



7 July 2021

MSI-REF(2020)05

**Draft Recommendation CM/Rec (202x)xx  
of the Committee of Ministers to member States  
on principles for media and communication governance**

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## Preamble

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the right to freedom of expression and its corollaries media freedom and pluralism, as guaranteed by Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, “the Convention”), are essential for the functioning of democratic societies, and that these freedoms carry with them duties and responsibilities and can be subject to limitations in accordance with Article 10, paragraph 2, of the Convention;

Recognising that media freedom is a necessary but not sufficient condition for democracy, and that, therefore, media and communication governance not only serves to safeguard the fundamental objectives of the public interest including freedom of expression, media freedom and pluralism but also to create and maintain the structural conditions that ensure the adequate functioning of media and the public sphere for democracy;

Conscious that in the past, media were the main means of public communication in society but that the digitalisation of information and communication technologies in conjunction with related social and economic changes has brought about a profound structural transformation of the public sphere;

Further considering that this transformation has not only changed the production, dissemination and use of media and journalism but has also allowed for the creation of new platforms that have become powerful intermediaries in the public sphere alongside media, as a consequence of which the relationships between individuals, policymakers, and media, as well as the way democracy functions are changing;

Reaffirming that diverse and independent media play a central role in democratic societies by offering a wide range of information on issues of public interest, providing a space for public debate to support individuals in opinion formation, and holding States as well as powerful groups and individuals to account; and emphasising that, beyond journalism, media provide education, entertainment, cultural and artistic expression;

Underlining that this important role of media remains irrespective of digitalisation, which provides journalism with new opportunities for information gathering and presentation as well as for more inclusive and engaging interaction with individuals;

Noting that while digitalisation offers new business opportunities for some media, most private news outlets, whether legacy media or new ventures, are in crisis as digitalisation has caused a shift of users and advertising to platforms, thus disrupting their traditional business model and undermining their sustainability;

Recognising that this has brought about cost-cutting measures that impact working conditions of journalists and the performance of news media, as well as contributed to increasing levels of media ownership concentration that pose a risk for media pluralism and diversity, thus potentially undermining the media's essential role in the public sphere;

Underlining that platforms such as search engines, news aggregators, video-sharing services, or social networks have become an important part of people's everyday information and communication activities, including their media and news consumption habits, and that media have become heavily dependent on platforms, with their content no longer being used exclusively via printed products, broadcasting, websites, and apps of media but also via the websites and apps of platforms, and with platforms also playing a key role in the monetisation of online advertising;

Acknowledging that for end users, platforms offer new opportunities in terms of access to information, freedom of expression, public debate, and participation, which is especially important in light of growing pressure on media independence, yet also noting that platforms are not neutral but have assumed an

active curatorial or editorial role, including through the use of algorithmic systems, in the dissemination of content produced by media and other actors, and thus have a huge impact on the way people perceive the world and are exposed to other viewpoints;

Recognising that platforms' dominant position on markets and access to personal data, the dissemination of illegal or otherwise harmful content and its moderation, as well as algorithmic systems designed in the private interest of platforms have significant societal ramifications, posing new challenges not only for the realisation of human rights and fundamental freedoms, including the freedom of expression and information, the right to private life and human dignity and the protection of personal data, but also for the functioning of democratic societies;

Realising that despite this structural transformation of the public sphere brought about by digitalisation, the aims of media and communication governance have not changed, but to be able to continue realising them, media and communication governance needs to be modernised to cover both media and platforms, as they both play an essential role in facilitating communication in the public sphere, and further realising that States neither can nor should address all challenges alone but private sector actors bear responsibilities as well;

Affirming that irrespective of digitalisation, the human rights dimension continues to be the underlying basis for any media and communication governance, not only with respect to the aim of protecting freedom of expression and its corollaries but also in relation to other regulatory areas such as competition law, and that consequently, in light of market developments, it is especially important to emphasise the role that private sector actors have to fulfil in order to contribute to the realisation of these rights;

Recognising that media and communication governance is interconnected with multiple policy and regulatory areas such as competition, data protection, copyright, consumer protection, or cybersecurity, and that, therefore, achieving its goals necessitates a holistic approach that considers adapting regulation in these areas to new market realities and the changing actors and roles in the production, dissemination and use of communication, while not precluding the possibility and need for sector- or topic-specific rules;

Recommends that the governments of member States:

1. review their legislative frameworks and policies as well as their own practices with respect to the Principles set out in the Appendix of this Recommendation and promote their implementation in all relevant areas;
2. in implementing the Principles, take account of the standards enshrined in Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, relevant case law of the European Court of Human Rights and previous Committee of Ministers' recommendations to Member States and declarations dealing with different aspects of media and communication governance;
3. promote the goals of this Recommendation at national and international levels by translating and disseminating them as widely as possible and engaging in dialogue and co-operate with all relevant actors and interested parties to achieve those goals;
4. evaluate at regular intervals the measures taken to implement this Recommendation in light of the importance to safeguard democratic standards and values in an ever-changing digitalised society by adequate media and communication governance and with a view to enhancing their effectiveness;
5. ensure that in this review, implementation and evaluation, besides legislative and executive bodies, all relevant stakeholders (notably private sector actors, journalists and other media actors, self- and co-regulatory organisations, civil society organisations and academics) are involved and are aware of their respective roles, rights and responsibilities in the production, dissemination and use of communication, especially concerning information that is relevant for the political decision-making process.

## **Appendix to Recommendation CM/Rec(202x)xx: Principles for media and communication governance**

### **Scope and Definitions**

1. Democratic societies are confronted with a structural transformation of the public sphere. Therefore, media and communication governance needs to be modernised. It needs to include both media and platforms in order to guarantee a level playing field, an appropriate level of protection from undue interference and to provide a clear indication of their duties and responsibilities in line with Council of Europe standards and values. In today's digital environment, other actors than those that fulfil the criteria of media as defined in Recommendation CM/Rec(2011)7 of the Committee of Ministers to member States on a new notion of media, namely an intent to act as media, the purpose to produce content, the exercise of editorial control over content and the adherence to professional standards, play an essential role in facilitating communication in the public sphere. Given the similarities and differences between media and platforms, a differentiated approach with respect to the roles played by different actors in the production, dissemination and use of communication is needed. At the same time, given the significant differences in size, market share and impact of different actors, governance should aim to be proportionate and follow a graduated approach to avoid overburdening micro and small actors while reflecting the responsibility of dominant ones.
2. The challenges brought about by the structural transformation of the public sphere neither can nor should be addressed by States and public authorities alone, not least because of the essential requirement to respect freedom of expression and media freedom. While States are primarily responsible for ensuring that media and platforms fulfil their responsibilities to respect human rights and fundamental freedoms, industry self-regulation and co-regulation as well as private ordering initiatives by individual media and platform actors are also relevant. At the same time, there are differences in the requirements for governance by States and public authorities on the one hand and private sector actors on the other hand.
3. Governance by the State must comply with the requirements set out in Article 10, paragraph 2, of the Convention and the standards that stem from the relevant case law of the European Court of Human Rights. Similarly, governance by private sector actors should protect and respect freedom of expression and other rights, and remedy any breaches as appropriate.
4. For the purpose of this Recommendation,
  - "media and communication governance" refers to all types of formal rules such as statutory regulation, co-regulation, industry self-regulation and private ordering initiatives by individual media and platform actors, informal norms as well as technological solutions (e.g., the design of algorithmic systems) at the national, supranational, transnational, and international level that shape the production, dissemination and use of communication in the public sphere;
  - "media" includes services offered by actors that meet the following criteria, or a combination thereof, as proposed by Recommendation CM/Rec(2011)7 on a new notion of media: they have an intent to act as media, they act with the purpose of producing and disseminating content, they have editorial control over content, they follow professional standards, they seek outreach, and they are confronted with public expectation. This definition encompasses print, broadcast and online media including audio and video streaming services;
  - "platforms" are understood as digital services offered by actors that connect participants in multisided markets, set the rules for such interactions, and make use of algorithmic systems to collect and analyse data and personalise their services (in communication such platforms include e.g., search engines, news aggregators, video-sharing services, and social networks);
  - "electronic communications networks and services" refers to other intermediaries than media and platforms that are relevant for communication and dissemination of content and covers signal transmission systems irrespective of the technology used (e.g., wired and wireless networks for telecommunications, internet and broadcasting) as well as services provided via such networks (e.g., interpersonal communications services);

- “industry self-regulation” means that an industry-level organisation develops and enforces rules relating to the conduct of firms in the industry (e.g., press or media councils and industry initiatives regarding the protection of minors);
  - “co-regulation” (sometimes also called regulated self-regulation) refers to industry self-regulation with a mandate and/or some oversight by the State;
  - “private ordering initiatives” describes firm-level attempts by individual private sector organisations to develop and enforce rules that may not only apply within their organisation (e.g., media’s internal editorial guidelines) but potentially also affects users of their services (e.g., platform’s terms of service agreements or so-called community standards);
  - “algorithmic systems” are understood as applications that perform one or more tasks such as gathering, combining, cleaning, sorting, classifying, and inferring data, as well as selection, prioritisation, the making of recommendations and decision making, as defined in CM/Rec(2020)1 on the human rights impacts of algorithmic systems;
  - “disinformation” refers to verifiably false, inaccurate, or misleading information deliberately created and disseminated to cause harm or make economic or political gain by deceiving the public.
5. This Recommendation and the principles in this Appendix are addressed to States, public and private sector actors, and civil society. The Appendix contains procedural and substantive principles for media and communication governance. Procedural governance principles address how to develop and enforce governance, while substantive governance principles detail which elements of the production, dissemination and use of communication in the public sphere require governance. A detailed explanation of the principles setting out the roles, rights, and responsibilities of different actors is contained in an accompanying Explanatory Memorandum.
  6. These principles, together with the Explanatory Memorandum, should assist policymakers, in dialogue and consultation with all societal actors, to modernise policies as well as to develop and enforce regulation compatible with Council of Europe standards and values. Further, these principles should also assist media, platforms, and other public and private sector actors, in dialogue with civil society, in their governance activities. Private sector actors have a responsibility to respect internationally recognised human rights and fundamental freedoms of their users and other parties who are affected by their activities. This responsibility exists irrespective of State obligations and across jurisdictions.

### Procedural principles for media and communication governance

1. **Transparency and accountability:** Media and communication governance should be transparent and accountable to enable public scrutiny of State and private sector decision-making and activity as well as to guarantee it is accessible and understandable.
2. **Openness and inclusiveness:** Media and communication governance should be open and inclusive to satisfy the right to be heard of various groups and interests in society and to democratise decision-making about communication in the public sphere.
3. **Independence and impartiality:** Media and communication governance should be independent and impartial to avoid undue influence on policymaking or preferential treatment of powerful groups.
4. **Evidence-based and impact-oriented governance choice:** Media and communication governance should be based on evidence showing the need for intervention and take account of its regulatory and human rights impact in order to allow for a graduated and differentiated response respecting the roles played by different actors in the production, dissemination and use of communication.
5. **Agility and flexibility:** Media and communication governance should be agile and flexible in order to ensure its impact and effectiveness.

## **Substantive principles for media and communication governance**

### *Substantive principle regarding free communication in the public sphere*

6. **Promoting human rights and fundamental freedoms in communication:** Media and communication governance should aim to promote human rights and fundamental freedoms in communication as they are essential for the functioning of democratic societies. This includes guaranteeing the widest possible exercise of these freedoms and limiting restrictions to what is necessary to achieve legitimate aims, encouraging industry self-regulation and private ordering initiatives. It also entails aligning rules for the offline and online environments, while guaranteeing free and independent media, platforms and communication. It includes furthermore safeguarding access to official documents and to the internet, as well as balancing freedom of expression and media freedom against other rights.

### *Substantive principles regarding production*

7. **Securing media freedom:** Media and communication governance should aim to secure media freedom including freedom of information. This includes guaranteeing editorial independence and operational autonomy of a diversity of media, protecting the safety of journalists and guaranteeing them the necessary working conditions, entailing access to official documents, as well as balancing media freedom with other rights in editorial decisions.
8. **Promoting media pluralism and safeguarding the sustainability of journalism:** Media and communication governance should aim to promote media pluralism and safeguard professional journalism. This includes market access in the most open form possible, market power-oriented regulation of economic competition, and sector-specific regulation of media ownership concentration. It furthermore involves the institutionalisation of independent and adequately funded public service media, direct and indirect subsidies for professional journalism, support for not-for-profit community media, the promotion of media content reflecting societal diversity including gender and ethnic diversity as well as additional measures to ensure the diversity of content production.
9. **Ensuring transparency of content production:** Media and communication governance should aim to ensure transparency of content production. This includes the obligation to provide information on the circumstances of content production including editorial standards, as well as on the ownership and funding of media and other actors producing content in an easily accessible and regularly updated manner made available to the public by independent media regulatory authorities or other designated bodies. Governance also entails disclosure of the use of and potential bias resulting from algorithmic systems in content production, the use of which has to respect human rights and fundamental freedoms.
10. **Ensuring compliance with content obligations and professional standards:** Media and communication governance should aim to ensure that media, individual journalists and other actors comply with content obligations in accordance with Article 10 of the Convention and with professional standards. This includes the need to clearly define illegal content and address otherwise harmful content, the possible inclusion of other content requirements serving the public interest, the provision of effective measures against violations of content standards while offering redress mechanisms, as well as the use of adequately financed media industry self-regulation or private ordering initiatives by individual media organisations both to protect vulnerable groups and to hold news media accountable for their performance with respect to professional journalistic and ethical standards.



### *Substantive principles regarding dissemination*

11. **Ensuring functioning markets and protecting personal data in content dissemination:** Media and communication governance should aim to ensure functioning markets and protect personal data in content dissemination in order to realise human rights. This includes ensuring the availability and accessibility of electronic communication infrastructure and universal services for individual users. It further entails ex-ante regulation in markets with significant market power in electronic communications networks and services to guarantee non-discriminatory, reasonable and fair access conditions. Governance also includes introducing, where appropriate, content dissemination obligations promoting pluralism. Moreover, it entails preventing negative impact of market power of platforms by means of modern competition law and new types of ex-ante instruments while ensuring platforms' contribution to the adequate functioning of the public sphere for democracy overseen by designated bodies, as well as guaranteeing fair use of data by platforms.
12. **Responding to the risks caused by platforms disseminating illegal or otherwise harmful content:** Media and communication governance should aim to respond to the risks caused by platforms disseminating illegal or otherwise harmful content, in addition to ensuring compliance with content obligations and professional standards by media. This includes risk-based and human rights compliant moderation of content disseminated via platforms as well as additional measures that mitigate the potential negative effects of disinformation and lack of transparency regarding disseminated content, including initiatives to strengthen media and information literacy, greater transparency of advertising on platforms, and efforts to label reliable content.
13. **Mitigating the risks posed by algorithmic curation, selection and prioritisation:** Media and communication governance should aim to mitigate the risks posed by algorithmic curation, selection and prioritisation to the realisation of human rights and the democratic process. This includes safeguarding the respect for human rights and fundamental freedoms in the design, development, and ongoing deployment of algorithmic systems used for content dissemination. It also involves enhancing the transparency, explainability and accountability of such algorithmic systems, and taking measures aimed at enhancing exposure diversity, such as encouraging platforms to offer alternative forms of personalisation compatible with the public interest as well as strengthening the role of public service media in offering personalised services.

### *Substantive principles regarding use*

14. **Guaranteeing human rights and fundamental freedoms in media and platform use:** Media and communication governance should aim to guarantee human rights and fundamental freedoms in media and platform use, taking into account the role and increased responsibility of media and platforms when providing a forum for public debate and political participation. This includes ensuring availability, accessibility, and affordability of content for all groups of the population while safeguarding the function of public service media in this context and universal access to the internet. It also involves supporting individuals' enjoyment of their communication rights and participation in the public sphere, and protecting users from unjustified interference by States, public and private sector actors. This in turn involves respect for data protection rights and personality rights, as well as providing and informing users about affordable and effective redress mechanisms including independent oversight.
15. **Empowering users and fostering responsible use:** Media and communication governance should aim to empower users of media and platforms as well as foster their responsible use, while being mindful that calling for the responsibility of individuals does not discharge States, media, and platforms from their respective responsibilities set out in this Recommendation. This includes the implementation of media and information literacy initiatives. It also entails additional empowerment measures, such as labelling reliable content, ensuring the transparency of commercial content and

political advertising, enhancing the transparency, accountability and explainability of algorithmic systems, and introducing alternative forms of personalisation compatible with the public interest.

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# **Recommendation CM/Rec(20xx)xx of the Committee of Ministers to member States on principles for media and communication governance: Explanatory Memorandum**

## **Introduction**

In light of the structural transformation of the public sphere and related challenges, media and communication governance needs to be modernised. Such modernisation is imperative in order to still be able to protect and promote human rights and fundamental freedoms as well as to create and maintain the structural conditions that ensure the adequate functioning of media and the public sphere for democracy.

Both in the process of developing and enforcing as well as in the substantive content of media and communication governance, States and public authorities (including independent regulatory authorities), organisations of industry self-regulation and co-regulation as well as individual media and platform actors have to respect Council of Europe standards and values. This is all the more important given the sensitive nature of media and communication governance, as it also affects the organisations playing a watchdog role with respect to public and political affairs as well as business-related matters.

The Council of Europe has developed over the years a significant body of standards with regard to the media and the public sphere in order to assist States, industry, and civil society in protecting media freedom, pluralism, and democracy, and thus in realising the public interest objectives of media and communication governance and in performing related policy-making and regulatory activities. This Recommendation updates and condenses these standards into fifteen principles for a clear guidance of all those concerned with media and communication governance.

This Explanatory Memorandum provides a more detailed breakdown of the principles according to the different roles played by different governance actors in performing policy-making and regulatory activities. The Explanatory Memorandum will further refer to relevant binding treaties as well as recommendations and declarations whenever appropriate and list them at the very end.

## **Working Methods**

In biennium 2020-2021, the Committee of Ministers instructed the Steering Committee on Media and Information Society (CDMSI) to prepare a draft recommendation with guiding principles for media and communication governance to address the shift from established channels to social networks and related risks such as manipulation of public opinion, a lack of public trust, and information disorder. To this end, the Committee of Ministers set up the Committee of Experts on Media Environment and Reform (MSI-REF), in accordance with Article 17 of the Statute of the Council of Europe and in accordance with Resolution CM/Res(2011)24 on intergovernmental committees and subordinate bodies, their terms of reference and working methods. The Expert Committee prepared the text of this Recommendation under supervision and guidance of the CDMSI.

The MSI-REF included 13 members, comprising seven member States' representatives, designated by the CDMSI, and six independent experts, appointed by the Secretary General, with recognised expertise in the fields of freedom of expression and media policy online and offline. The Expert Committee members had diverse backgrounds, bringing together academics, researchers, representatives of media regulatory authorities, relevant government institutions, and media associations. A wide range of participants and observers, including representatives of civil society and professional media associations, also contributed to the Committee's work. The consultation of various stakeholders on the text was ensured through public consultation from XXXX to XXXX 2021. The draft text was furthermore submitted to the CDMSI in November 2020 and May 2021 for comments and

guidance, before eventually being submitted for approval in November 2021. The comments received were taken into consideration by the MSI-REF throughout the drafting process.

The draft recommendation and its explanatory memorandum were examined and approved by the CDMSI during its 20<sup>th</sup> plenary meeting held from 1 to 3 December 2021, before their transmission to the Committee of Ministers. The draft recommendation was adopted on XXXX XXXX.

## **Comments on Recommendation CM/Rec(20xx)xx of the Committee of Ministers to member States on principles for media and communication governance**

This Explanatory Memorandum contains a detailed version of the procedural and substantive principles for media and communication governance that provide further guidance to States, public and private sector actors, and civil society. The procedural governance principles address the politics of media policymaking as well as the development and enforcement of media and communication governance. The substantive principles detail the challenges which need to be addressed by media and communication governance.

### **Preamble**

The Preamble offers the rationale for developing the Recommendation, starting with the recognition of the essential role of freedom of expression, media freedom and pluralism in a democratic society. The introductory paragraph reaffirms Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, “the Convention”) as the core of the Council of Europe’s system for the protection of the right to freedom of expression, one that defines its scope and limitations and therefore also the boundaries of media and communication governance.

In the second paragraph, the Preamble highlights the importance of media and communication governance for safeguarding freedom of expression and its corollaries and for ensuring the functioning of media and the public sphere. It proceeds in the third paragraph to state that a structural transformation of the public sphere necessitates an updated set of governance principles.

Paragraphs 4-11 provide an overview of the key changes in the media and communication environment prompted by this transformation: new platforms have changed the way media are produced, disseminated, and used, challenging their privileged role as gatekeepers of news and public communication, and undermining their sustainability. These powerful platforms ranging from search engines to social networks have become an inherent part of people’s information and communication practices, enjoying continuous growth in both the number of users and advertising revenue. Platforms are becoming an important way for users to access media content, which leads to media’s dependency on them for the dissemination of content.

This combination of technological, social, and economic changes requires modernisation of media and communication governance to allow it to continue to fulfil its aims. The final three paragraphs of the Preamble set out the objective of the Recommendation and its intended outcomes, notably for the national governance frameworks to: (i) cover both media and platforms; (ii) consider the important role of private sector actors in media and communication governance; (iii) be based on the Council of Europe and other international human rights standards; and (iv) be embedded in holistic strategies encompassing multiple regulatory and policy areas including competition, data protection, copyright, consumer protection, and cybersecurity.

### **Operative Part**

Paragraph 1 recommends to member States to review their legislative frameworks and practices against the principles set out in the Appendix. It further recommends States to promote the

implementation of the principles in all relevant areas. The area of media and communication is subject to complex and varied national legislative frameworks through which States achieve their policy goals. It is also an area which has been undergoing profound changes over the past decade. In response, many States are exploring possible changes to their frameworks, including by encouraging forms of private sector governance like self- and co-regulation. The media and governance principles in the Appendix are designed to allow States considerable flexibility and discretion in their implementation, also giving due regard to the differences in their national frameworks. Furthermore, the promotion of these principles at the national level can inform other relevant stakeholders of their respective roles in contributing towards the objectives of this Recommendation, as well as raise general awareness on the issues of media and communication governance.

Paragraph 2 recommends to member States to implement the principles set out in the Appendix in compliance with the relevant existing standards stemming from Article 10 of the Convention, relevant case law of the European Court of Human Rights and the applicable Committee of Ministers' instruments. The principles build on these existing standards to the extent possible and provide an updated and condensed yet comprehensive overview of issues to be addressed in media and communication governance. As these issues are numerous and some have already been addressed in detail by the Council of Europe, references are made throughout the text to relevant treaties, recommendations and declarations, and a complete reference list is provided at the end of the document. This is to help States and other relevant stakeholders discharge their responsibilities in full compliance with the human rights dimension of media and communication governance.

Paragraph 3 recommends to member States to undertake several actions to promote the goals of the Recommendation: translate the text, disseminate it widely, and co-operate with relevant stakeholders to achieve its goals. Translation into national, but also regional and minority languages is essential for a clear understanding of the text and consequential ability to fulfil the obligations resulting from the principles set out in the Appendix. This, along with the dissemination of the Recommendation in both printed and electronic formats and its publication on the websites of all relevant public authorities and bodies can help bring the applicable standards to the attention of private sector actors and civil society and highlight the functions of media and communication governance to the public. Translations can also contribute to a more consistent implementation of the principles across all sectors concerned. States should, in pursuit of the effective implementation of the Recommendation, also engage with all relevant stakeholders through open dialogue, consultations, exchange of information and knowledge, and/or joint activities, considering that collective efforts can yield more effective results in media and communication governance.

Paragraph 4 recommends to member States to regularly evaluate the implementation of this Recommendation with a view to upholding its standards and values in the face of continuous changes in the media and communication environment and enhancing its effectiveness. States are encouraged to conduct voluntary reviews at the national level involving all relevant stakeholders, with a view to identifying and addressing any gaps and limitations to the effective implementation of the principles set out in the Appendix. The national reviews can serve as a basis for the exchange of information within the Committee of Ministers on actions taken by States regarding this Recommendation, as provided for in Article 15 of the Statute of the Council of Europe.

Paragraph 5 recommends to member States to ensure genuine dialogue between public authorities, private sector actors, and civil society, thus helping the latter discharge their own roles and responsibilities under this Recommendation effectively. As stated in a foundational principle of the United Nations Guiding Principles on Business and Human Rights, business enterprises should respect human rights, which means that they should avoid infringing on the human rights of others and address adverse human rights impact with which they are involved. In the context of this Recommendation, which is addressed in a significant part to private sector actors and civil society, it is important that a collaborative approach is taken to develop national measures of implementation. However, it is also important for the private sector to be aware that its responsibility to respect human rights exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does

not diminish those obligations. This responsibility exists over and above compliance with national laws and regulations protecting human rights.

## **Scope and Definitions**

The scope of the Recommendation clarifies its addressees and defines the level of their responsibilities. This section includes two initial considerations. First, in today's media and communication environment, also actors that cannot be defined as media play an essential role in facilitating communication in the public sphere. Second, in light of the challenges which media and communication governance seeks to address, it cannot be designed and implemented by States and public authorities alone.

Considering the important role to be played by industry self-regulation and co-regulation as well as private ordering initiatives by individual media and platform actors, a multi-stakeholder approach with a considerable degree of flexibility is required. Accordingly, the principles set out in the Appendix are to assist both States in modernising their legislative/regulatory and policy frameworks, as well as media, platforms, and other private sector actors in their governance activities. A more detailed attribution of roles, rights and responsibilities to different actors is included in the explanation of individual substantive principles in this Memorandum. It is worth noting that within national governance structures, several functions can be carried out either by public authorities, independent regulatory authorities, private actors, or civil society organisations, or indeed, a combination thereof.

As explained in "Scope and Definitions", all addressees are to protect and respect freedom of expression and other relevant rights in their respective areas of activities. States are furthermore directly bound by the requirements of Article 10, paragraph 2, of the Convention and the relevant case law of the European Court of Human Rights. In this connection, it is important to recall that regulatory and other governance instruments constitute a form of interference with freedom of expression and media freedom. While in principle such interference can be justified by the importance of media and communication for the functioning of democratic societies, it must comply with the abovementioned Convention requirements.

The Recommendation explicitly acknowledges that media and platforms are marked by similarities but also by differences, necessitating a differentiated approach in their governance. In addition to their separate functions and roles in the production, dissemination and use of media and communication, individual actors also differ according to size, market share and impact, which calls for a graduated and proportionate approach. This applies both to the role of the media and platforms as governance actors and the responsibilities attributed to them by States and public authorities. In this connection, what can be considered as excessive burden for small and less impactful actors may be justified in the case of large and dominant enterprises.

In the framework of this Recommendation, some definitions and descriptions of notions used in the text are relevant for the full understanding of its meaning and purposes. These definitions have whenever possible been taken from the existing instruments of the Council of Europe, also taking account of the existing approaches in other relevant organisations. As this Recommendation covers both media and platforms and recognises that both States and private sector actors bear responsibilities, the definitions of media and communication governance, different forms of private sector governance, and platforms were developed with the intention to provide for a flexible and future-proof approach that takes account of the manifold forms of governance applied to communication in the public sphere while also allowing for a clear distinction between different actors and governance forms.

## Principles

### *Procedural principles for media and communication governance*

Media and communication governance should not only guarantee that human rights and fundamental freedoms, especially the right to freedom of expression and media freedom, are respected, but also live up to democratic principles and the rule of law.

The procedural principles thus provide a basis for both public and private governance. They offer guidance on how to put media and communication governance into practice in a transparent and accountable, open and inclusive, independent and impartial, evidence-based and impact-oriented, as well as agile and flexible manner that meets Council of Europe standards and values and enhances the procedural legitimacy of governance.

At the same time, the principles account for the differing requirements for governance by States and public authorities on the one hand and by private sector actors on the other. In addition, these procedural principles should be applied in a graduated manner which takes size, market share and impact of affected private sector actors into consideration.

### **1. Transparency and accountability**

*Media and communication governance should be transparent and accountable to enable public scrutiny of State and private sector decision-making and activity as well as to guarantee it is accessible and understandable.*

- 1.1. **Powers of public authorities:** Any legislation should clearly define the powers granted to public authorities including law enforcement authorities and bodies that these have towards media, platforms, and communication in the public sphere. Such legislation should indicate the scope of discretion in order to protect against arbitrary application of the rules. Further, States should invest in relevant expertise to be available to adequately resourced regulatory authorities.
- 1.2. **Transparency of the governance process (obligations of States):** States and public authorities should publicise and actively promote public understanding of any legislation, policies, and regulation applicable to media, platforms, and communication in the public sphere. All affected stakeholders should be notified of planned reforms and changes. Moreover, States and public authorities should publish any regulatory decisions regarding media, platforms, and communication in the public sphere in anonymised form where appropriate. These decisions should be based on transparent procedures.
- 1.3. **Transparency of the governance process (obligations of other actors):** Organisations of industry self-regulation and co-regulation as well as individual media and platform actors should ensure that codes of conduct, policies, terms of service agreements specifying standards, practices, and rights of users as well as information about algorithmic systems are publicly available and easy to be found in accessible formats and outlined in clear, plain language. When operating globally, they should translate such documents into the languages that their users and affected parties understand. Users should be notified in advance and in understandable and accessible form of all changes in relevant policies. Moreover, organisations of industry self-regulation and co-regulation as well as individual media and platform actors should make available policy or regulatory decisions that affect communication in the public sphere. These decisions should be based on transparent procedures.
- 1.4. **Publication of decisions:** States and public authorities, organisations of industry self-regulation and co-regulation as well as individual media and platform actors should make available, publicly and in regular manner, information in a non-personalised way on individual decisions which restrict the free and open flow of information and ideas in the public sphere. States should also require individual media and platforms to disclose such information. In



addition, States should ensure that there are out-of-court redress mechanisms and access to judicial review for individuals against decisions affecting them.

- 1.5. **Further guidance:** Recommendations CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries and CM/Rec(2020)1 on the human rights impacts of algorithmic systems provide further guidance.

## 2. Openness and inclusiveness

*Media and communication governance should be open and inclusive to satisfy the right to be heard of various groups and interests in society and to democratise decision-making about communication in the public sphere.*

- 2.1. **Participation in the governance process (obligations of States):** States and public authorities should, when developing and enforcing legislation, policies, and regulation applicable to media, platforms, and communication in the public sphere, allow for the full participation of affected media and platforms as well as civil society, taking into account their specific roles and responsibilities. This includes the responsibility to hold hearings and consultations on new policy proposals or regulatory reform, to invite and listen to all stakeholders affected or likely to be affected to participate in hearings and consultations, to allow sufficient time to respond to consultations, to inform publicly about the results and impact of such hearings and consultations, and to explain the reasoning behind considering or not considering submissions made.
- 2.2. **Participation in the governance process (obligations of other actors):** Organisations of industry self-regulation and co-regulation as well as individual media and platform actors should, when developing and enforcing media and communication governance, including codes of conduct, policies, terms of service agreements specifying standards, practices, and rights of users as well as algorithmic systems, allow for the meaningful participation of civil society. This includes the expectation to hold hearings and consultations on new proposals or reforms, to invite and listen to all stakeholders affected or likely to be affected to participate in hearings and consultations, to allow sufficient time to respond to consultations, to inform publicly about the results and impact of such hearings and consultations, and to explain the reasoning behind considering or not considering submissions made. When operating globally, they should be committed to the full and equal participation of all stakeholders from all countries.
- 2.3. **Democratisation of decision-making:** In particular, States and public authorities, organisations of industry self-regulation and co-regulation as well as individual media and platform actors should strengthen the participation and involvement of individuals in decision-making processes affecting media, platforms, and communication in the public sphere to allow for genuine deliberation and to contribute to a democratisation of media and communication governance. Media and information literacy initiatives play an important role in this respect.
- 2.4. **Regular and inclusive consultations:** States and public authorities, organisations of industry self-regulation and co-regulation as well as individual media and platform actors should engage in regular, open, and inclusive consultation, co-operation, and dialogue with all relevant stakeholders with a view to ensuring that an appropriate balance is struck between the public interest, interests of users and affected parties, and industry interests. They should pay particular attention to the needs and voices of vulnerable groups and minorities as well as to gender and ethnic diversity. Public authorities, organisations of industry self-regulation and co-regulation as well as individual media and platform actors should consider establishing bodies consisting of user and/or citizen representatives to include their voices in internal decision-making.
- 2.5. **Further guidance:** Recommendations CM/Rec(2007)16 on measures to promote the public service value of the Internet, CM/Rec(2013)1 on gender equality and media, CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries and CM/Rec(2020)1 on the human rights impacts of algorithmic systems provide further guidance.

## 3. Independence and impartiality

*Media and communication governance should be independent and impartial to avoid undue influence on policymaking or preferential treatment of powerful groups.*

- 3.1. **Independence, impartiality and non-discrimination of the governance process:** The process of developing and enforcing media and communication governance should be free of and prevent any undue interference, in particular by political or economic interests. Moreover, media and communication governance should be impartial and ensure the equal treatment of all media and platforms without discrimination.
- 3.2. **Design and implementation of human rights-compliant governance:** States should design and implement governance in a manner that ensures the realisation of the rights contained in Article 10, paragraph 1, of the Convention and the standards that stem from the relevant case law of the European Court of Human Rights, while limitations to those rights have to meet the requirements in Article 10, paragraph 2, of the Convention. Similarly, private sector actors should design and implement governance in a manner that protects and respects freedom of expression and other rights. Where private sector actors fail to meet these standards, States have the obligation to protect the rights of individuals. The design and implementation of governance in such a manner includes preventing States or any powerful political, economic, religious, or other groups from acquiring dominance over or exerting pressure on the media, on platforms or on debates in the public sphere. It further implies the need to be aware of differences between public and private interests and the duty to refrain from abusing governance to further the private interests of policymakers or other powerful actors.
- 3.3. **Impartial media coverage of governance issues:** Media and communication governance differs from other policy areas because the media and platforms affected by governance are also able to shape communication in the public sphere and thus the perception of the sector and of media and communication governance. It is essential that media coverage of the topic of media and communication governance as well as media's and platforms' algorithmic curation of public debates concerning such governance remain unbiased and free from private interests of their owners.
- 3.4. **Independence of national regulatory authorities:** States should ensure the establishment and unimpeded functioning of independent regulatory authorities for audiovisual media, electronic communications networks and services and/or platforms as well as for competition with autonomy, powers as well as human and financial resources allowing them to fulfil their missions. The rules and procedures governing or affecting the functioning of these regulatory authorities should clearly affirm and protect their independence. Therefore, these rules should be defined so as to protect the regulatory authorities against any interference, in particular by political forces or economic interests. Partisan appointments and an undue closeness between members and industry need to be avoided. Moreover, the duties and powers of regulatory authorities, as well as the ways of making them accountable, the procedures for appointment and dismissal of their members, and the means of their funding should be clearly defined in law.
- 3.5. **Independence of other governance actors:** Similarly, the rules and procedures governing or affecting the functioning of organisations of industry self-regulation and co-regulation as well as private ordering initiatives by individual media and platform actors should clearly affirm and protect their independence, in particular from both political forces and economic interests. Moreover, such forms of governance require adequate power and financial resources allowing them to fulfil their missions.
- 3.6. **Further guidance:** Recommendations CM/Rec(2011)7 on a new notion of media and CM/Rec(2000)23 on the independence and functions of regulatory authorities for the broadcasting sector as well as the 2008 Declaration on the independence and functions of regulatory authorities for the broadcasting sector provide further guidance.

#### **4. Evidence-based and impact-oriented governance choice**

*Media and communication governance should be based on evidence showing the need for intervention and take account of its regulatory and human rights impact in order to allow for a*



*graduated and differentiated response respecting the roles played by different actors in the production, dissemination and use of communication.*

- 4.1. **Adequate and effective governance:** Governance choice refers to the task of identifying the responses most adequate and effective for addressing identified problems. Finding such best practices also involves considering interrelations with other policy areas, defining the duties and powers of public authorities, organisations of industry self-regulation and co-regulation as well as individual media and platform actors, and guaranteeing the protection of human rights and fundamental freedoms in line with the Convention.
- 4.2. **Evidence-based governance:** Identifying problems that require and justify media and communication governance as well as the extent of intervention required necessitates an evidence-based approach for which access to relevant information and data is a prerequisite. This includes taking into account the high impact of both media and platforms on communication in the public sphere and thus on society, the functioning of democracy and human rights. An evidence-based approach should not restrict the openness and inclusiveness of governance by putting civil society groups at a disadvantage if they lack the resources to back their submissions with data and (legal) opinions.
- 4.3. **Regulatory and human rights impact assessments:** Identifying appropriate governance responses further necessitates to assess both the adequacy (i.e., appropriateness to solve identified problems in a proportionate way) and the effectiveness (i.e., performance with respect to implementation) of potential measures. Before adapting new governance, states and public authorities, organisations of industry self-regulation and co-regulation as well as individual media and platform actors should thus conduct a regulatory and a human rights impact assessment to not only assess which governance responses are appropriate to solve identified problems but to also better understand or prevent any potential negative impact – direct or indirect – on human rights, including issues of gender equality. These assessments should be based on broad and effective consultations with all relevant stakeholders.
- 4.4. **Graduated and differentiated governance:** As a result, governance should be graduated and differentiated, acknowledging the different roles played by different actors in the production, dissemination and use of communication. First, a graduated approach reflects differences in impact that private sector actors have depending on their size and market share. The principle of proportionality should guide decisions on imposing obligations which do not to overburden micro and small actors while taking into account the responsibility of dominant ones. Second, a differentiated approach in media and communication governance mirrors differences between types of media (news, entertainment, etc.) as well as differences between media and platforms which may not produce content themselves but assume an active role in public communication as they manage, edit and/or curate content (including through the design and use of algorithmic systems). This does not preclude for certain rules to be applied to all media and platforms.
- 4.5. **Further guidance:** Recommendations CM/Rec(2001)8 on self-regulation concerning cyber content, CM/Rec(2011)7 on a new notion of media, CM/Rec(2012)3 on the protection of human rights with regard to search engines, CM/Rec(2012)4 on the protection of human rights with regard to social networking services, CM/Rec(2018)1 on media pluralism and transparency of media ownership, CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries and CM/Rec(2020)1 on the human rights impacts of algorithmic systems provide further guidance.

## 5. Agility and flexibility

*Media and communication governance should be agile and flexible in order to ensure its impact and effectiveness.*

- 5.1. **Reviews of existing frameworks (obligations of States):** The continuous fast-moving social, economic, and technological changes require that States and public authorities regularly monitor the development of the media and communication sector. At the same time, they should regularly review and evaluate existing legislation, policies, and regulation with the participation of all relevant stakeholders.

- 5.2. **Reviews of existing frameworks (obligations of other governance actors):** Similarly, organisations of industry self-regulation and co-regulation as well as individual media and platform actors should regularly review and evaluate codes of conduct, policies, terms of service agreements specifying standards, practices, and rights of users as well as algorithmic systems with the participation of all relevant stakeholders.
- 5.3. **Aims of governance:** Reviews and evaluations should aim to develop and adopt appropriate governance responses to ensure the effectiveness of media and communication governance in protecting and promoting freedom of expression, media freedom and pluralism and other human rights and fundamental freedoms, as well as in creating and maintaining the structural conditions that ensure the adequate functioning of media, the public sphere, and democracy.

### *Substantive principles for media and communication governance*

Media and communication governance not only serves to safeguard the fundamental objectives of the public interest including freedom of expression, media freedom and pluralism but also to create and maintain the structural conditions that ensure the adequate functioning of media and the public sphere for democracy.

The substantive principles thus detail what challenges media and communication governance should address while being aware that States and public and private sector actors might come up with various functionally equivalent solutions for addressing these challenges. Beyond an overarching substantive principle regarding free communication in the public sphere, the principles are organised along the process of communication and assigned to the three phases of production, dissemination, and use.

- With respect to production, the principles cover the following challenges: securing media freedom, promoting media pluralism and safeguarding the sustainability of journalism, ensuring transparency as well as ensuring compliance with content obligations and professional standards.
- With respect to dissemination, the principles cover the following challenges: ensuring functioning markets and protecting personal data in content dissemination, responding to the risks caused by platforms disseminating illegal or otherwise harmful content as well as mitigating the risks posed by algorithmic curation, selection and prioritisation.
- With respect to use, the principles cover the following challenges: guaranteeing human rights and fundamental freedoms in media and platform use as well as empowering users and fostering responsible use.

In any case, States and public and private sector actors should integrate a gender equality perspective and be aware of multiple and intersecting forms of discrimination when developing and implementing media and communication governance in order to avoid the potential risks of media and platforms perpetuating such inequalities and gender stereotypes.

Moreover, media and communication governance should be graduated and differentiated. First, this entails applying these substantive principles in a proportionate manner that considers differences in size, market share and impact of media and platforms. Second, the different roles played by different actors in the production, dissemination and use of communication need to be taken into account, meaning that while certain substantive principles apply to both media and platforms, others do not.

Substantive principle regarding free communication in the public sphere

## **6. Promoting human rights and fundamental freedoms in communication**

*Media and communication governance should aim to promote human rights and fundamental freedoms in communication as they are essential for the functioning of democratic societies. This includes guaranteeing the widest possible exercise of these freedoms and limiting restrictions to what is necessary to achieve legitimate aims, encouraging industry self-regulation and private ordering initiatives. It also entails aligning rules for the offline and online environments, while guaranteeing free and independent media, platforms and communication. It includes furthermore safeguarding*

*access to official documents and to the internet, as well as balancing freedom of expression and media freedom against other rights.*

- 6.1. **Background:** Article 10 of the Convention addresses States in their role as guarantors of freedom of expression and media freedom as well as freedom of information. This includes the need to take proactive measures in order to realise free communication in the public sphere. At the same time, freedom of expression and especially media freedom also carry duties and responsibilities and can therefore be limited according to the requirements of Article 10, paragraph 2, of the Convention. Such limitations must be prescribed by law, pursue a legitimate aim and be necessary in a democratic society.
- 6.2. **Limits of freedom of expression and media freedom:** In introducing legitimate limits to freedom of expression and media freedom, or effectively balancing with other rights, the goal of States should be to allow the widest possible exercise of these freedoms. They should therefore apply limitations narrowly, only to ensure the effective protection of Council of Europe standards and values. The necessary balancing of these rights and freedoms should be applied both in legislative and regulatory frameworks as well as in individual decisions by competent authorities or bodies and courts. In order for users to know the limits of free speech, the laws prescribing the limitations of freedom of expression and media freedom must be accessible, precise, clear, and predictable. In the balancing of freedoms and rights, in particular the protection of the private life and human dignity of persons reported about as well as the protection of personal data of users should be taken into consideration.
- 6.3. **Effective exercise of freedom of expression offline and online:** The importance of freedom of expression and media freedom offline and online means that rules for both environments should be aligned, taking into account differences but avoiding stricter regulation of content disseminated via platforms. This includes rules to guarantee free and independent media, platforms, and communication in the public sphere. Governance of platforms shall not be used to restrict debates in the public sphere, or to exert any pressure on media that are increasingly disseminated and used via platforms.
- 6.4. **Governance by private sector actors:** Industry self-regulation as well as private ordering initiatives by individual media and platform actors can complement statutory regulation. However, such governance by private sector actors can also involve interference with others' rights, with potentially equal impact to State-initiated interferences. Therefore, private sector actors should design and implement governance in a manner that protects and respects freedom of expression and other rights. Where such forms of governance do not guarantee these standards, co-regulatory frameworks ensuring an oversight mechanism can provide the most appropriate solution for States.
- 6.5. **Freedom of information and access to official documents:** Freedom of information as an element of freedom of expression entails the right of access to documents of State bodies, as required by the Council of Europe Convention on Access to Official Documents (CETS No. 205), as well as widely available and affordable access to the internet. The latter is a prerequisite for content disseminated via media and platforms to be available and accessible to all groups without discrimination. Any restriction of access to the internet as well as decisions to block, filter or remove internet content by competent State authorities or private sector actors has to comply with the requirements of Article 10 of the Convention which, as a minimum, demands decision by a court or independent authority and a possibility of judicial review as well as the strictest possible limitation in scope and time.
- 6.6. **Effective remedies:** Judicial protection should be provided in case of alleged violations of freedom of expression, media freedom and freedom of information. In addition, decisions of regulatory authorities or other designated bodies involved in the governance of media and platforms also have to be subject to judicial review. Furthermore, States should ensure that these bodies are independent, sufficiently resourced and have adequate powers. The transnational dimension of communication, especially in light of platforms, suggests that cooperation is essential for both standards development and individual case handling.
- 6.7. **Further guidance:** The Council of Europe Convention on Access to Official Documents (CETS No. 205) as well as Recommendations CM/Rec(2016)5 on Internet freedom, CM/Rec(2018)2

on the roles and responsibilities of internet intermediaries and CM/Rec(2020)1 on the human rights impacts of algorithmic systems provide further guidance.

Substantive principles regarding production

## 7. Securing media freedom

*Media and communication governance should aim to secure media freedom including freedom of information. This includes guaranteeing editorial independence and operational autonomy of a diversity of media, protecting the safety of journalists and guaranteeing them the necessary working conditions, entailing access to official documents, as well as balancing media freedom with other rights in editorial decisions.*

- 7.1. **Background:** Human rights and fundamental freedoms form the basis for media and communication governance, and freedom of expression and media freedom have a particular significance in the production of content. Media freedom necessitates media that are independent and free from undue interference by States or any political, economic, religious, or other groups or powerful individuals and provide a choice to citizens that is meaningful and relevant to them, reflecting political, economic, and societal issues on the local, regional, national, and European level and beyond.
- 7.2. **Media independence and autonomy:** States should not impose any restrictions on content production beyond those provided for in Article 10, paragraph 2, of the Convention, as interpreted by the case law of the European Court of Human Rights. They should further guarantee the editorial independence and operational autonomy of a diversity of media. Media should also be free from undue interference from platforms and their private ordering initiatives. The media themselves should also ensure that their coverage of media and communication governance and associated public debates is not biased or influenced by the private interests of their owners.
- 7.3. **Safety of journalists:** States should ensure the safety of journalists by guaranteeing the necessary working conditions and by protecting journalists in their investigative work in order that they are able to fulfil their watchdog function. This includes the protection of confidentiality of sources against arbitrary searches or disclosure requests and from confiscation of working instruments. Moreover, journalists should be protected against discriminatory, often gender-specific, treatment and threats directed at obstructing their work, but above all States should take active measures to ensure the protection of journalists' lives.
- 7.4. **Access to official documents:** States should ensure the right to freedom of information as an element of the freedom of expression by enabling access of journalists to official documents by State bodies and other relevant government documents. The role of independent information access bodies, such as information commissions, should be reinforced to realise information access rights of journalists.
- 7.5. **Media's responsibility to safeguard human rights:** Media should, in their editorial decisions, balance freedom of expression and media freedom against other rights, especially the protection of the private life, including the protection of personal data, and human dignity. At the same time, media should have privileged status in connection with some of these rights, for instance exceptions to the limitations of processing personal data for journalistic purposes as provided for by Article 11 Convention 108+.
- 7.6. **Further guidance:** The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), the Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 223) as well as Recommendations CM/Rec(2000)7 on the right of journalists not to disclose their sources of information, CM/Rec(2007)15 on measures concerning media coverage of election campaigns, CM/Rec(2011)7 on a new notion of media and CM/Rec(2016)4 on the protection of journalism and safety of journalists and other actors provide further guidance.

## 8. Promoting media pluralism and safeguarding the sustainability of journalism

*Media and communication governance should aim to promote media pluralism and safeguard professional journalism. This includes market access in the most open form possible, market power-oriented regulation of economic competition, and sector-specific regulation of media ownership concentration. It furthermore involves the institutionalisation of independent and adequately funded public service media, direct and indirect subsidies for professional journalism, support for not-for-profit community media, the promotion of media content reflecting societal diversity including gender and ethnic diversity as well as additional measures to ensure the diversity of content production.*

- 8.1. **Background:** Irrespective of the governance challenges raised by platforms, a major task for media and communication governance is to maintain and promote a diverse media landscape and to ensure the sustainability of journalism. Media pluralism is achieved not only by means of diverse content but also by a diversity of media outlets owned by different media organisations, although both aspects are interrelated.
- 8.2. **State obligation to ensure pluralism:** States, as the ultimate guarantors of pluralism, have the obligation to ensure that a sufficient variety of media outlets provided by a range of different owners offering a diversity of content is available to the public, taking into account the characteristics of local, regional, and national media markets as well as differences in terms of their purposes and functions. The complementary nature of different media types strengthens external pluralism and can contribute to creating and maintaining diversity of media content. At the same time, any governance measures by States have to respect media freedom and refrain from restricting the editorial independence and the operational autonomy of media.
- 8.3. **Prior restraints:** States should enable market access in the most open form possible. They should refrain from requiring prior authorisation for content production and dissemination except in narrowly defined circumstances justified by legitimate aims, such as requiring a license or comparable authorisation to offer broadcasting services. Such a legitimate aim is to guarantee the availability of a wide range of diverse and independent media even where dissemination possibilities are scarce (for instance in terrestrial distribution). Notification or registration requirements are not to be regarded as generally blocking market access. The principle of refraining from regular prior authorisation does not limit the right of States to institutionalise public service media.
- 8.4. **Regulation of media ownership concentration:** States should, in addition to applying market power-oriented regulation of economic competition aiming to fair and equitable market conditions, adopt sector-specific regulation of media ownership concentration implemented by independent media regulatory authorities or other designated bodies. Such regulation restricts horizontal, vertical and/or cross-media ownership in order to limit the concentration of power in public opinion formation that any single owner or group of media outlets may reach and to ensure a sufficient number of diverse media outlets. Regulation of media ownership concentration may include thresholds based on criteria such as audience share, turnover, capital shares, or voting rights, but may not discriminate based on viewpoint. The regulation of media ownership concentration should reflect not only the national market, but also regional and local markets in States and take into consideration the possible need for specific or additional rules to ensure pluralism also on these levels. Beyond general rules against ownership concentration, States should pay particular attention to the need for effective separation between the exercise of political authority on the one hand and media ownership or involvement in editorial decision-making on the other. States should also address other forms of control such as commercial influence on independent content production or editorial decision-making restricting diversity. This can concern market influence by competitors as well as by other entities on the relevant down- or upstream markets which are relevant for the media.
- 8.5. **Guarantees for public service media:** States should guarantee adequate conditions, including independence and sufficient funding, for public service media to continue to play a crucial role in promoting pluralism and diversity and in providing high-quality and innovative services and content. On the one hand, they should allow public service media to develop and innovate, notably by ensuring that the public service remit is extended to allow for personalised content provision and on-demand services as well as to cover the provision of appropriate content via third-party platforms or other forms of collaboration. Moreover, cooperation with other public institutions and not-for-profit organisations involved in knowledge and culture



production and dissemination should be encouraged in the remit, as should collaboration with the audience in content development and production. On the other hand, it is vital that the external governance of public service media not only fully guarantees editorial independence and operational autonomy as well as protection from control by one or more political, economic, religious, or other groups, but critically also ensures transparent, sufficient, stable, and predictable funding. Further, public service media themselves should introduce ways to involve the public in its internal governance structures, paying particular attention to the needs and voices of vulnerable groups and minorities as well as to gender and ethnic diversity.

- 8.6. **Support measures:** States should, in full respect of the editorial independence and operational autonomy of media, develop and implement direct and indirect subsidies for private news media to protect and promote media pluralism on the local, regional, and national level and ensure the financial sustainability of professional journalism. Direct subsidies can financially support media in the production and dissemination of journalism, whether it is text-, audio- and/or video-based. Indirect subsidies also include support for journalism education, self-regulatory organisations (e.g., press councils) or innovative digital solutions that strengthen the production and dissemination of news media content. Any support measure should be granted on the basis of predetermined, clear, objective, viewpoint-neutral, equitable and transparent criteria, and be administered in a transparent and non-discriminatory manner in terms of Article 14 of the Convention by a body enjoying functional and operational autonomy, such as independent media regulatory authorities or other designated bodies. Advertising by States and public sector actors should adhere to the same criteria.
- 8.7. **Support for community media:** States should encourage and support the establishment and functioning of community media, including by providing financial mechanisms to foster their development and support their operation. Such media give a voice to communities underrepresented in other media and are thus instrumental in facilitating inclusion and participation, especially on the local and regional level.
- 8.8. **Measures for enhancing exposure diversity:** While respecting editorial independence, States should adopt measures and media should commit themselves to promote the availability, discoverability, and accessibility of a diversity of media content as well as the representation of the diversity of society in the media, including gender and ethnic diversity. With respect to content, offering a diversity of topics, actors and viewpoints is crucial for public debate. Including diverse perspective also requires promoting the balanced representation and equal participation of different groups in society in the news and in the media in general. Diversity in media management, newsrooms and media production as well as equal working conditions are key factors in this respect.
- 8.9. **Additional measures for enhancing the diversity of content production:** States should ensure that the diversity of content production is secured by indirect supporting measures. This includes incentivising independent production of content beyond direct financial support. Means of refinancing the costs of content production include an adequate protection of the rights of authors/creators and other related rights and an effective copyright contract law safeguarding fair revenue shares for all parties involved.
- 8.10. **Further guidance:** Recommendations R(97)21 on the media and the promotion of a culture of tolerance, CM/Rec(2007)2 on media pluralism and diversity of media content, CM/Rec(2007)3 on the remit of public service media in the information society, CM/Rec(2012)1 on public service media governance, CM/Rec(2013)1 on gender equality and media, CM/Rec(2018)1 on media pluralism and transparency of media ownership, CM/Rec(2019)1 on preventing and combating sexism, CM/Rec(20xx)xx on promoting a favourable environment for quality journalism in the digital age as well as the 2009 Declaration on the role of community media in promotion social cohesion and intercultural dialogue, the 2012 Declaration on public service media governance and the 2019 Declaration on the financial sustainability of quality journalism in the digital age provide further guidance.

## 9. Ensuring transparency of content production

*Media and communication governance should aim to ensure transparency of content production. This includes the obligation to provide information on the circumstances of content production*

*including editorial standards, as well as on the ownership and funding of media and other actors producing content in an easily accessible and regularly updated manner made available to the public by independent media regulatory authorities or other designated bodies. Governance also entails disclosure of the use of and potential bias resulting from algorithmic systems in content production, the use of which has to respect human rights and fundamental freedoms.*

- 9.1. **Background:** Transparency is a prerequisite for users to make an informed choice and to be capable to evaluate content against the background of its production in a media-literate way. Transparency should not be precluded as such by intellectual property law or limits deriving from trade secrets and should always be achieved at the highest possible level while respecting the fundamental rights of media and content producers.
- 9.2. **Transparency of editorial processes:** At the most basic level, States should require media to provide a masthead with information about the publisher, executive management, editors, and journalists. Media should also ensure that editorial policies or mission statements are made public. Furthermore, as laid down in the procedural principles, media should ensure that internal editorial standards and codes of conduct are publicly available. Individual decisions based on these which restrict user-generated content should be reasonable and understandable. Increased transparency should be encouraged with respect to correction policies which exist beside right of reply requests under the law. Measures by States aiming at achieving this transparency should require feasible action by actors and reflect size, market share and impact of media concerned. Regarding the production of specific content, media should clearly distinguish between factual information and opinion as well as between professional editorial content, paid content, and user-generated content. Such transparency should be limited by human rights guarantees of working conditions for journalists and namely protection of their sources.
- 9.3. **Transparency of ownership:** States should require media as well as other actors producing content for economic or political gain and reaching a certain size, market share or impact to make available in an easily accessible and regularly updated manner basic information about their ownership, management, business model, and sources of funding. States should also require them to report this information to independent media regulatory authorities or other designated bodies charged with collecting, analysing, and making this information available to the public. Moreover, States should arrange for regular public reporting by these bodies about the overall state of media pluralism including an overview of active media, their ownership, funding, market power, and power in public opinion formation. Such reports should entail, where appropriate, displaying dependencies on up- or downstream market participants. Notwithstanding these requirements for transparency, where necessary for the protection of freedom of expression, exceptions should be introduced.
- 9.4. **Transparency of algorithmic systems:** As algorithmic systems are gaining in importance not only for the dissemination but also for the production of content and interaction with users, States should ensure that the design, development, and ongoing deployment of such systems comply with the applicable laws and fulfil the responsibility of media to respect human rights and fundamental freedoms. States should also obligate media to enhance the transparency, explainability and accountability of these systems, including information about potential bias, and to clearly label political and commercial influences. Media, for their part, should exercise due diligence in respect of human rights and fundamental freedoms in the design, development and ongoing deployment of such systems and enhance their transparency, accountability and explainability. In addition, the use of data for journalistic purposes should be disclosed in accordance with data protection rules including Convention 108 and 108+.
- 9.5. **Further guidance:** The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), the Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 223) as well as Recommendations CM/Rec(2007)2 on media pluralism and diversity of media content, CM/Rec(2018)1 on media pluralism and transparency of media ownership, CM/Rec(2020)1 on the human rights impacts of algorithmic systems as well as CM/Rec(20xx)xx on promoting a favourable environment for quality journalism in the digital age provide further guidance.



## 10. Ensuring compliance with content obligations and professional standards

*Media and communication governance should aim to ensure that media, individual journalists and other actors comply with content obligations in accordance with Article 10 of the Convention and with professional standards. This includes the need to clearly define illegal content and address otherwise harmful content, the possible inclusion of other content requirements serving the public interest, the provision of effective measures against violations of content standards while offering redress mechanisms, as well as the use of adequately financed media industry self-regulation or private ordering initiatives by individual media organisations both to protect vulnerable groups and to hold news media accountable for their performance with respect to professional journalistic and ethical standards.*

- 10.1. **Background:** Given that interferences with the rights of Article 10 of the Convention by States need to be reduced to the strictly necessary measures in light of the sensitivity of public opinion formation, industry self-regulation is of key significance. At the same time, it is of utmost importance that media as well as other actors producing content for economic or political gain and reaching a certain size, market share or impact guarantee themselves the safeguarding of other human rights and fundamental freedoms while exercising their own freedoms.
- 10.2. **Content restrictions:** States should, while respecting the requirements of Article 10 of the Convention, ensure that content provided by media as well as other actors producing content for economic or political gain and reaching a certain size, market share or impact respects Council of Europe standards and values. This includes not only a clear definition of illegal content in the applicable legislative framework but also addressing otherwise harmful content by appropriate measures. Such measures include requiring media to consider whether specific content may impair the development of minors or the rights of others. In addition, restrictions provided for by States can also concern commercial communication or political advertising, including during electoral campaigns, in order to protect consumers and citizens. Where users are invited to contribute themselves to content, media and platforms should have measures in place to uphold the level of respect for human rights and fundamental freedoms also in this context, while content restrictions imposed by these should protect and respect freedom of expression and other rights.
- 10.3. **Public interest content requirements:** Beyond content restrictions, namely for audio and audiovisual media, States might also implement content requirements that serve the public interest. These may include measures to realise general interest goals such as providing accurate, fair, non-discriminatory, and balanced reporting. Moreover, States may implement requirements, financial and other support measures to guarantee that specific content of special value, for instance European works, minority or children's content, is available.
- 10.4. **Effective remedies for violations:** The significance of the public interest aims that are the justification for content regulation necessitate that States provide for effective measures for alleged violations of these standards. Regularly, any rectification of damage occurred by published content will take place after publication as possible violations only happen on actual publication. Access to judicial review and out-of-court redress mechanisms for individuals whose rights are at risk of being violated can nonetheless exceptionally include, where appropriate, the instrument of injunctions. In addition, in cases of violation of content rules concerning content that is entirely banned from dissemination, States should arrange for efficient enforcement. Typically, however, State intervention will be limited to reactions after dissemination in order to respect the standards of Article 10 of the Convention. States should be aware of possible abuse of remedies in order to systematically prevent the production of content for its subsequent dissemination and, if necessary, react to such a development.
- 10.5. **Role of self-regulation and individual private ordering initiatives:** Media should implement and adhere to industry self-regulation or individual private ordering initiatives that guarantee that provided content complies with relevant content obligations to protect vulnerable groups, especially minors, from harm. Self-regulatory organisations or internal compliance procedures allow for the provision of age ratings, the independent classification of content prior to dissemination, and for handling complaints. Any such self-regulatory organisation or private

ordering initiative should have stable financing and meaningful powers to enforce its decisions. If the industry is unable to implement effective and independent private ordering initiatives or industry self-regulation, or if the public interest requires a stronger involvement of the State as guarantor of these interests, States should provide a co-regulatory framework. Moreover, governance by private sector actors should itself be aligned with the standards contained in Article 10 of the Convention.

- 10.6. **Compliance with professional and ethical standards:** Beyond the protection of vulnerable groups, news media should agree upon, implement, and adhere to industry self-regulation that permits to hold media accountable for their performance with respect to professional journalistic and ethical standards that were developed by the industry itself. Industry self-regulation such as ombudspersons and press or media councils allow for examining complaints and deciding on compliance. Such independent bodies should have stable financing and meaningful powers, in particular to require the publication of prominent corrections and critical adjudications and apologies. If the industry is unable to implement effective and independent self-regulation, States should provide a co-regulatory framework while fully respecting the editorial independence and operational autonomy of media.
- 10.7. **Further guidance:** Recommendations R(97)21 on the media and the promotion of a culture of tolerance, CM/Rec(2007)15 on measures concerning media coverage of election campaigns, CM/Rec(2011)7 on a new notion of media and CM/Rec(20xx)xx on promoting a favourable environment for quality journalism in the digital age provide further guidance.

Substantive principles regarding dissemination

## 11. Ensuring functioning markets and protecting personal data in content dissemination

*Media and communication governance should aim to ensure functioning markets and protect personal data in content dissemination in order to realise human rights. This includes ensuring the availability and accessibility of electronic communication infrastructure and universal services for individual users. It further entails ex-ante regulation in markets with significant market power in electronic communications networks and services to guarantee non-discriminatory, reasonable and fair access conditions. Governance also includes introducing, where appropriate, content dissemination obligations promoting pluralism. Moreover, it entails preventing negative impact of market power of platforms by means of modern competition law and new types of ex-ante instruments while ensuring platforms' contribution to the adequate functioning of the public sphere for democracy overseen by designated bodies, as well as guaranteeing fair use of data by platforms.*

- 11.1. **Background:** Content dissemination is of utmost importance for content producers to reach their users and for users to access content. Therefore, dissemination is not a mere technical question, but closely linked to the human rights dimension of freedom of expression and information. On the one hand, electronic communications networks and services that are often part of vertically integrated companies as well as other technical providers are a prerequisite for content dissemination. On the other hand, platforms play an increasingly decisive role for communication in the public sphere due to the ever-growing numbers of user and the increasing number of individuals who mainly or exclusively access media content via platforms. Content dissemination markets are characterised by the concentration of power in the hands of only a few private providers, which creates not only problems of potential discrimination of other market participants and a strong dependence of these participants on the dominant providers, but also impacts the possibilities for realising users' human rights. Other than electronic communications networks and services, platforms have only been subjected to limited regulation so far. As accessing content disseminated via platforms allows for the collection of user data, the market power of platforms is enhanced by access to and further use of such data.
- 11.2. **Provision of electronic communication infrastructure:** States should ensure the availability and accessibility of electronic communication infrastructure for individual users irrespective of their geographical location. This necessitates public or private investment into widely available

and affordable broadband networks and other recent technology as well as adequate universal service obligations to fully participate in society. If necessary for the availability of the universal services, regulation can extend to the software and hardware of terminal equipment and not only to services provided on the network. When devising rules concerning dissemination States should take into account the goals of interoperability and portability of services.

- 11.3. **Safeguards against anti-competitive practices:** In markets relevant for content dissemination where significant market power has been found, States should use ex-ante regulation to prevent anti-competitive behaviour. In particular, States should use ex-ante regulation in such markets to ensure access of third-party providers of audiovisual media services as well as electronic communications services to electronic communications networks on fair, reasonable, and non-discriminatory terms, if specific market analyses show that general competition law is not sufficient to guarantee competitiveness on that market. The imposition of additional regulatory measures has to be proportionate and thereby limited to the extent necessary to secure effective and sustainable competition in the interest of end-users. In addition, they have to be transparent, non-discriminatory, and subject to periodical review. Moreover, States should safeguard an open internet in content dissemination by implementing net neutrality rules that limit the interference on the distribution of content by electronic communications networks and other technical providers involved in dissemination to necessary network management measures or for predefined justified reasons. In doing so, the principles of non-discrimination and fairness should be applied by providers.
- 11.4. **Content dissemination obligations promoting pluralism:** Beyond preventing anti-competitive behaviour, where necessary to ensure media pluralism and diversity of content or access to public interest content, States can provide for proportionate, transparent, and viewpoint-neutral rules obligating providers of electronic communications networks and platforms to disseminate and prioritise specific categories or types of providers of content. Such obligations can include must carry-provisions for cable networks and other electronic communications networks and services as well as provisions concerning hardware and operating software to improve the findability of content. This framework for electronic communications networks and services providers as well as terminal equipment should be complemented by rules against bias for selection and curation by algorithmic systems and measures to enhance exposure diversity like alternative forms of personalisation, as detailed in Principle 13. In addition, States can require that providers of electronic communications networks and services disseminate media content in the way it was delivered to them by the producers without changing or overlaying the content except if the producer or user consented to this. Moreover, States should encourage media to make their channels available to electronic communications networks and services providers to allow for diverse content packages. Any such obligations introduced by States have to be proportionate in light of the general interest objective, transparent and based on the situation of the respective markets in which they are to be applied. In addition, such requirements may not result in interference with the independence and editorial autonomy of the media.
- 11.5. **Competition law framework and other ex-ante instruments addressing the platforms' market power:** Given both the economics of platform markets, not least direct and indirect network effects leading to concentration, and the power of platforms in shaping communication in the public sphere, States should adapt their regulatory approach towards such markets, taking into account the human rights dimension of a functioning market for content dissemination. On the one hand, States should modernise their competition law framework to respond more efficiently to the market reality by applying a broader understanding of market power, dominance and anti-competitive behaviour or risks. This includes the need to consider non-price competition parameters and, especially, the access to and exploitation of user data as a relevant component of market power. On the other hand, States should consider new ex-ante approaches to respond to monopolisation or anti-competitive market developments which further intensify structural inequalities, stifle innovation by potential new market entrants or hinder user choice. Beyond such ex-ante regulation, where appropriate and proportionate, possible responses to abuses of platforms' market power should include not only behavioural but also structural remedies. In addition, States should consider extending regulation of media ownership concentration, as detailed in Principle 8, to platforms and their services.

- 11.6. **Independent monitoring of media markets:** States should ensure that independent media and/or platform regulatory authorities or other designated bodies entrusted with maintaining and promoting pluralism and diversity in the public sphere are equipped with the necessary powers to regularly review the conduct of electronic communications networks and services as well as platforms that are relevant in the dissemination of media and other content. Specifically, in order to gain better insight into the functioning of these markets and the impact of specific market participants, these authorities should be able to enforce transparency and reporting obligations as well as to conduct sector enquiries and publish information on relevant platforms and their relation and behaviour towards content production organisations. New ex-ante regulation should be applied in a way proportionate to platforms' size, market share and impact in order not to overburden micro and small actors while taking into account the responsibility of dominant ones.
- 11.7. **Personal data protection:** Platforms with high user numbers have access to very large amounts of personal data created by the use of their services. This data may only be collected and processed in respect of data protection rules and namely Convention No. 108 and 108+. As a matter of principle, any form of aggregation, combination, or further distribution of such data to other services offered by a platform should be based on user consent. Exceptional distribution to other parties, such as competent authorities, requires an authorisation by means of a legitimate basis laid down by law. Tracking and profiling of users should be made transparent, and States should require the platforms to provide a possibility for users to opt out of personalisation of the services even if consent to the terms of service as far as collection and processing of data was given by the users. By adhering to the principle of fair use of data, platforms should not exploit user data in a way that disadvantages competitors. This includes that data which is created by the communication flows between content producers and users and which platforms have access to as provider of the service is not used to reach a more beneficial position than the content producer.
- 11.8. **Further guidance:** The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), the Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 223), Recommendations CM/Rec(2007)2 on media pluralism and diversity of media content, CM/Rec(2011)7 on a new notion of media, CM/Rec(2012)3 on the protection of human rights with regard to search engines, CM/Rec(2016)1 on protecting and promoting the right to freedom of expression and the right to private life with regard to network neutrality, CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries and CM/Rec(20xx)xx on promoting a favourable environment for quality journalism in the digital age as well as the as the 2011 Declaration on Internet governance principles provide further guidance.

**12. Responding to the risks caused by platforms disseminating illegal or otherwise harmful content**

*Media and communication governance should aim to respond to the risks caused by platforms disseminating illegal or otherwise harmful content, in addition to ensuring compliance with content obligations and professional standards by media. This includes risk-based and human rights compliant moderation of content disseminated via platforms as well as additional measures that mitigate the potential negative effects of disinformation and lack of transparency regarding disseminated content, including initiatives to strengthen media and information literacy, greater transparency of advertising on platforms, and efforts to label reliable content.*

- 12.1. **Background:** Platforms have not only assumed an influential role in the dissemination and use of media content, but they have also made it much easier for individuals and groups to access the public sphere and realise their right to freedom of expression. Platforms offer new opportunities in terms of access to information, public debate, and political participation. Yet it has also become easier to disseminate illegal or otherwise harmful content. Disinformation campaigns are a particular challenge for media and communication governance, as such campaigns undermine trust in media and democratic institutions and threaten the reliability of



information that feeds public debate and democracy. Making things even more complicated, disinformation often originates from official sources. Moreover, it can be difficult for users to distinguish between journalism, commercial communication, and political advertising. Platforms so far only bear limited liability for content uploaded by their users. Nevertheless, almost all platforms engage in some form of content moderation that complements existing content obligations and professional standards for media. Their terms of service agreements and/or so-called community standards usually contain content restrictions that are implemented using a combination of human decision-making and algorithmic systems to identify, flag, deprioritise or remove content in breach of these standards. While such private ordering initiatives need to be recognised, they come with severe limitations. First, beyond the risk of censorship operated through platforms on behalf of States, there is a risk of so-called private censorship by platforms themselves. Second, bearing in mind national differences, the content standards of often-times globally operating platforms are contested. Third, despite laudable efforts, content moderation often is not sufficiently transparent, potentially inaccurate, and inefficient. Notwithstanding these shortcomings of private ordering initiatives, States should not treat illegal content in the same way as otherwise harmful content protected by freedom of expression.

- 12.2. **Human rights compliant content moderation:** The private ordering initiatives by platform actors, including content moderation and related measures like blocking accounts, should respect the right to freedom of expression of its users guaranteed by Article 10 of the Convention. At the same time, platforms' duty of care should be proportionate to their size, market share and impact in order not to overburden micro and small actors while taking into account the responsibility of dominant ones. Any restriction of content should be carried out using the least restrictive technical means and should be limited in scope and duration to what is strictly necessary to avoid unjustified restrictions or removal of legal content. Platforms should thus carefully assess the human rights impact of their governance efforts. While acknowledging differences of interests and values between globally operating platforms and States, there is a need for making content moderation compatible with Council of Europe standards and values.
- 12.3. **Key principles of content moderation (obligations of platforms):** Platforms should provide users and the public with clear information about their content restriction policies as well as about the use, nature and functionality of algorithmic systems used for this purpose. When they flag, deprioritise, remove or restrict access to content, they should do so in a transparent and non-discriminatory manner in pre-defined procedures. Members of staff engaged in content moderation should be given adequate training and appropriate working conditions, including sufficient time for assessing content and opportunities to seek support. Furthermore, platforms should take into account the limits of algorithmic systems which, due to a failure to assess context, may lead to an over-restrictive or too lenient approach. Platforms should also acknowledge the effect such algorithmic systems may have on public debate and human rights. The private ordering initiatives of platform actors should comply with appropriate procedural principles contained in the Recommendation and ensure not only the transparency of content moderation, but also the use of easily understandable language of their content-related policies, the contestability of decisions, as well as the information of the public about the number and types of complaints, take-down notices and the results of content moderation. The contestability of decisions means that, when content is moderated or accounts are blocked, users are notified and have easy and affordable access to effective redress mechanisms which should ensure independent oversight through out-of-court redress mechanisms by independent bodies as well as judicial review. Platforms have to provide information about their policies and redress mechanisms in an easily accessible manner and clear terms including advance information on the standards and procedures according to which contestations will be dealt with.
- 12.4. **Key regulatory principles of content moderation (obligations of States):** In light of the limitations of content moderation by platforms, supplementary forms of governance may be warranted. In their efforts, States should clearly distinguish between procedures and remedies applicable to illegal and otherwise harmful content. While States should obligate platforms to remove illegal content, they are also encouraged to consider and develop – in cooperation with each other, with platforms and civil society organisations – a co-regulatory framework as well as to redefine the responsibility of platforms. This includes, besides the question of liability for

specific cases, developing a more general enhanced standard of responsibility following a risk-based approach to be met by platforms as duty of care obligations. Moreover, States should stipulate reporting duties on content moderation to independent media and/or platform regulatory authorities or other designated bodies entrusted with maintaining and promoting pluralism and diversity in the public sphere. However, obligations should be proportionate to platform's size, market share and impact in order not to overburden micro and small actors while taking into account the responsibility of dominant ones. In any case, it is of utmost importance that human rights and fundamental freedoms, including the freedom of expression and information, are not violated and that States' involvement in co-regulation complies with Council of Europe standards and values, including the requirements set out in Article 10, paragraph 2, of the Convention and the standards that stem from the relevant case law of the European Court of Human Rights.

- 12.5. **Media content on platforms:** Content moderation by platforms potentially conflicts with media's editorial decisions and their content's integrity. Content produced by media is already subject to editorial standards or even to regulatory requirements and independent oversight. Platforms should thus not interfere with these media's content and refrain from overwriting editorial standards and regulatory requirements with their own terms of service agreements or community standards, insofar as the media content concerned complies with Council of Europe standards and values. To this end, platforms should put the necessary organisational and technical measures in place.
- 12.6. **Measures for mitigating the effects of disinformation:** Beyond content moderation, the challenges of disinformation campaigns and of the difficulty to distinguish between journalism, commercial communication and political advertising can also be mitigated by additional measures. First, States, public and private sector actors, and civil society should cooperate to strengthen users' media and information literacy, as detailed in Principle 15. Second, the transparency of advertising should be ensured. States should implement effective governance frameworks that make transparent the identity of actors behind and the sources of funding of commercial and political advertising on platforms. States should also consider transparency requirements and limits for contributions to political actors and expenditures by political actors in relation to election, referendum and popular vote campaigns. For their part, platforms should commit to improve the transparency of political advertising, including its sources of funding. Third, States should encourage open, independent, transparent and participatory initiatives for identifying reliable content. Platforms, media, civil society and other relevant stakeholders like fact-checking initiatives should collaborate to develop criteria for assessing the credibility, relevance and diversity of journalistic content, complying with appropriate procedural principles contained in the Recommendation. Platforms are expected to make transparent use of those criteria for the indexation of content by labelling reliable sources such as professional news organisations that uphold professional standards without discriminating based on viewpoint. Fourth, platforms are expected to label so-called social bots or automated accounts.
- 12.7. **Further guidance:** Recommendations CM/Rec(2012)4 on the protection of human rights with regard to social networking services, CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries, CM/Rec(20xx)xx on promoting a favourable environment for quality journalism in the digital age and the 2019 Declaration on the financial sustainability of quality journalism in the digital age provide further guidance.

### 13. Mitigating the risks posed by algorithmic curation, selection and prioritisation

*Media and communication governance should aim to mitigate the risks posed by algorithmic curation, selection and prioritisation to the realisation of human rights and the democratic process. This includes safeguarding the respect for human rights and fundamental freedoms in the design, development, and ongoing deployment of algorithmic systems used for content dissemination. It also involves enhancing the transparency, explainability and accountability of such algorithmic systems, and taking measures aimed at enhancing exposure diversity, such as encouraging platforms to offer alternative forms of personalisation compatible with the public interest as well as strengthening the role of public service media in offering personalised services.*

- 13.1. **Background:** Platforms exert an influence on communication in the public sphere not only through content moderation, but even more profoundly by their control over the availability, findability and accessibility of content produced by media (which is especially relevant with respect to journalism) and other sources. As a consequence, media have become dependent on platforms. Even if indifferent towards content, platforms are not neutrally conveying content but play a curatorial or editorial-like role, including through the use of algorithmic systems. Based on the systematic collection, aggregation and analysis of users' personal and non-personal data, algorithmic curation, selection and prioritisation, sometimes in combination with human decision-making, allows for the personalisation of search results, newsfeeds, and recommended content. Moreover, media make use of algorithmic systems allowing for personalisation as well. Such personalisation, while useful and necessary for navigating a vast amount of information, also poses severe challenges. First, algorithmic systems are often lacking transparency. Even designers or operators of these will often not know what information the system relies upon to make its decisions and will encounter uncertainty about the effects of the system. Second, algorithmic systems may be biased due to their programming and due to the quality, nature, and origin of the data they are using, potentially leading to the reinforcement of existing forms of discrimination, not least based on gender and ethnicity. Third, the curation and selection of content is also subject to commercial and potentially political interests of media and platforms. Given the latter's business model of collecting, aggregating and analysing data to sell advertising, algorithmic systems of platforms are designed for maximum engagement of target audiences with little consideration for the public interest, inevitably prioritising certain values over others. This potentially restricts the diversity of sources and content, including journalism, that individuals are exposed to and shapes the context in which they process information and make decisions.
- 13.2. **Human rights compliant algorithmic systems for content dissemination:** States should ensure that the design, development, and ongoing deployment of algorithmic systems for content dissemination by media and platforms comply with the applicable laws and fulfil their responsibilities to respect human rights and fundamental freedoms. Media and platforms have a responsibility to respect the human rights of their customers and of all affected parties. They should exercise due diligence in respect of human rights and fundamental freedoms in the design, development, and ongoing deployment of algorithmic systems for content dissemination and should thus carefully assess the human rights impact of their algorithmic systems used for the curation and selection of content. In particular, the criteria by which platforms curate, select and prioritise content and thus influence the visibility and accessibility of journalism and other media content, need to be applied in line with Article 10 of the Convention. Furthermore, these criteria should fully comply with the right to non-discrimination in terms of Article 14 of the Convention in order not to prevent access to legal journalistic content based merely on its political or other opinion or on the form of expression, and to stimulate exposure diversity.
- 13.3. **Transparency, explainability and accountability of algorithmic systems for content dissemination:** States should also obligate media and platforms to enhance the transparency, explainability and accountability of algorithmic systems for content dissemination, including information about potential bias, and to clearly label political and commercial influences. Such obligations should be proportionate to their size, market share and impact in order not to overburden micro and small actors while taking into account the responsibility of dominant ones. Media and platforms themselves should also be committed to enhance the transparency, accountability and explainability of algorithmic systems used for personalising content and inform about their use, nature, purpose, and functionality. This includes, proportionate to their size, market share and impact, providing users and the public meaningful and understandable information on which data is being processed, which criteria are used, and why certain content was selected, helping them understand that prioritisation may not always enhance the prominence of relevant public interest content because it may be influenced by commercial and political considerations. In this regard, it is also essential that the algorithmic curation of public debates about media and communication governance remains unbiased from the private interests of media and platforms. In the interests of transparency and accountability towards the public, platforms are also encouraged to cooperate with the research community and



journalists reporting on the above-mentioned processes and provide them access to relevant anonymised datasets. Moreover, platforms should comply with appropriate procedural principles contained in the Recommendation, including impartial and independent review mechanisms that are easily available to users.

- 13.4. **Independent oversight of algorithmic systems for content dissemination:** To ensure that platforms fulfil their responsibilities, States are encouraged to consider and develop – in cooperation with each other, with platforms and civil society organisations – a co-regulatory framework or other appropriate and proportionate forms of governance following a risk-based approach to ensure adequate and independent democratic oversight of algorithmic systems, especially with respect to access, distribution, and prioritisation of content. Such oversight should include reporting duties on algorithmic content curation and prioritisation to independent media and/or platform regulatory authorities or other designated bodies entrusted with maintaining and promoting pluralism and diversity in the public sphere.
- 13.5. **Measures for enhancing exposure diversity:** Considering that such measures might not mitigate the problems created by the business model of dominant platforms and the lack of alternative services available to users, States should obligate or encourage platforms to take measures that enhance exposure diversity by offering the opting out of personalisation mechanisms as well as alternative forms of personalisation compatible with the public interest that guarantee the discoverability, prioritisation and prominence of quality journalism without discriminating on the basis of content or viewpoint. Such alternative forms of personalisation should be developed collaboratively with media, civil society and other relevant stakeholders, complying with appropriate procedural principles contained in the Recommendation, with the aim of supporting the empowerment of users by offering them choice, as detailed in Principle 15. Moreover, States should strengthen the role of public service media in offering personalised services. However, attempts to address algorithmic bias may not infringe human rights and fundamental freedoms, including the freedom of expression and information, and have to comply with the requirements set out in Article 10, paragraph 2, of the Convention and the standards that stem from the relevant case law of the European Court of Human Rights.
- 13.6. **Further guidance:** Recommendations CM/Rec(2011)7 on a new notion of media, CM/Rec(2012)3 on the protection of human rights with regard to search engines, CM/Rec(2018)1 on media pluralism and transparency of media ownership, CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries, CM/Rec(2019)1 on preventing and combating sexism, CM/Rec(2020)1 on the human rights impacts of algorithmic systems, CM/Rec(20xx)xx on promoting a favourable environment for quality journalism in the digital age as well as the 2019 Declaration on the financial sustainability of quality journalism in the digital age and the 2019 Declaration on the manipulative capabilities of algorithmic processes provide further guidance.

Substantive principles regarding use

#### 14. Guaranteeing human rights and fundamental freedoms in media and platform use

*Media and communication governance should aim to guarantee human rights and fundamental freedoms in media and platform use, taking into account the role and increased responsibility of media and platforms when providing a forum for public debate and political participation. This includes ensuring availability, accessibility, and affordability of content for all groups of the population while safeguarding the function of public service media in this context and universal access to the internet. It also involves supporting individuals' enjoyment of their communication rights and participation in the public sphere, and protecting users from unjustified interference by States, public and private sector actors. This in turn involves respect for data protection rights and personality rights, as well as providing and informing users about affordable and effective redress mechanisms including independent oversight.*

- 14.1. **Background:** Considering the role media and platforms play in providing a forum for public debate and political participation in a digital environment, it is important that their users can fully

enjoy in an active manner their human rights and fundamental freedoms. At the same time users have the right to be protected against harm and should be able to use media and platforms without infringements to their human rights and fundamental freedoms even when it is difficult to understand who bears the responsibility for potential harm. Irrespective of legitimate business interests, media and platforms need to acknowledge their role in the realisation of the human rights of their users and therefore, proportionate to their size, market share and impact, the increased responsibility they have to safeguard human rights in that context.

- 14.2. **Inclusive and non-discriminatory access to media and communication content:** States should provide a framework to guarantee that media and communication content is available, accessible, and affordable to all groups of the population without any discrimination. In that context, the role of public service media in providing access to diverse content including reliable and balanced information as well as content covering the local and regional level should be safeguarded. States should furthermore ensure universal access to the internet given its relevance for the public sphere. This also involves the availability of broadband access and other recent technology for people in a general and non-discriminatory way to avoid any digital divide.
- 14.3. **Individuals' communication rights and participation in the public sphere:** States should ensure that individuals can fully enjoy their communication rights and actively take part in the public sphere, without having to fear intimidation against which there are no adequate remedies. Communication rights, beyond access and availability, include dialogical rights for individuals to use media and platforms to make themselves heard as equals. On the one hand, this requires the availability of public spaces for engaging in dialogue, i.e., having the possibility to make use of media and platforms without unjustified restrictions of the rights stemming from Article 10 of the Convention. In principle, it should be possible for individuals to remain anonymous, notwithstanding justified identifiability requests in case of violations of rights. On the other hand, dialogical rights require providing users opportunities to participate in the management and governance of media and platforms. Media and information literacy plays an important role in making users aware of these opportunities and empowering them to fully make use of them.
- 14.4. **Protection of individuals against unjustified interference:** Neither States nor public or private sector actors should interfere in an unjustified manner with individuals' rights and States need to guarantee this. The use of platforms for the consumption of media and communication content in particular brings with it potential infringements of human rights and fundamental freedoms of the users, over and above their freedom of expression in respect of Article 10 of the Convention. The right to private life including the right to data protection as laid down in Article 8 of the Convention and interpreted by the European Court of Human Rights can be especially affected by the collection, generation, retention, and processing of data by media, platforms, and other service providers. Therefore, there must be compliance with obligations stemming from specific data protection rules as well as a transparent explanation of the use of data by media and platforms, especially when resorting to algorithmic systems.
- 14.5. **Protection of individuals' personality rights:** Users additionally need to be protected effectively against violations of their personality rights by private sector actors or other individuals. Media and platforms should refrain from intentionally disclosing private information or enabling such disclosure when there is no public interest and the aim is to damage the individuals concerned. Platforms need to arrange for measures to ensure the use of communication exchange fora complies with the rights of third persons and States' regulatory frameworks. Most importantly, such measures have to include prohibitions of content violating rights of individuals. However, when platforms apply content moderation that goes beyond the prohibition of illegal content, whether they are taken with a view of protecting individuals against otherwise harmful content, their personality rights or more generally consumers from exposure to certain types or amount of content, they should follow a risk-based approach that carefully balances moderation with freedom of expression and information. Additionally, until there is a more harmonised international standard of illegal or otherwise harmful content, this lack of common standards may impede the possibility for users to seek protection which should be

considered in the creation of redress mechanisms. States should support efforts to develop such international standards in adequate fora and especially in the Council of Europe.

- 14.6. **Effective remedies for users of media and platforms:** It is essential that users have information about and easy access to affordable and effective remedies in case of assumed violation of their rights in accordance with Article 13 of the Convention. These violations can derive from the application of terms and conditions and other actions taken by private sector actors, but also by state action or lack of action. Therefore, remedies should include out-of-court redress mechanisms as well as judicial review, as detailed in Principle 12. Initial steps before a formal complaint should also be possible by simple reporting and content flagging. Platforms should follow due process requirements so that users can defend their position, including the notification of any restrictive measures taken, such as content moderation or blocking of user accounts. Although industry self-regulation or individual private ordering initiatives can help to swiftly and efficiently respond in the interest of affected users to violations caused by content of media or disseminated by platforms, ultimately the obligation to protect users' human rights lies with States. Regulatory frameworks therefore need to at the very least include oversight mechanisms to ensure compliance by private sector actors.
- 14.7. **Further guidance:** Recommendations CM/Rec(2007)16 on measures to promote the public service value of the Internet, CM/Rec(2014)6 on a Guide to human rights for Internet users, CM/Rec(2016)5 on Internet freedom and CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries as well as the 2011 Declaration on Internet governance principles provide further guidance.

## 15. Empowering users and fostering responsible use

*Media and communication governance should aim to empower users of media and platforms as well as foster their responsible use, while being mindful that calling for the responsibility of individuals does not discharge States, media, and platforms from their respective responsibilities set out in this Recommendation. This includes the implementation of media and information literacy initiatives. It also entails additional empowerment measures, such as labelling reliable content, ensuring the transparency of commercial content and political advertising, enhancing the transparency, accountability and explainability of algorithmic systems, and introducing alternative forms of personalisation compatible with the public interest.*

- 15.1. **Background:** The structural transformation of the public sphere opens up a plethora of new opportunities for individuals to inform, exchange and express themselves. At the same time, it has not only become more challenging for users to understand the conditions under which content is produced and disseminated but exercising their rights enshrined in the Convention also requires additional cognitive, technical, and social skills and capabilities. Media and information literacy aims at empowering individuals to use media and platforms in a self-determined way to access, create and/or share content meeting their needs and interests. In particular, media and information literacy should:
- raise individuals' awareness of their human rights and fundamental freedoms in the public sphere, enable and encourage them to exercise these rights as well as to respect other people's rights;
  - help individuals understand the importance of freedom of expression, media freedom and pluralism for democracy and recognise the value of independent and diverse media and journalism;
  - empower individuals to understand how communication in the public sphere is produced and disseminated by media and platforms, including knowledge about the influences of the ownership, funding, operation and governance of media and platforms on content and its selection, curation, and prioritisation (for instance through the use of algorithmic systems);
  - convey knowledge to individuals about decision-making processes in media and communication governance as well as possibilities to get involved, have their voices heard and participate;

- foster individuals' knowledge about the collection and use of their personal data by media and platforms, including for commercial and political reasons, as well as about their rights in relation to data protection; and
- raise individuals' awareness of gender inequalities in media, platforms, and the public sphere.

These skills and knowledge should enable individuals:

- to make informed choices about which media and platforms (including their algorithmic systems) to use, and how to use them;
- to critically analyse the trustworthiness of sources and the accuracy of content and, thus, to recognise disinformation and be able to distinguish journalism from commercial communication and political advertising;
- to communicate effectively, including by creating and publishing content;
- to promote the responsible use of personal data;
- to not only make use of governance mechanisms to challenge inappropriate content and seek redress, but also to be involved and to participate in political decision-making processes and in the process of developing and enforcing media and communication governance.

Media and information literacy should not be used to discredit any particular media or platforms based on viewpoint.

- 15.2. **MIL as part of media and communication governance:** States should fulfil their role as enablers of individuals' capabilities by integrating the promotion of media and information literacy, understood as part of the right to education, in their media and communication governance. They should, together with media, platforms, providers of electronic communications networks and services, schools, civil society organisations and other relevant stakeholders, strategically coordinate, develop, adequately fund, and ensure the implementation of media and information literacy initiatives for all age groups and with particular attention to the needs of vulnerable groups and minorities as well as to inequalities based on gender and ethnicity. To this end, States should ensure that independent media regulatory authorities or other designated bodies have the necessary responsibilities and resources. Media and information literacy initiatives should target formal and non-formal education sectors and need to be integrated in teachers' education and further training. In addition to education institutions, media and platforms play a critical role in promoting media and information literacy and should be encouraged by States to assume their responsibility. Public service media and community media can play a leading role in the promotion of media and information literacy. States should monitor the efforts of media and platforms and obligate them to regularly report on their activities in this respect and on their efforts to comply with transparency requirements concerning content production and dissemination.
- 15.3. **Additional measures for user empowerment:** Beyond media and information literacy, States can support the empowerment of users by encouraging platforms, in collaboration with media, civil society and other relevant stakeholders, to develop labels for reliable content, to label any form of commercial communication and political advertising, and to enhance the transparency, accountability and explainability of algorithmic systems, as detailed in Principles 12 and 13. Moreover, States should encourage measures that enhance exposure diversity, for instance by expecting media and platforms to offer the opting out of or alternative forms of personalisation compatible with the public interest, as detailed in Principle 13.
- 15.4. **Importance of a comprehensive governance framework:** States should be aware that media and information literacy does not render unnecessary more far-reaching measures of media and communication governance detailed in other substantive principles and does not remove the responsibility of States as well as media and platforms for protecting and promoting freedom of expression, media freedom and pluralism, as well as for creating and maintaining the structural conditions that ensure the adequate functioning of media and the public sphere for democracy.
- 15.5. **Further guidance:** Recommendations CM/Rec(2007)16 on measures to promote the public service value of the Internet, CM/Rec(2014)6 on a Guide to human rights for Internet users, CM/Rec(2018)1 on media pluralism and transparency of media ownership, CM/Rec(2019)1 on preventing and combating sexism, CM/Rec(20xx)xx on promoting a favourable environment for

quality journalism in the digital age as well as the 2011 Declaration on Internet governance principles and the 2019 Declaration on the manipulative capabilities of algorithmic processes provide further guidance.

## **Reference instruments**

### *Conventions*

Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 005)  
Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108)  
Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 223)  
Council of Europe Convention on Access to Official Documents (CETS No. 205)

### *Recommendations*

Recommendation No. R(97)21 of the Committee of Ministers to member States on the media and the promotion of a culture of tolerance  
Recommendation CM/Rec(2000)23 of the Committee of Ministers to member States on the independence and functions of regulatory authorities for the broadcasting sector  
Recommendation CM/Rec(2000)7 of the Committee of Ministers to member States on the right of journalists not to disclose their sources of information  
Recommendation CM/Rec(2001)8 of the Committee of Ministers to member States on self-regulation concerning cyber content  
Recommendation CM/Rec(2007)15 of the Committee of Ministers to member States on measures concerning media coverage of election campaigns  
Recommendation CM/Rec(2007)16 of the Committee of Ministers to member States on measures to promote the public service value of the Internet  
Recommendation CM/Rec(2007)2 of the Committee of Ministers to member States on media pluralism and diversity of media content  
Recommendation CM/Rec(2007)3 of the Committee of Ministers to member States on the remit of public service media in the information society  
Recommendation CM/Rec(2011)7 of the Committee of Ministers to member States on a new notion of media  
Recommendation CM/Rec(2012)1 of the Committee of Ministers to member States on public service media governance  
Recommendation CM/Rec(2012)3 of the Committee of Ministers to member States on the protection of human rights with regard to search engines  
Recommendation CM/Rec(2012)4 of the Committee of Ministers to member States on the protection of human rights with regard to social networking services  
Recommendation CM/Rec(2013)1 of the Committee of Ministers to member States on gender equality and media  
Recommendation CM/Rec(2014)6 of the Committee of Ministers to member States on a Guide to human rights for Internet users  
Recommendation CM/Rec(2016)1 of the Committee of Ministers to member States on protecting and promoting the right to freedom of expression and the right to private life with regard to network neutrality  
Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other actors  
Recommendation CM/Rec(2016)5 of the Committee of Ministers to member States on Internet freedom  
Recommendation CM/Rec(2018)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership



Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries  
Recommendation CM/Rec(2019)1 of the Committee of Ministers to member States on preventing and combating sexism  
Recommendation CM/Rec(2020)1 of the Committee of Ministers to member States on the human rights impacts of algorithmic systems  
Recommendation CM/Rec(20xx)xx of the Committee of Ministers to member States on promoting a favourable environment for quality journalism in the digital age

#### *Declarations*

Declaration of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector, adopted on 26 March 2008  
Declaration of the Committee of Ministers on the role of community media in promotion social cohesion and intercultural dialogue, adopted on 11 February 2009  
Declaration of the Committee of Ministers on Internet governance principles, adopted on 21 September 2011  
Declaration of the Committee of Ministers on public service media governance, adopted on 15 February 2012  
Declaration of the Committee of Ministers on the financial sustainability of quality journalism in the digital age, adopted on 13 February 2019  
Declaration of the Committee of Ministers on the manipulative capabilities of algorithmic processes, adopted on 13 February 2019