Committee of Experts on Media Environment and Reform (MSI-REF)

**2nd meeting, 19–20 January 2021
(by videoconference)**

MSI-REF(2020)11
31 January 2021

MEETING REPORT

Opening and agenda

1. The [Committee of Experts on Media Environment and Reform](#) (MSI-REF) met online via videoconference on 19–20 January 2021. The meeting was headed by Maria Donde, the expert committee's Chair, and attended by twelve members. Artur Cozma (Republic of Moldova) apologised.

2. Jan Kleijssen, Director of the Information Society – Action against Crime Directorate, welcomed the participants from Strasbourg and expressed satisfaction that the committee has capitalised on the rich discussion from the September meeting and was progressing with great commitment on its demanding task of completing three standard-setting instruments. Mr Kleijssen emphasised the topicality and transversality of the documents, encouraging internal coordination between the Council of Europe's bodies and departments, as well as consideration of the work undertaken in other institutions, especially the European Union. Finally, Mr Kleijssen briefed the expert committee on other recent work and activities of the Council of Europe relevant to its work: the Secretary General's regular reports to the Committee of Ministers on the state of freedom of expression; the [upcoming (online) Ministerial Conference of ministers responsible for media and information society](#) in June 2021, and the progress of the [CAHAI](#) which will be building its proposals for a legal framework on AI on their recently adopted [Feasibility study](#).

3. The MSI-REF members adopted the meeting agenda without amendment.

4. Urška Umek, Secretary to the MSI-REF, provided information on the work of two other relevant expert committees, the [Committee of experts on freedom of expression and digital technologies (MSI-DIG)](#) and the [Committee of experts on combatting hate speech (ADI/MSI-DIS)](#). As the topics dealt with by the three committees overlap in certain areas, coordination on the general approaches, use of terminology, definitions and certain content solutions will be necessary. To this end, the responsible secretariats are planning for coordination activities between chairs and rapporteurs to take place in the next months.

5. On the issue of elections, the Venice Commission has recently adopted the "[Principles for a Fundamental Rights-Compliant Use of Digital Technologies in Electoral Processes](#)"

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which was presented to the MSI-REF by Michael Janssen, Administrator in the Commission's Division on Elections and Political Parties.

6. The list of confirmed participants appears in Appendix 2. Of the 44 confirmed participants, there were 22 women and an equal number of men (50-50%).

7. The discussion focused on the structure of the deliverables and their content, especially the elements still to be included or further elaborated, as well as concrete proposals to be included in the three documents that the expert committee is expected to finalise by the end of its mandate in December 2021. The MSI-REF welcomed the revised texts of the two draft recommendations, as prepared by the rapporteurs, commending the development of the texts, the rapporteurs' reflection of the issues discussed at the first meeting and the effort to integrate as many comments as possible. Furthermore, the Expert committee expressed support for the structure and main lines of the Draft guidance note, whose first draft was discussed at this meeting.

Conclusions and decisions

Draft recommendation on electoral communication and media coverage of election campaigns (MSI-REF(2020)6))

8. Rapporteurs Elda Brogi and Raphaël Kies revised the text of the instrument in line with the discussion held at the first committee's meeting in September 2020. Definitions of relevant terms have been added to the document, explaining what is understood by political advertising, political communication, electoral communication, political actors, etc. Possible other definitions may be added in relation to co-regulation, electoral periods, etc. In this connection, it was argued that some definitions may be too broad and additional criteria might be added to narrow their scope. However, limiting the scope to, for example, public or semi-public communication might not properly consider the rising importance of private messaging apps, so exact determination of certain notions is still to be developed.

9. The document specifies that it complements Recommendation CM/Rec(2007)15 on measures concerning media coverage of election campaigns, providing guidance on political advertising and electoral communication in the online sphere. The link to the previous recommendation demonstrates that many features of electoral campaigning have long existed, but some distinct elements of online campaigning are yet to be addressed. The Draft recommendation is divided into sections according to specific topics of (i) political advertising online, (ii) campaign financing and electoral spending, (iii) transparency and accountability of algorithms, (iv) content regulation and regulation of problematic accounts, (v) privacy, consent and microtargeting, (vi) governance and (vii) cross-cutting recommendations.

10. In view of the permanent political debate online, but also offline, members took the view that the text should make a distinction between electoral and non-electoral periods, also taking into account that electoral periods are defined differently in different member states. Political advertising should be regulated also during non-electoral periods, *inter alia* because various political information and disinformation is circulating which can influence election results. This would also have an impact on monitoring, since relevant regulatory authorities should monitor political advertising permanently. The Expert committee further discussed whether the text includes or should include issue-based advertising (taking position on political issues without direct association with a particular political party or candidate) and how to appropriately address it.

11. Regarding the transparency of political advertising, it would be important to have data available for scrutiny prior to election day; while this may not be possible for political parties, online platforms could provide such data in real time. As regards ad libraries

to be kept by internet intermediaries, certain privacy concerns can be overcome, since even today many intermediaries keep such libraries without affecting the privacy of individuals concerned. Regarding the costs of campaigning, it was emphasised during the discussion that different elements of funding, namely contributions and spending, should both be limited. Also, some costs are spent outside of electoral periods and outside the states concerned. In addition, there may be other "hidden" costs, such as sharing of data which may amount to in-kind donations. The rapporteurs invited written comments to help them resolve these open issues and formulate appropriate and proportionate responses.

12. Support was expressed for the governance approach favouring co-regulatory frameworks. The proposal for the establishment of multi-stakeholder forums, however, needs further articulation to better define the roles of states and independent regulatory authorities in them. There were also suggestions for more guidance on how different regulatory authorities (electoral commissions, data protection authorities, media regulatory authorities, etc.) can work with each other in a more holistic way. In terms of content moderation, co-regulation can be controversial, but so can be assigning the sole responsibility to the platforms. Multi-stakeholder forums could play a key role in this context.

13. In terms of gender perspective, the document was considered rather gender-neutral; however, gender equality could be embedded in provisions mentioning individuals and politicians, and to underline diversity in media content and in political advertising (e.g., by avoiding stereotypes).

Draft recommendation on principles for media and communication governance (MSI-REF(2020)5))

14. Rapporteurs Mark Cole and Manuel Puppis revised and completed the text of the instrument, based on the premise that the transformation of the public sphere requires a broad understanding of relevant actors and forms of governance. However, while the text applies to both the media and online platforms, it acknowledges their differences, where relevant, and takes a graduated and differentiated approach to their governance.

15. In the procedural principles, the principles have been restructured in a way to make it clear what applies to state regulation and what to governance by private actors. Likewise, the rapporteurs introduced clearer boundaries between state regulation and other types of governance. As regards openness and inclusiveness, the principle might still be reinforced to allow for effective participation of civil society in the regulatory process.

16. Regarding the substantive principles, in terms of ensuring transparency in production, the committee discussed different forms of transparency and corresponding reporting obligations. An explicit emphasis should be made on transparency of criteria integrated in the algorithmic systems, with a view to identifying possible algorithmic bias (also as regards labelling and prioritising of content). In the section on ensuring compliance with content obligations, several points were made with regard to the similarities and differences between traditional media and online platforms, which could be further defined in terms of their shared or separate obligations. Also, a careful distinction is to be made between self-regulation as a form of governance and compliance with obligations.

17. With regard to the substantive principles applicable to the dissemination phase, the principles regarding the control of market power should be phrased with precision to avoid the possibility of abuse, ensure fair and non-discriminatory access conditions on the relevant markets, independence of private actors such as platforms, and enable all

consumers to benefit from the digital society. "Must carry" and "must offer" rules can be relevant also for platforms' dissemination of content, thus further harmonisation of different parts of the draft recommendation would be useful to link various mentions of due prominence of public interest content. As regards the problem of disseminating illegal content on platforms, the text will evolve in relation to the development of the EU Digital Services Act. One of the interesting solutions, possibly to be reflected in the Draft recommendation, is the recognition of the particular impact of very large online platforms and the possibility of imposing on them more oversight and stricter sanctions. Likewise, certain obligations might be excessive for very small online platforms. The Expert Committee also discussed that governance principles applicable to illegal content should be distinguished from those applicable to harmful yet legal content which is more difficult to determine and therefore more difficult to regulate.

18. Regarding the substantive principles applicable to the media and platform use, anonymity of users was emphasised as an important feature of internet use, along with the importance of balancing its benefits with effective redress mechanisms in the cases of various cyber offences committed by anonymous users.

19. The document as a whole will also be reviewed from the gender equality perspective to ensure that gender equality is included in media and communication governance as one of the underlying values, but also that it can be integrated as a concrete incentive or requirement, for example, for benefiting from support schemes. Existing instruments and tools will guide the gender equality rapporteurs in making concrete proposals in the next stage of drafting.

20. Finally, given the complexity and length of the text, the Secretariat proposed dividing the current Appendix into a shorter Appendix and a more detailed Explanatory memorandum. In view of the Committee of Ministers' request for brevity and succinctness of standard-setting instruments, it was considered appropriate to list the principles for media and communication governance in the Appendix, retaining the current structure and relevant elements of individual principles, but to move the detailed explanations of how those principles should operate in the Explanatory memorandum.

Draft guidance note on the prioritisation of public interest content on online platforms

21. Rapporteur Damian Tambini proceeded from the premise that assigning human rights responsibilities to the area of content prioritisation is a new field of governance; therefore, the Draft guidance note seeks to raise awareness of the issue, formulate general governance principles and thereby provide useful directions for both states/policymakers and the providers of the relevant services (media, internet intermediaries). Following the Expert committee's discussion, it may also be useful to add a section on the notion of public interest as an underlying principle in media regulation, to justify any intervention on this basis.

22. In terms of the scope of the guidance note, it was proposed to explicitly include all aspects of content curation including search function display, social media feeds, and other algorithmic processes. Further, regarding the question of how to introduce the notion of public interest content into the guidance note, different approaches are possible; the current draft does not prescribe what may be public interest content but rather how such content is to be identified, selected, promoted, and explained. Admittedly, the document could also provide certain criteria for public interest content; however, this might lead to contradictory results.

23. One of the main issues addressed by the guidance note concerns the roles assigned to different stakeholders in the prioritisation process. Online platforms' prioritisation practices have the most substantial impact on the media consumption, so the question

is whether they should continue to set their own rules, or should there be other regulatory, co-regulatory or self-regulatory frameworks to integrate the principle of due prominence in their prioritisation practices. The current draft assigns the main responsibility for designing the prominence regimes to the intermediaries themselves, with the support of civil society and public authorities. However, considering that public interest may be at odds with intermediaries' commercial interests or their owners' political interests, a different approach may be necessary. Another important issue is who should be entrusted with oversight responsibility and how the audit process should be implemented. Given the importance of these issues, they will be revisited following the expert committee's written comments.

24. As to the timelines and follow-up, a deadline was set for written comments to the three deliverables (5 February 2021), whereupon the rapporteurs will revise the texts, to be presented in the next meeting. The further revised drafts will also be published on the MSI-REF webpage to allow for open consultation.

Any other business

25. The Secretariat will prepare a draft meeting report to be sent to the Chair and Vice-Chair for consideration. Thereafter, the Secretariat will send the draft report to the MSI-REF, allowing for comments within five full working days. In the absence of comments, the report will be deemed finalised and will be transmitted to the CDMSI for information. The progress of work of the MSI-REF will be reflected in its draft documents and the reports of its meetings.

Appendix I

Agenda

19 January 2021

9:30 – 12:00

1. Opening of the meeting

2. Welcoming address by Jan Kleijssen, Director, Information Society - Action against Crime Directorate, Directorate General Human Rights and Rule of Law

3. Adoption of the agenda

4. Information by the Secretariat

Information on relevant standard-setting and reference work of the Council of Europe

5. Discussion of the Draft recommendation by the Committee of Ministers to member States on electoral communication and media coverage of election campaigns (*MSI-REF(2020)06*)

13:30 – 16:00

6. Continuation of point 5

7. Discussion of the Draft recommendation by the Committee of Ministers to member States on principles for media and communication governance (*MSI-REF(2020)05*)

20 January 2021

9:30 – 12:00

8. Continuation of point 7

13:30 – 16:00

9. Discussion of the Draft guidance note on the prioritisation of public interest content (*MSI-REF(2020)08*)

10. Other business

11. Date and time of next meeting

Appendix II

List of participants / *Liste des participants*

COMMITTEE MEMBERS / *MEMBRES DU COMITÉ*

Elda BROGI
Scientific Coordinator at the Centre for Media Pluralism and Media Freedom and Research Fellow at the European University Institute, Florence, Italy
Coordinatrice scientifique au Centre pour le pluralisme des médias et la liberté des médias et chercheuse à l'Institut universitaire européen, Florence, Italie

Liz CAROLAN
Executive Director of Digital Action, Ireland
Directrice exécutive de Digital Action, Irlande

Mark David COLE
Professor for Media and Telecommunication Law, University of Luxembourg, Luxembourg / Director for Academic Affairs, Institute of European Media Law (EMR), Saarbrücken, Germany
Professeur de droit des médias et des télécommunications, Université du Luxembourg, Luxembourg / Directeur des affaires académiques, Institut de droit européen des médias (EMR), Sarrebruck, Allemagne

Artur COZMA
Member of Coordinating Council of the Audio-visual of the Republic of Moldova - excused
Membre du Conseil de coordination de l'audiovisuel de la République de Moldova - excusé

Maria DONDE, Chair of MSI-REF / *Présidente du MSI-REF*
Head of International Content Policy, Office of Communication (OFCOM), United Kingdom
Chef de la politique de contenu international, Bureau de la Communication (OFCOM), Royaume-Uni

Marius DRAGOMIR
Director of the Center for Media, Data and Society, at the Central European University, Austria, Hungary
Directeur du Centre pour les médias, les données et la société, à l'Université d'Europe centrale, Autriche, Hongrie

Raphaël KIES
Research Scientist, Department of Political Science (IPSE), University of Luxembourg
Chercheur scientifique, Département de sciences politiques (IPSE), Université du Luxembourg

Helena MANDIĆ
Director of Broadcasting, Communications Regulatory Agency, Bosnia and Herzegovina
Directrice de la radiodiffusion, Agence de régulation des communications, Bosnie-Herzégovine

Marko MILOSAVLJEVIĆ, Vice-Chair of MSI-REF / *Vice-président du MSI-REF*
Associate Professor, Chair of Journalism, Faculty of Social Sciences at the Ljubljana University, Slovenia
Professeur associé, Chaire de journalisme, Faculté des sciences sociales de l'Université de Ljubljana, Slovénie

Markus OERMANN, Gender Equality rapporteur of MSI-REF / *Rapporteur sur l'égalité de genre du MSI-REF*
Policy Advisor, Office of the President of the Federal Republic of Germany, Department for Strategy and Policy Planning/Digital Policy, Germany
Conseiller politique, Bureau du Président de la République fédérale d'Allemagne, Département de la stratégie et de la planification politique/politique numérique, Allemagne

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MEMBER STATES / *ÉTATS MEMBRES*

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Vice-ministre de la culture de l'Ukraine

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Urška UMEK

Secretary of MSI-REF Committee, Head of Media Unit, Media and Internet Division
Secrétaire du Comité MSI-REF, Chef de l'unité médias, Division médias et internet

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