

*ADI/MSI-DIS(2021)10*  
*v. 17.11.21*

## **4<sup>th</sup> meeting**

**6-7 October 2021 (hybrid)**

**and**

**21-22 October 2021 (online)**

### **Meeting report**

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

1. Bastiaan WINKEL (the Netherlands), Vice-Chair to the ADI/MSI-DIS, opened the 4<sup>th</sup> and last meeting of the ADI/MSI-DIS, and invited participants to discuss the text of the draft Recommendation to the Committee of Ministers on Combating Hate Speech (the draft Recommendation) and its accompanying draft Explanatory Memorandum (the draft EM) with a view to reaching an agreement on both texts before transmitting them to the two steering committees, CDADI and CDMSI, for approval. The final step in the process is the expected adoption of the draft Recommendation by the Committee of Ministers.

#### **Item 2. Welcoming remarks**

3. Hallvard GORSETH, Head of the Anti-Discrimination Department, Directorate General of Democracy, and Patrick PENNINCKX, Head of the Information Society Department, Directorate General Human Rights and Rule of Law, welcomed the experts and participants in the meeting and stressed the relevance and urgency of the Committee's work.

4. Hallvard Gorseth recalled that hate speech is a persistent problem of great magnitude in Europe. He stressed the importance of finding a comprehensive response to preventing hate speech, referring to ECRI's monitoring findings and the experience gained by member States and civil society, which consists of both short-term responses to incidents of hate speech and long-term strategies to address its root causes. He underlined the need for a constant balancing of the fundamental rights and freedoms involved, also referring to

hate speech online and, in this regard, welcomed the exchanges that took place between the Committee of Experts on Freedom of Expression and Digital Technologies (MSI-DIG) and the ADI/MSI-DIS.

5. Patrick PENNINCKX further stressed the importance of ensuring the balance between the right to private life and to be free from discrimination and the right to freedom of expression. He also stressed that the abuse of hate speech laws must be prevented, as they could be misused for silencing conflicting or critical opinions and valuable contributions to the public debate. In this regard, Patrick PENNINCKX insisted on the importance of a comprehensive definition of hate speech that will be referred to in the future work of the Council of Europe. He concluded by recalling the close collaboration between the Council of Europe and the European Commission on the Rule of Law report and the European Democracy Action Plan, which are of particular relevance with regard to the Committee's work.

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

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

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

7. The co-Secretaries to the Expert Committee, Giulia LUCCHESI and Menno ETTEMA presented key developments within the Council of Europe in relation to the work of the Committee of Experts. Giulia LUCCHESI, Information Society Department, Media and Internet Division, co-Secretary to the Expert Committee, recalled that the Steering Committee on Media and Information Society (CMDSI) had, during its last Plenary meeting in May, reviewed the draft Recommendation and approved the launch of the public consultation. She recalled that the MSI-DIG had held its final meeting and had agreed on the draft Recommendation on the impacts of digital technologies on freedom of expression, and that the CDMSI had adopted the Guidance note on content moderation, elaborated by the MSI-DIG. She also updated the members on the [Conference of Ministers responsible for Media and Information Society](#) held on 10 and 11 June, which addressed hate speech issues, content moderation and the impact of digital technologies on freedom of expression. She invited participants in the ADI/MSI-DIG to participate in the "[Human Rights in the Digital Sphere](#)" Seminar on October 18.

8. Menno ETTEMA, Anti-discrimination Department, No Hate Speech and Cooperation Programmes Unit, co-Secretary to the Expert committee, recalled

that the CDADI held its last Plenary meeting in June, during which the members reviewed the draft Recommendation and also approved the launch of the public consultation. The public consultation started on June 23 and closed on August 8. 28 contributions were received from a variety of stakeholders, including from individual experts and representatives of civil society organisations, the business sector and international organisations. The rapporteurs together with the co-Secretariat have drafted the EM and revised the draft recommendation on the basis of the previous discussions of the ADI/MSI-DIS and the valuable contributions received from CDMSI and CDADI members and through the public consultation.

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

9. Unni MATHISEN (Norway) provided information on the developments in Norway regarding the outcome of the evaluation of the national hate speech strategy. Laurence VILETTE-RICHARD (France) updated the Committee on the recent law of August 2021, which makes the disclosure of a person's personal details on the Internet a punishable offense, and informed that the DILCRAH (Délégation interministerielle à la Lutte Contre le Racisme, l'Antisémitisme et la haine anti-LGBT) would release its new action plan until 2025 at the end of the year.

### **Item 6. Discussion on the draft Recommendation and the draft EM**

10. The ADI/MSI-DIS discussed the draft Recommendation and related amendments and proposals during the first two days of the meeting with a view to finding an agreement on the text. The meeting was continued to allow the Committee to conclude the same exercise on the draft EM.

11. Experts and participants agreed that it was important, in preventing and combating hate speech, to present the rights of the European Convention on Human Rights and Fundamental Freedoms (the Convention) - respectively Articles 8, 10 and 14 - as requiring constant and careful balancing.

12. Regarding the definition provided for the purposes of the draft Recommendation, the Committee agreed on the new wording of the relevant paragraphs using the term "hate speech" to designate all three layers of hate speech, including offensive and harmful types of expressions which do not have sufficient severity to legitimately be restricted under the Convention, in line with the comprehensive approach the recommendation provides for. On this issue, the draft EM clarifies that for some member States criminal law is the sole basis for regulating hate speech.

13. During the discussions, § 27 of the EM was added to provide clarification on the importance to also address in appropriate and proportionate ways offensive or harmful types of expressions which do not have sufficient severity to legitimately be restricted under the Convention, especially to pursue the comprehensive strategy within the tasks of the Committee. Upon request of one member State's representative, paragraph 27 of the EM was put in square brackets to allow further consideration during the plenary meetings of the CDADI and CDMSI. According to the author of the request paragraph 27 in the EM could be understood as encouraging the European Court of Human Rights to cover also hate speech which does not have sufficient severity to legitimately be restricted under the Convention.

14. The Committee stressed that the list of grounds in paragraph 2 of the draft Recommendation is purposefully open-ended, to enable an interpretation of the definition provided in the Recommendation in line with the evolutive nature of the rights of the Convention, so that the responses to hate speech can adapt to evolving societal developments.

15. In the same chapter on the scope, definition and approach to hate speech, the Committee agreed to add to § 4 of the Recommendation the aspect of imminence in relation to the harmful potential of the expression as well as the size of the audience exposed to these expressions.

16. During the discussions, a reference to hate speech affecting not only the dignity and psychological well-being of the persons targeted, but also their physical integrity, was included in § 42 of the EM. The same paragraph notes that hate speech reaching a particular level of intensity, depending on the context, may amount to a violation of Article 3 of the Convention. Upon request of one member State's representative, these passages in paragraph 42 of the draft EM were put into square brackets. According to the author of the request there was no legal and practical basis to link hate speech to an act of torture.

17. Regarding online hate speech, the Committee emphasised in particular the necessity for internet intermediaries to appoint a sufficient number of content moderators.

18. The chapter on key actors was renamed "Recommendations addressed to key actors" to clarify that recommendations under it do not require action from the member States but are addressed directly to other stakeholders that should contribute to preventing and addressing hate speech. On public officials, the Committee discussed the extent to which, and how, they should

speak out against hate speech and agreed that the future recommendation should state that public officials should condemn hate speech firmly and promptly.

19. With regard to awareness-raising, education, training and the use of counter and alternative speech, the Committee agreed that member States should encourage and support civil society organisations in relevant work, while safeguarding their independence.

20. The Committee agreed that member States should, where appropriate, provide free legal aid to those targeted by hate speech, as an additional effective means to provide support, and clarified in the draft EM that this should in particular be the case when hate speech is prohibited under criminal law.

21. The Committee agreed that the recording and monitoring of hate speech should cover all different layers of hate speech and that, regarding criminal hate speech, the collection and dissemination of disaggregated data should be the responsibility of criminal justice authorities.

22. The ADI/MSI-DIS further discussed relevant measures to ensure international co-operation on combating hate speech and added a reference in the draft EM to making use, as appropriate, of existing arrangements, such as extradition and mutual legal assistance.

23. The ADI/MSI-DIS agreed on the draft Recommendation as finalised on October 7. It also agreed on the draft EM as finalised on October 22 with the exception of paragraphs 27 and 42, for which one member State's representative's view point is that the sections within square brackets should be deleted.

### **Item 7. Discussion on the roadmap for the ADI/MSI-DIS in 2021**

24. The Chair informed the Committee that the CDMSI and the CDADI will hold their plenary sessions on 1-3 December and 7-9 December respectively.

25. The ADI/MSI-DIS instructed the co-Secretariat to transmit the draft Recommendation and the draft Explanatory Memorandum to the CDADI and CDMSI, for their discussion and possible joint approval. Participants were informed that, following the CDADI and CDMSI's approval, the draft Recommendation will be transmitted to the Committee of Ministers in

conjunction with the accompanying draft Explanatory Memorandum, for possible adoption of the former and for taking note of the latter.

### **Item 8. Other business**

26. The fourth meeting having been the last meeting of the ADI/MSI-DIS, members expressed satisfaction with the work of the Committee and its outcome, commending in particular the Chair and Vice-Chair - María Rún BJARNADÓTTIR (Iceland) and Bastiaan WINKEL and the drafting rapporteurs - Nadejda HRIPTIEVSCHI, Tarlach McGONAGLE and Sejal PARMAR – for their dedication and commitment.

27. In line with the established practice, the co-Secretariat will share the draft report with the ADI/MSI-DIS, allowing for comments within five full working days. In the absence of comments, the report will be deemed agreed, uploaded on the website of the ADI/MSI-DIS and transmitted to the CDMSI and the CDADI for information.