framework of reference.

32. The CDMSI agreed with the proposed way forward (agreed by the Bureau), namely to explore the possibility of preparing an expert report to analyse the legal, policy and technical issues of cross-border flow of Internet traffic and to examine policy options to be pursued.

Cooperation and outreach (capacity building, best practice in the field)

6.5 European Dialogue on Internet Governance (EuroDIG 2012 and 2013)

33. The CDMSI took note of the document EURODIG document “Message from Stockholm”. Several delegations stressed the importance of EURODIG as a regional platform for multi-stakeholder discussions on the Internet. They were pleased that the

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Council of Europe provides strong input to the EURODIG. The organisation in Stockholm was considered excellent and the large involvement of youth organisations had been impressive. However, some delegations expressed concern that there were too many topics and workshops and that it would be an advantage to provide for more focused themes for these events in the future.

34. The CDMSI was informed by the Secretariat that 6th EuroDIG meeting is to take place in Lisbon on 6-7 June 2013 (dates announced in the meeting have since changed to 20-21 June). It encouraged CDMSI members to take part in it.

6.6 Internet Governance Forum (IGF, Baku, 6-9 November 2012)

35. The CDMSI took note of the written information provided by the Secretariat concerning the IGF, which appear as APPENDIX III to the current report. Also in respect of the IGF, several delegations stressed the importance of this global forum and the success of the event in Baku at the same time as concerns were raised as to its massive size (over 100 workshops in 4 days). The CDMSI suggested that IGF meetings should be more focused on particular subjects in the future.

36. The CDMSI was informed of the press meeting for Azeri journalists and bloggers, jointly conducted by the Council of Europe Commissioner for Human Rights, the OSCE representative for media freedom and the Vice-President of the European Commission responsible for the Digital Agenda. This event was held in Baku on 7 November 2012 outside the framework of the IGF. The CDMSI took note of press releases from this event.

6.7 Council of Europe Internet Governance Strategy 2012-2015

37. The CDMSI considered the state of play of the implementation of the Strategy, based on a synthesis and implementation chart. Members considered the Strategy to be very ambitious and welcomed its multidisciplinary approach. Some delegations expressed that it was rather difficult to follow the implementation of the Strategy; and would welcome further information on the implementation as well as on the risks encountered in respect of non-implementation of action lines. Delegations also expressed the need to identify necessary synergies and partnerships with other bodies and networks, both within the Council of Europe and beyond. The CDMSI would also welcome discussions with the various stakeholders of the Strategy on their role in the implementation. The Strategy should be made available online for easier oversight.

6.8 Governmental Advisory Committee (GAC)/ Internet Corporation for Assigning Names and Numbers (ICANN)

38. The Secretariat informed the CDMSI that the Council of Europe, in its capacity as an observer to the GAC, submitted to the GAC meeting in Toronto (14-19 October 2012) a set of comments prepared by independent experts on freedom of expression and freedom of association with regard to new generic top level domains (document DG-I (2012)4). The CDMSI took note of the information, congratulated the Secretariat and welcomed this initiative. These comments were submitted too late to be included in the GAC's agenda so they were not discussed. Consequently, CDMSI members were invited to bring these comments to the attention of their representatives in the GAC.

7. Data protection

Standard setting activities

7.1 Information concerning the review by the Consultative Committee (T-PD) of the Convention for the Protection of Individuals with regard to Automatic processing of personal data (ETS 108)

39. In its exchange of views with the with Jean-Philippe Walter, Chair of the T-PD, assisted by the Secretary to the T-PD on the state of play in the on-going revision of Convention 108, the CDMSI was informed that the T-PD had just adopted (3rd reading) the modernisation proposals (29th Plenary meeting of the T-PD 27-30 November 2012). In essence this included the enhancement of the rights and protection of individuals (proportionality, accountability, privacy by design, obligation to declare data breaches, transparency of data processing, and additional safeguards for the data subject such as the right of access to the origin of data and the right to object). Furthermore, the draft strengthens the follow-up of the implementation of the Convention. A key aspect of the work had been to ensure that Convention 108 would remain fully complementary and consistent with the EU Data Protection Framework and its modernisation as well.

40. The CDMSI was informed that the draft proposals would be directly submitted by the T-PD to the Committee of Ministers in accordance with its mandate (2010). The CDMSI would thus not be involved in the process at this stage. However, it would be competent for adopting draft terms of reference of an ad hoc Committee to provide an intergovernmental forum to the modernisation negotiations and enable their finalisation.

Co-operation activities

41. The CDMSI exchanged views with Professor Bertil Cottier, independent expert who successfully led a cooperation project in Ukraine on the adoption by the national stakeholders of "Recommendations on the right to privacy in media coverage" (this work was carried out within the framework of a joint programme between the Council of Europe and the European Commission).

8. Council of Europe Conference of Ministers responsible for Media and Information Society (Serbia, 2013)

42. The State Secretary of the Serbian Ministry of Culture and Information, Ms Gordana Predić addressed the CDMSI. She emphasised that her authorities look forward to hosting the Conference of Ministers responsible for Media and Information Society in close cooperation with the Council of Europe and the CDMSI. She stated that her authorities would like to build this event as a follow up to the Reykjavik Conference on a new notion of the media, and to focus on new possibilities and rights but also responsibilities in the new media landscape.

43. On the basis of a document prepared by the Secretariat following instructions of the Bureau, (CDMSI(2012)Misc15rev), the CDMSI discussed and agreed on dates, overall theme, sub-themes and format for the Ministerial Conference. Following a proposal from the Serbian delegation, it was agreed to organise the Conference on 17 and 18 October 2013 in Belgrade.

44. After a long and thorough debate on possible themes, the CDMSI agreed on the following main theme of the Conference: “Freedom of expression and democracy in the digital age – opportunities, rights and responsibilities”

It was also agreed to include three sub-themes:

- Sub-theme 1: “Access to the Internet and Fundamental Rights”
- Sub-theme 2: “How do we address current threats to journalism?”
- Sub-theme 3: “Pluralism, diversity and quality in the new media eco-system – opportunities and risks”.

45. The CDMSI stressed that the Conference should have a strong multi-stakeholder approach (including civil society and possibly, industry, business etc) and that the main ministerial sessions should be complemented with parallel sessions, similar to the organisation in the previous Conference in Reykjavik. The CDMSI encouraged civil society representatives to organise separate side events on issues linked to the Conference.

46. Maja Rakovic agreed to draft an outline of the Conference programme on the “Reykjavik model”.

47. The CDMSI stressed the need for starting the process of drafting a declaration and resolutions of the Conference as early as possible, and one of the resolutions should deal with safety of journalists (see also above 5.1). An informal drafting group should be established. The draft documents would need to be discussed in the 3rd Bureau meeting (March 2013) and in the 3rd meeting of the CDMSI (April 2013). It was stressed that sufficient time for preparing the Conference must be provided for in these meetings.

48. The CDMSI invited all delegations to submit to the Chair and the Secretariat suggestions for keynote speaker(s), other speakers and panellists.

49. The CDMSI was informed by the Secretariat that it had been invited to a preparatory meeting in Belgrade (early 2013) in order to discuss the practical details of the Conference with the Serbian authorities.

9. CDMSI relation with other Council of Europe bodies

50. The CDMSI also took note of reports on various meetings and events attended by the Chair of the CDMSI (Pan European Forum on Media Pluralism and New Media, Brussels, European Parliament, Brussels, 27 June 2012; and the 31st Conference of Ministers of Justice, Vienna, 19-21 September 2012). William Horsley presented a draft report on the State of media freedom in Europe (MP Mats Johansson, rapporteur) AS/Cult(2012)35, to be discussed by the CoE Parliamentary Assembly session in January 2013.

51. Ms Regina Jensdottir, Head of the Children’s Rights Division, on the Council of Europe Strategy for the Rights of the Child (2012-2015) informed CDMSI on the Strategy.

10. CDMSI exchanges of views with other organisations etc

52. The CDMSI held an exchange of views with Professor Vaira Vīķe-Freiberga, Chairperson of the EC High Level Group on Media Freedom and Pluralism concerning the work of the High Level Group and its implications for possible synergies between the EU and the Council of Europe. The EC High Level Group was to publish a report towards the end of 2012 or beginning of 2013. On the basis of the discussions, the Secretariat prepared a follow-up paper, APPENDIX IV, which was submitted to Dr Vīķe-Freiberga for consideration by her and the High Level Group.

53. The CDMSI also exchanged views with Ms Nieves Fernandez del Cotero Secades, European External Action Service (EEAS), on EU's progress with its Internet Freedom Strategy and related other matters. The CDMSI welcomed the EEAS's intention to draw on Council of Europe instruments in this area and underlined the need to enhance cooperation between the Council of Europe and EU institutions. Delegations also expressed concern about risks for EU duplication of work already carried out by the Council of Europe.

11. Elections

54. The CDMSI re-elected Andris Mellakauls (Latvia) as its Chair and Maja Rakovic (Serbia) as its Vice-Chair, both for a second term (1 January to 31 December 2013).

12. Dates for future meetings

55. The CDMSI agreed on dates for its plenary meetings in 2013 as follows: 3rd meeting 23 - 26 April and 4th meeting 3 - 6 December 2013. It also agreed to hold an extra plenary meeting in Belgrade on the eve of the first day of the Ministerial Conference, i.e. 16 October 2013.

13. Budget and administrative issues

56. The CDMSI discussed the current budget situation in the Council of Europe which was considered to have critically negative impact on the work of the CDMSI. Several delegations expressed concern that the role of the CDMSI, as the most important standard setting body in Europe in the area of media and information society, was severely damaged by the limited resources made available. In particular the difficulty of establishing subordinate expert groups would make it harder to pursue the role of the CDMSI. Some delegations expressed the views that standard setting should remain the core activity of the CDMSI. The Committee agreed to send the following message (in its abridged report) addressed to the Committee of Ministers: "The CDMSI wishes to bring to the attention of the Committee of Ministers that due to the lack of adequate sub-structures and resources the CDMSI finds itself severely constrained in the fulfilment of its standard setting work and is unable to fully realise its potential in that regard."

14. Other questions

57. A representative of the Black Sea Broadcasting Regulatory Authorities (BRAFA), made a presentation of this organisation before the CDMSI and requested that BRAFA be

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granted observer status with the Committee. The CDMSI decided to consider this request after a discussion in the Bureau.

15. Adoption of the abridged report

58. The CDMSI adopted its abridged report for submission to the Committee of Ministers.

Appendix I
Meeting agenda

- 1. Opening of the meeting**
- 2. Adoption of the agenda**
- 3. Information by the Chair and the Secretariat**
- 4. Decisions of the Committee of Ministers**
- 5. Media**

Standard setting activities

5.1 *Initiatives to strengthen the protection of journalists, other media professionals and bloggers, both as regards preventive measures and effective investigation, taking into account the work conducted by other international organisations, and to foster ethical journalism*

5.2 *Draft convention on broadcasters' neighbouring rights*

5.3 *Draft recommendation on gender equality and media*

Cooperation and outreach (capacity building, best practice in the field)

5.4 *On-going and future activities*

5.5 *Hate speech*

5.6 *Implementation of CM Declaration of 13 January 2010*

6. Information Society and Internet Governance

Standard setting activities

6.1 *Draft declaration on risks to fundamental rights stemming from digital tracking and other surveillance technologies*

6.2 *Compilation of existing rights of Internet users (MSI-DUI)*

6.3 *Follow-up to specific instruments on the Internet adopted by the Committee of Ministers*

6.4 *Drafting of an instrument on cross-border flow of Internet traffic*

Cooperation and outreach (capacity building, best practice in the field)

6.5 *European Dialogue on Internet Governance (EuroDIG 2012 and 2013)*

6.6 *Internet Governance Forum (IGF, Baku, 6-9 November 2012)*

6.7 *Council of Europe Internet Governance Strategy 2012-2015*

6.8 *GAC / ICANN*

7. Data protection

Standard setting activities

7.1 *Information concerning the instruments currently under review by the T-PD:*

Convention 108

8. Council of Europe Conference of Ministers responsible for Media and Information Society (Serbia, 2013)

9. CDMSI relation with other Council of Europe bodies

10. CDMSI exchanges of views with other organisations etc

11. Elections

12. Dates for future meetings

13. Budget and administrative issues

14. Other questions

15. Adoption of the abridged report

Appendix II

List of participants

Gender distribution: 67 participants, 32 women (48%), 35 men (52%)
Parité entre hommes / femmes : 67 participants: 32 femmes (48), 35 hommes (52%)

ALBANIA/ALBANIE

Ms Eva Kushova

Press adviser of Albanian Deputy Prime Minister and Minister of Foreign Affairs

ARMENIA/ARMENIE

Mr Garegin Chugaszyan

Executive Director, IT Foundation

AUSTRIA/AUTRICHE

Mr Matthias Traimer

Federal Chancellery, Head of Department, Media Affairs and Information Society, Federal Chancellery, Constitutional Service

AZERBAIJAN

Ms Jeyran Amiraslanova

Senior Consultant for Public and Political Issues, Office of the President of the Republic of Azerbaijan, Presidential Palace

BOSNIA AND HERZEGOVINA/BOSNIE-HERZEGOVINE

Mr Emir Povlakic

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

BULGARIA/BULGARIE

Ms Bissera Zankova, Media Expert / Consultant

Ministry of Transport, IT and Communications

Ms. Zlatina Atanassova Nikolova, Chief Expert at the IT Directorate

Ministry of Transport, IT and Communications

CROATIA/CROATIE

Ms Jasminka Draženović

The Ministry of the Culture of the Republic of Croatia

Ms Anja Jelavić

Agency for Electronic Media of the Republic of Croatia

CZECH REPUBLIC/REPUBLIQUE TCHEQUE

Artuš Rejent

Media and Audio-Visual Department, Ministry of Culture

DENMARK/DANEMARK

Ms Katja Just Maarbjerg

Head of Section, Danish Ministry of Culture

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ESTONIA/ESTONIE

Mr Peeter Sookruus
Head of Media Department, Ministry of Culture

FINLAND/FINLANDE

Ms. Kati Ström-Lepola
Coordinator, Unit for Internet Services, Communications Policy Department, Ministry of Transport and Communications

FRANCE

Ms Sophie Verrier
Bureau des affaires europeennes et internationales, Direction Generale des Medias et des Industries Culturelles, Ministere de la Culture et de la Communication

Ms Catherine Souyri

Rédacteur, la Sous-direction de l'audiovisuel extérieur et des technologies de communication
Mministère des affaires étrangères

GEORGIA/GEORGIE

Ms Tamar Kintsurashvili
General Director of Public Broadcasting

GERMANY/ALLEMAGNE

Ms Els Hendrix
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Mr Rüdiger Dossow

THE CONSULTATIVE COMMITTEE OF THE CONVENTION FOR THE PROTECTION OF INDIVIDUALS
WITH REGARD TO AUTOMATIC PROCESSING OF PERSONAL DATA [ETS No. 108] /

COMITÉ CONSULTATIF DE LA CONVENTION POUR LA PROTECTION DES PERSONNES A L'EGARD
DU TRAITEMENT AUTOMATISÉ DES DONNÉES A CARACTÈRE PERSONNEL [STE n°108] (T-PD)

M. Bertil Cottier

* * *

HEARING (items 6.3 and 6.4 on 28/11 (am))

Mr Bernard de la Chapelle, International Diplomatic Academy

Mr Patrik Fältström, Head of Research and Development, Netnod

Ms Joanna Kulesza, University of Łódź

Mr Wolfgang Kleinwächter, University of Aarhus

Mr Bram Tullemans, EBU

EXCHANGE OF VIEWS WITH EU Internet Freedom Strategy (Item 10b on 28/11(pm))

Ms Nieves Fernandez del Coto Secades

European External Action Service Human Rights (Policy Instruments)

EXCHANGE OF VIEWS (29/11 am)

Ms Vaira Vīķe-Freiberga.

Chair of the European Commission's High-level group on Media Freedom and Pluralism

GENDER EQUALITY AND HUMAN RIGHTS DEPARTMENT – CHILDREN'S RIGHTS

Ms Regína Jensdóttir, Head of Division and Programme Coordinator

INTERPRETERS

Mr Luke Tilden

Ms Amanda Beddows

Mr Nadine Kieffer

Ms Maryline Neuschwander

SECRETARIAT

Mr Jan Kleijssen, Director, Information Society and Action against Crime, Directorate General of Human Rights and Rule of Law

Mr Jan Malinowski, Head of Information Society Department, Directorate General of Human Rights and Rule of Law

Mr Björn Janson, Head of Media Division, Directorate General of Human Rights and Rule of Law, Secretary to the Steering Committee on Media and Information Society

Ms Anne Boyer-Donnard, Administrative Assistant, Media Division

Ms Julia Whitham, Assistant, Media division

Mr Ivan Nicolchev, Head of Cooperation, Media division

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Mr Lee Hibbard, Head of Information Society Unit, Directorate General of Human Rights and Rule of Law

Ms Elvana Thaçi, Administrator, Information Society Unit

Mr James Lawson, Administrator, Information Society Unit

Ms Sophie Kwasny, Head of Data Protection Unit, Data Protection and Cyber Crime Division, Directorate General of Human Rights and Rule of Law

Appendix III

Briefing for the CDMSI on the Council of Europe's participation in the seventh edition of the Internet Governance Forum (IGF) Baku, 6-9 November 2012

Background

In the run up to the 2nd phase of the World Summit on the Information Society (WSIS - Tunis, November 2005), Internet governance circles advanced that human rights discussions had been exhausted. In response, the Steering Committee on Media and New Communication Services (CDMC) submitted a message to the Committee of Ministers underlining that human rights had to be at the forefront of any Internet governance discussions. It asked the Committee of Ministers to enable the Council of Europe to pursue this goal.

Since then, the Committee of Ministers has included this objective – involving participation in the IGF – in a range of decisions,¹ standard setting texts,² the Council of Europe Internet Governance Strategy 2012-2015, the CDMSI's own terms of reference and, also explicitly, in the Programme of Activities³. The specialised Ministerial Conference held in Reykjavik in May 2009 also supported this approach.

Outcomes

Ensuring a human rights dimension in Internet governance discussions has been the Council of Europe's biggest achievement in its participation in the IGF to date. Human rights (together with rule of law and democracy concerns) featured in approximately two-thirds of the Baku IGF workshops and events; this resulted in repeated reference to the Council of Europe's "no harm" principle and its 10 Internet governance principles adopted by member states.

There were 8 events organised/co-organised by the Council of Europe involving in aggregate approximately 400 people covering the human rights safeguards in fighting cybercrime, empowering Internet users, the tracking of online personal data, cross-border flow of Internet traffic, and freedom of expression and hate speech. In addition, the Council of Europe open forum on anti-terrorism, human rights and the Internet was a popular and rather unique event which contributed to balancing the issues of security and human rights, as was the joint open forum (originally proposed by the CDMSI-

¹ CM Decisions of 21 October 2009 (1068th meeting).

² Declaration on Internet governance principles, adopted on 21 September 2011; Recommendation CM/Rec(2011)8 on the protection and promotion of the universality, integrity and openness of the Internet; Recommendation CM/Rec(2007)16 on measures to promote the public service value of the Internet; Declaration on enhanced participation of member states in Internet governance matters – Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN), adopted on 26 May 2010.

³ Cf. more recently, Programme and Budget 2012-2013, Common Standards and Practices, Information Society and Internet Governance, Expected Result 4.

Bureau) on the safety of online media actors which was co-organised by the EBU, CoE, UNESCO, OSCE and the European Commission with the support of Austria, Sweden, the Netherlands, Reporters Without Borders and the International Federation of Journalists. The latter event was complemented by a meeting between high level participants⁴ and Azerbaijan journalists which led to a joint statement⁵. In a separate declaration, Neelie Kroes, Vice-President of the European Commission, together with a group of members of the European Parliament “call[ed] on the political leaders of Azerbaijan to immediately adhere to the standards of the Council of Europe”.

Other results

The IGF is a multi-stakeholder discussion platform. It was not set up to deliver concrete outputs (agreed standards, declarations or other tangible results) but rather to develop ideas, and momentum for incremental positive change, with the ultimate goal of protecting and preserving the Internet as we know it. It offers opportunities for the Council of Europe to pursue specific objectives such as increased interaction and reconciliation of competing interests of/with stakeholders. This is done in real time with a range of actors who are open to designing public-private partnerships. Such dialogue has brought the Council of Europe into contact with a wide range of interlocutors, many of whom are now regular contributors and supporters of the Council of Europe’s work.⁶

The Internet Corporation for Assigned Names and Numbers (ICANN) is a specific example. In the 2007 edition of the IGF, the Deputy Secretary General and the Secretariat met ICANN’s Chief Executive Officer and Board Members, advocating the need for ICANN to take due account of human rights and international law. Following Committee of Ministers decisions, the Council of Europe became observer to ICANN’s Governmental Advisory Committee (GAC) and has since been actively contributing to its discussions both from a human rights and rule of law angle. In a clear change in direction, in 2012, ICANN’s CEO stated that human rights must have an important place in ICANN’s work.

It is sometimes claimed that the IGF does not deliver any concrete results. However, it is important to stress it has directly inspired and contributed to the Council of Europe’s adopted standards in the field.⁷ The Council of Europe’s on-going work on a

⁴ Nils Muiznieks, Council of Europe Commissioner for Human Rights; Neelie Kroes, Vice-President of the European Commission; Dunja Mijatovic, OSCE Representative on Freedom of the Media.

⁵ While the freedom of speech Rapporteurs / Representatives of the OSCE, UN, OAS and of Africa have issued a number of joint statements in the past, this is the first occasion in which the Council of Europe Commissioner for Human Rights is party to such initiatives.

⁶ Cf. Programme and Budget 2012-2013 (see note 3 above).

⁷ Council of Europe deliverables discussed and shaped at IGFs include Recommendation CM/Rec(2012)4 on the protection of human rights with regard to social networking services; Recommendation CM/Rec(2012)3 on the protection of human rights with regard to search engines; Declaration on Public Service Media Governance; Recommendation on public service media governance; Declaration on the protection of freedom of expression and freedom of assembly and association with regard to privately operated Internet platforms and online service

compendium of rights of Internet users was discussed and supported by many in the Baku IGF. Participation in previous editions of the IGF permitted early contacts with high level officials from several Council of Europe member states, contributing to shaping their strong support for freedom of expression and related Internet freedom as one of their countries' foreign policy priorities.

Cost-effectiveness

The multiplier effect of participation in the IGF is impressive. The Council of Europe funds the participation of a limited group of people who directly reach up to 2000 participants on-site and many more via Twitter and other social networks and media platforms. The return on investment is high also in respect of expert debate and momentum for intergovernmental work thereafter. Participation of a relevant member of the Secretariat together with few government and/or independent experts can often replace far more costly meetings of experts.

The IGF has also proven to be an excellent cost-effective pool for identifying and recruiting experts with demonstrated skills and competence including for membership in mixed intergovernmental / independent expert groups.

Looking ahead

The Council of Europe has repeatedly transmitted messages of support for the IGF, addressed, *inter alia*, to the UN structures that support it. These messages have come from the Committee of Ministers, the Secretary General, intergovernmental structures such as the CDMC and its successor Committee CDMSI, as well as from the Conference of Specialised Ministers.

Various Council of Europe expected results will be discussed in the next edition of the IGF (Bali, Autumn 2013) including multi-stakeholder follow up that might be given to the CM Declaration on Internet governance principles and to the CM Recommendation on the protection and promotion of the universality, integrity and openness of the Internet.

providers, adopted on 7 December 2011; Declaration on Internet governance principles, adopted on 21 September 2011; Declaration on the protection of freedom of expression and information and freedom of assembly and association with regard to Internet domain names and name strings, adopted on 21 September 2011; Recommendation CM/Rec(2011)7 on a new notion of media; Recommendation CM/Rec(2011)8 on the protection and promotion of the universality, integrity and openness of the Internet; Declaration on the management of the Internet protocol address resources in the public interest, adopted on 29 September 2010; Declaration on network neutrality, adopted on 29 September 2010; Declaration on enhanced participation of member states in Internet governance matters – Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN), adopted on 26 May 2010; Recommendation CM/Rec(2009)5 on measures to protect children against harmful content and behaviour and to promote their active participation in the new information and communications environment; Recommendation CM/Rec(2008)6 on measures to promote the respect for freedom of expression and information with regard to Internet filters; Declaration on protecting the dignity, security and privacy of children on the internet, adopted on 20 February 2008; Recommendation CM/Rec(2007)16 on measures to promote the public service value of the Internet.

The objective is to identify ways in which other stakeholders, such as business and civil society, and countries that are not Council of Europe member states, can support Council of Europe outputs such as its 10 Internet governance principles or its commitment to do “no harm” to the internet and to cooperate to resolve any problems that may arise.

The Council of Europe considers the IGF to be an important platform for implementation and capacity building action in the fight against cybercrime and in the protection of personal data pursuant to the Budapest Convention on Cybercrime and Convention “108”. The unique multi-stakeholder setting of the IGF helps to share Council of Europe expertise and best practice at the global level.

Future IGFs will also offer an opportunity to further build up discussions and showcase Council of Europe work on the Internet dimension of anti-terrorism. Following the recent Pompidou Group⁸ High Level Meeting focussed on drugs and the Internet (on the one hand, “darknet” and “silk road” used for Internet-based drug trafficking and, on the other hand, the dissemination of drug abuse information on the Internet, prevention and Internet-assisted treatment) this may be another ground-breaking Internet governance theme that the Council of Europe could bring to the IGF.

⁸ The Pompidou Group’s core mission is to contribute to the development of multidisciplinary, innovative, effective and evidence-based drug policies in its member states.

Appendix IV

Exchange of views with Professor Vaira Vīķe-Freiberga (VVF), Chairperson of the EC High Level Group on Media Freedom and Pluralism; summary of issues raised by CDMSI members/observers.

- CDMSI members expressed great interest in the work of the EC High Level Group on Media Freedom and Pluralism and its upcoming report which could serve as an important tool for establishing synergies and cooperation between the EU and CoE in the future. The work of the High Level Group was considered to be “at the heart of the CDMSI” and the CoE.
- The basic values of the EC High Level Group as developed by VVF (media freedom-democracy) are built on the same fundamental principles underpinning the equivalent work of the CoE.
- Freedom of expression and media freedom is a CoE priority. A large number of media standards (including media freedom and pluralism) have been adopted by the CoE. This needs to be recognised by the EU.
- Important to avoid double standards. Possible areas for cooperation between the EU and the CoE should build on longstanding CoE experience in establishing standards for media freedom and media pluralism. In recent years, standard setting has also developed rapidly in the area of the Internet and the CoE has its Internet Governance Strategy 2012-2015.
- There were several questions relating to monitoring of member states in respect of media freedom etc and the role of the CoE in this respect.
- Given the limited EU competence in the area of media, should not the CoE make arrangements for observing more closely member states’ performance in respect of freedom of expression and media (early warning leading to constructive dialogue)? CoE could provide monitoring in respect of European countries (one recent example is the Hungarian media legislation, which is subject to in-depth CoE scrutiny, supported by the EC (Neelie Kroes).
- How can EU and CoE develop improved synergies and multiply the impact of their respective efforts, taking into account different mandates and areas of expertise / excellence? Monitoring?
- VVF: The current EU treaties offer limited possibilities for the EU to act on matters relating to media issues and to intervene in EU member states; also the subsidiary principle makes it difficult for the EU to act on media issues in member states. Therefore the EU focus is on countries in the process of acceding to the EU where measures may have greater impact. – In this context it was stressed that the CoE with 47 member states (including all EU members and all states in the process of acceding to the EU as well as other European states, some of which in a “pre-accession stage”) is not limited in its competence concerning

freedom of expression and media freedom, and ought to be a potentially important partner to the EU in this area.

- It would appear that the problems of media concentration and pluralism in respect of traditional media and even more so concerning online media are areas of common concern where cooperation would be important.
- The importance of Public Service Media (PSM) was raised several times. The EBU representative wondered how the High Level Group saw the role of PSM in the new digital environment. He reminded the meeting that the CoE is an important standard setter in respect of PSM, including recent instruments (2012).
- The independence of regulatory authorities was mentioned as an area where the CoE recommendations are important (EPRA).
- Convergence between broadcasting and broadband, connected TV and evolving multi-screen/platforms and their involvement on broadcasting in general and PSM in particular was mentioned as an issue of concern.
- It should be added that the cooperation activities of the CoE in the field of media, most of which are already funded by the EU through “joint programmes” are addressed to some 10 countries. There is potential for more such cooperation.
- Risks to pluralism and democracy stemming from new forms of concentration with operators such as Google, Facebook, Apple, becoming powerful gatekeepers of content, capturing available revenue and driving traditional media out of business if they do not change business models.
- The issue of EU competence and the risk of negative impact on cooperation between EU and the CoE was mentioned in the light of the bad experience with the unsuccessful updating of the Convention on Transfrontier Television as a result of the EU position.
- Reference was made by the European Audiovisual Observatory (EAO) to its latest IRIS Special publication on pluralism and media concentration in the audiovisual sector, for example, indicating that few big companies control a significant share of the market. The report was handed over to VVF.
- VVF pointed to competition law as the EU’s primary tool for addressing media concentration issues. This is beyond doubt but merits further reflection. For example, it appears that the market by market approach of competition law fails to offer tools that could cope with vertical integration and the resulting media concentration issues. At the same time various EU Directives address situations outside of mergers and acquisitions that also have an impact on the freedom of information, especially scenarios where companies introduce business models or technology to control access to media services and/or content. Facilitating access to information and promoting interoperability of technologies are also suitable tools to support media pluralism. Schemes offering financial support for the production of content may also be used to promote media pluralism and are within the realm of EU competence.

- Community Media Forum Europe (CMFE) underlined the need to take into account community media when assessing media pluralism in present and future EU member states as has been done by the UN and by CoE and EP. In 2012 CMFE conducted a mapping of community radio and television in 49 European countries, in cooperation with EPRA; there is still a long way to go to ensure that the European Parliament and CoE standards are put into practice. Hope the High Level Group will remind EU member states of the importance of ensuring community media.
- References were also made to the Leveson report; it was asked if this report would be taken into account by the High Level Group.