

Draft Recommendation CM/Rec(20XX)XX of the Committee of Ministers to member States on online safety and empowerment of content creators and users

*(Open to public consultation by decision of the Steering Committee on Media and information Society
on 18 June 2024 at its 27th Session)*

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Preamble

- a. The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe (ETS No. 1),
- b. Considering that the aim of the Council of Europe is to achieve greater unity among its members for the purpose of safeguarding and promoting the ideals and principles which are their common heritage, *inter alia* by promoting common policies and standards;
- c. Having regard to the obligations of member States under the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, “the Convention”), as interpreted in the case law of the European Court of Human Rights (“the Court”), to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention;
- d. Reiterating their commitment to the promotion and protection of human rights in the online environment;
- e. Emphasising that member States have a positive obligation to guarantee the enjoyment of freedom of expression and other rights, both offline and online, but that they are also under a negative obligation not to impose restrictions on rights other than those which are prescribed by law and necessary in a democratic society in pursuit of a legitimate aim;
- f. Conscious of the need to ensure a free, open, and accessible internet for all, whilst also creating an enabling environment for the online exercise of the right to freedom of expression and other rights;
- g. Conscious that the online environment has become one of the principal means for the exercise of the right to freedom of expression and information, and that user-generated expressive activity is a rich and diverse exercise of the right to freedom of expression which requires a regulatory approach that values and retains its unique benefits;
- h. Recalling that the right to freedom of expression protects not only information and ideas that are favourably received or regarded as inoffensive or neutral, but also those that may offend, shock, or disturb the State or any sector of the population, and recognising that such protection is essential in a democratic society and extends to online discourse and the work of content creators in digital environments;
- i. Aware of the urgent need that women and those in vulnerable situations and from marginalised or disadvantaged groups, including children, people with disabilities, national ethnic, linguistic and religious minorities, LGBTI communities, and migrants, are able to enjoy, individually or collectively, effective online access, agency, and autonomy;
- j. Recalling the role of the media and other public watchdogs in democratic society and the need to ensure media plurality as well as the protection and safety of journalists and other media actors and the safety of journalism both online and offline;
- k. Acknowledging the existence of risks in the online environment and the potentially resulting harms to the enjoyment of rights – particularly freedom of expression – and the functioning of democracy;
- l. Acknowledging that women and girls and those in vulnerable situations and from marginalised or disadvantaged groups face specific and increased risks in the online environment, including identity-based targeting, and intersectional obstacles to their full enjoyment of their right to freedom of expression, and recognising that these risks can extend into the physical environment, reinforcing existing inequalities and harms;
- m. Stressing the need for measures to protect both the right to freedom of expression of users sharing content and the safety of users at risk of being silenced by content carrying the risk of harm, allowing for the full participation of all;
- n. Acknowledging the need for transparent and evidence-based legal frameworks and other initiatives to ensure that online risks, as well as resulting harms, are assessed, addressed and mitigated in a human rights compliant manner that safeguards against disproportionate interferences with the right to freedom of expression and other human rights;
- o. Stressing that such risk assessment and mitigation actions should be undertaken in consultation with users, including content creators, affected groups and communities, and other relevant civil society stakeholders;

- p. Recognising that empowerment is grounded in human dignity and autonomy of users and contributes to achieving equitable access to digital technologies, enables the full enjoyment of human rights in the online environment, and fosters inclusive participation in digital spaces for all;
- q. Emphasising that the empowerment of content creators and users is an important means by which to ensure the fulfilment of all human rights in the online environment, and emphasising in particular that a safer online space can create an enabling environment for the enjoyment of freedom of expression;
- r. Emphasising that whenever it is ascertained or evident that such empowerment fails to mitigate the harmful effects of online risks, states may consider alternative proportionate ways of addressing harms that flow from online risks, including the imposition of due diligence obligations and proportionate restrictions to content or its accessibility on platforms;
- s. Emphasising that any laws or regulations that aim to prevent or mitigate harms that arise from online risks must be evidence-based, necessary and proportionate to the aim pursued, precise in their wording, and foreseeable in their effects;
- t. Acknowledging that the adoption of disproportionately restrictive measures to prevent or mitigate harms arising from online risks has a harmful effect on the enjoyment of the right to freedom of expression and information, debates on matters of public interest, the enjoyment of other human rights, the capacity of users to address risks they may be exposed to and their trust in media and other online content and, ultimately, undermines the functioning of democracy;
- u. Acknowledging that measures taken by platforms, including through content curation, removal and moderation, also interfere with the enjoyment of freedom of expression and information and other rights, and may disproportionately affect the exercise of these rights;
- v. Further noting that platform design choices, including those geared towards generating virality and user engagement, may enhance the visibility and relevance of content that can adversely impact on user safety, the human rights of users, as well as on social cohesion and, ultimately, democracy;
- w. Recognising further the significant differences in size, market share, and impact of online service providers, and the need for a proportionate and graduated approach that ensures that all providers uphold their human rights responsibilities toward users and content creators, while avoiding overburdening micro and small providers and reflecting the increased responsibility and accountability of those of significant influence;
- x. Recalling its strong concern at the concentration of power among a few online platforms, the power asymmetry between these platforms and their users, and the implications of these dynamics for user safety, the human rights of users, and for democratic processes and institutions;
- y. Considering that it is imperative to reaffirm and further clarify, in particular with regard to user safety and empowerment, the role and human rights impact of those online platforms that significantly influence public communication, and their corresponding duties and responsibilities;
- z. Reaffirming that privately owned online platforms and other providers of digital services infrastructure must neither cause nor contribute to adverse human rights impacts through their activities and must take effective measures to prevent or mitigate such impacts arising from their operations, products, or services, in particular by providing mechanisms for accountability, redress, and user empowerment;
- aa. Considering the importance of previous recommendations and declarations adopted by the Committee of Ministers relevant to the exercise and protection of the right to freedom of expression online and urging their implementation, including:
 - Recommendation [CM/Rec\(2016\)5](#) on internet freedom,
 - Recommendation [CM/Rec\(2018\)2](#) on the roles and responsibilities of internet intermediaries,
 - Recommendation [CM/Rec\(2018\)7](#) on Guidelines to respect, protect and fulfil the rights of the child in the digital environment,

- Recommendation [CM/Rec\(2022\)4](#) on promoting a favourable environment for quality journalism in the digital age,
 - Recommendation [CM/Rec\(2022\)11](#) on principles for media and communication governance,
 - Recommendation [CM/Rec \(2022\)13](#) on the impacts of digital technologies on freedom of expression;
 - Recommendation [CM/Rec \(2022\)16](#) on combating hate speech;
 - Recommendation CM/Rec(2024)XX on combating technology-facilitated violence against women and girls; and
 - [Declaration](#) on the need to protect children's privacy in the digital environment;
- bb. Having also regard to the relevant guidance documents adopted by the Steering Committee for Media and Information Society, including:
- the [Guidance note](#) on countering the spread of online mis- and disinformation through fact-checking and platform design solutions in a human rights compliant manner,
 - the [Guidance note](#) on content moderation, and
 - the [Guidance note](#) on the prioritisation of public interest content online.
- cc. Emphasising the need for the prompt and thorough implementation of the case law of the European Court of Human Rights;

Recommends that the governments of member States:

- review their legislative frameworks and policies as well as their own practices with respect to the principles set out in the appendix to this recommendation and promote their implementation in all relevant areas;
- in implementing the principles, take account of the standards enshrined in the Convention, the relevant case law of the European Court of Human Rights and previous Committee of Ministers' recommendations to member States and declarations dealing with the implementation of human rights in the online environment, in particular the rights to freedom of expression and information, to respect for private life, to freedom of assembly and association, and the protection of groups who may be targeted or who may otherwise be exposed to enhanced risks to their safety and well-being;
- 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 cooperation with all relevant and interested parties to achieve those goals, including regulatory bodies, civil society organisations, corporate actors, and other relevant stakeholders;
- evaluate at regular intervals the measures taken to implement this recommendation in order to enhance their effectiveness, and inform the Committee of Ministers about the measures taken by member States and other stakeholders, the progress achieved, and any remaining shortcomings;
- ensure that this review, implementation and evaluation involves all relevant stakeholders (notably online platforms and others in the private sector, journalists and other media stakeholders, self- and co-regulatory organisations, civil society organisations and academics), in addition to legislative and executive bodies, and that they are aware of their respective roles, rights and responsibilities in ensuring the safety and empowerment of content creators and users online.

Appendix to Recommendation CM/Rec(20XX)XX on online safety and empowerment of content creators and users

I. Rationale, scope and definitions

Rationale

1. The online environment, and specifically a small number of influential platforms, has become the principal means for the exercise of the right to freedom of expression, as well as for other rights. With the expansion of these opportunities, there is growing concern over risks to the online safety of users and content creators that can result in harm to individuals, groups, society, or societal

interests such as democracy, the rule of law, and the free flow of information. Such risks are both specific to the online environment and an extension and amplification of existing risks in society.

2. Online safety implies an enabling online environment where users can communicate, access information, and participate in online activities without being unduly exposed to risks of violence, exploitation, discrimination, and other unlawful interferences with their human rights.
3. Enhancing online safety contributes to creating an enabling online environment for the enjoyment of human rights and specifically freedom of expression, in which users and content creators can freely participate and engage in public debates and have access to trustworthy sources of information and a variety of points of views, while retaining control over their online experience in accordance with their preferences.
4. Tackling online safety solely through content restrictions and the enforcement of liability of users and platforms is insufficient to meet the challenges of promoting an enabling online environment for users and content creators, and risks exacerbating excessive or disproportionate content moderation adversely impacting freedom of expression, by both states and platforms.
5. Effective promotion and protection of human rights online requires the development of proportionate and evidence-based regulatory and co-regulatory frameworks to enhance the transparency and accountability of platforms for their design choices and their operations, as well as the online empowerment of users and content creators. Such frameworks, complemented by adequate policies to promote empowerment in society, contribute to building online environments that are safer by design and enhancing which enhance users' awareness of online risks and their ability to respond to them, thereby making online spaces more supportive of freedom of expression.

Scope

6. This Recommendation focuses on how to address online risks that result from or impact on the exercise of the right to freedom of expression.
7. This Recommendation aims to guide States in the adoption, implementation, and enforcement of policy and legal frameworks, as well as other measures, that address risks to online safety, mitigate risks of harm and foster an enabling online environment that promotes the enjoyment of human rights online.
8. It also addresses human-rights-compliant measures that platforms should take, or should be required by States to take, to ensure that they uphold their own responsibilities in creating such an enabling online environment.
9. The Recommendation pursues two distinct but related objectives: protecting the online safety of users and ensuring their online empowerment.
10. Empowerment and safety engage both the positive duty of the State to take steps to secure the enjoyment of rights and the negative duty of the State not to interfere with rights beyond what is necessary in a democratic society for the achievement of a legitimate aim. Together, the two obligations of the State ensure equitable access to communication technologies, enable the full enjoyment of human rights, and foster inclusive participation in online spaces for all.

Definitions

11. For the purpose of this recommendation:
 - "Users" are understood as any natural or legal person, or groups thereof, who uses online services;
 - "Content creators" are understood as users who are regularly or professionally engaged in the production and dissemination via a platform of information and ideas, in text, audio, visual, audiovisual or other form, with the intention of reaching an audience beyond their private circle;
 - "Internet intermediaries" are understood here as defined in Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries. Bearing in mind that internet intermediaries offer a variety of functions and services and may carry out several functions in parallel, where appropriate, reference is made here to specific functions they perform;
 - "Platforms" are understood as those providers of online digital services whose primary purpose, function, or use is to connect users and facilitate the exchange of information and ideas between

them in publicly accessible fora, and who set the rules for their interactions; platforms frequently use algorithmic systems to collect and analyse data or personalise their services; in the field of communications, such platforms include social networks as well as search engines, news aggregators, and video-sharing services insofar as these platforms provide user-to-user functionality;

- “Platforms of significant influence” refer to those platforms that due to their size, market share, or impact, play a substantial role in shaping the information environment globally or in a particular territory and thereby materially affect the enjoyment and exercise of freedom of expression and information and other human rights, and the functioning of democracy;
- “Platform design” refers to all the key decisions that shape the functioning of an online platform and the ways in which users experience it; the definition also encompasses the technical means by which platforms implement, maintain, and update their architectures and interfaces, including user-facing trust and safety functionalities;
- “User empowerment” refers to the means through which users expand their understanding, informed choice and control of their online experience to fully benefit from its opportunities and address its risks without becoming overburdened; these include measures to be taken in the physical environment, such as digital citizenship education, media and information literacy initiatives, inclusion of users in the decision-making processes affecting them, as well as measures taken in the online environment such as that can include the availability to users of effective tools to personalise their online experience on platforms in accordance with their own preferences, opportunities for exercising and protecting user rights, and avenues for collective action;
- “self-regulation” means the process whereby a private actor or sector develops and enforces rules for itself to achieve an industry or public policy objective; this includes platforms’ contractual policies and rules that affect users of their services;
- “co-regulation” refers to industry self-regulation with a mandate and/or some oversight by the State;
- “Legally restricted content” means an expression or a manifestation of behaviour of users that is not in compliance with the applicable law, including illegal content and legal, but regulated content;
- “Illegal content” means an expression or a manifestation of behaviour of users that is prohibited under criminal, civil or administrative law;
- “Legal but regulated content” means an expression or a manifestation of behaviour of users that is not “illegal content”, but the publication, dissemination or visibility of which is restricted in a content-specific way in a precise setting, including to minimise its visibility to protected groups, such as minors, or to reduce its amplification to the general population, such as exposure of personal data in search engines or polling results shortly before elections;
- “Flagging” is understood as a user-generated signal, embedded in platform design, that content or behaviour may violate platform contractual policies or legal standards;
- “Notice” means a formal request addressed to an intermediary by a user or a third-party to remove or restrict content, with legal implications; notices can be issued inter alia by users, rightsholders, regulators and other public authorities;
- “Order” means a legally binding directive issued by a public authority requiring platforms to take action, such as content removal and other content restrictions or account suspension or termination.

II. Online risks related to freedom of expression

12. Online risks may adversely affect users and content creators by inhibiting their willingness, ability and determination to freely express themselves, out of concern for their well-being and safety. Online risks can also restrict the public’s ability to access reliable information, encounter a diversity of perspectives, and develop informed opinions on matters of public interest. They may also have wider societal consequences, including the erosion of social cohesion, trust in institutions, threats to public health, and the weakening of democratic processes.
13. Online risks that are related to freedom of expression include:

- a. Risks to personal and community safety and well-being associated with content and communication that users may be exposed to, interact with, or be targeted by;
 - b. Risks to the democratic process, information integrity, and informed public discourse;
 - c. Risks associated with the systems deployed by providers which may interfere with the rights to freedom of expression, privacy and personal data protection, and other rights;
- 14. Such risks may derive directly from the online activity of other users and content creators and can also be posed or exacerbated by platform design and operations.
- 15. The wide availability of artificial intelligence systems to produce, present, and enhance or reduce the visibility of content creates new risks and potentially amplifies existing risks.
- 16. Certain categories of users and content creators may be at a higher risk than others, because of their position or their identity. These include:
 - a. Children are particularly vulnerable in the online environment and have a right to protection from content that is legally restricted for them, in line with Recommendation CM/Rec(2018)7 on Guidelines to respect, protect and fulfil the rights of the child in the digital environment. Measures to assess and address such risks, mitigate harms, and protect children should give primary consideration to the best interest of the child and take into account children's age, vulnerabilities and evolving capacities, as well as their rights to participate and express themselves in the online environment.
 - b. Women and girls, especially content creators, face a heightened risk of online abuse and attacks, which are often gendered in nature and aimed at silencing their voices. Furthermore, women may be negatively and disproportionately affected by various forms of online content, which can exacerbate societal dynamics that extend into the physical sphere.
 - c. People in vulnerable situations and from marginalised or disadvantaged groups, including people with disabilities, national, ethnic, linguistic and religious minorities, LGBTI communities, and migrants, face identity-based and intersectional targeting aimed at silencing them.
 - d. Journalists, politicians, researchers, activists, and others who frequently contribute to debate on matters of public interest and potential controversy are often targeted with content aimed at stopping their future participation or their exercise of freedom of expression. This can include threats and other type of abuse which may be targeted at them, their families, their collaborators, or their community.
- 17. The existence of risks to online safety does not immediately or automatically lead to harm that requires regulation or the introduction of restrictive measures.
- 18. Restrictive measures adopted to protect safety may themselves present a risk to the enjoyment of human rights. In particular, risks to freedom of expression occur as a result of the introduction of disproportionately restrictive measures, or of platform design or recommender systems that have the effect of reducing the visibility or accessibility of certain content or classes of content. In addressing concerns about potential harms that flow from the categories of risk outlined above, states and private actors should therefore take the utmost care not to impose or require measures that disproportionately interfere with freedom of expression and other rights.

III. General Principles for an enabling online environment

Principles for States

- 19. The aim of governance of online safety and the empowerment of users by States and internet intermediaries, including platforms, should be to create an enabling online environment to which users have access without discrimination. This environment should be safe, inclusive, pluralistic and trustworthy, should allow users to enjoy and exercise their human rights without undue interference, and should maximise their autonomy, ability to participate and engage, shaping their online experience in accordance with their choices and preferences.
- 20. Ensuring a safe and enabling online environment requires States to not only take legal and regulatory measures specific to the online space but also broader actions in the offline realm. States' policies and interventions in this regard should be embedded within a comprehensive and coordinated strategy that addresses underlying societal conditions and inequalities that cause online abuse and users' exposure to it. They should promote equality, social cohesion, and

democratic values, reinforce the rule of law, ensure public safety, and empower users to make informed decisions about their online experience. Measures should include educational initiatives to foster digital citizenship, policies that strengthen media and information literacy, community empowerment initiatives, measures aimed at promoting free, independent, responsible, and pluralistic media and quality journalism, and effective mechanisms to safeguard the physical and mental safety of users, investigate technology-facilitated criminal offences, and ensure accountability in accordance with the law.

21. States have a duty to abstain from actions that may compromise online safety, whether by heightening risks of harm or diminishing opportunities for protection and empowerment. In particular, States should avoid any measures that would introduce weaknesses or vulnerabilities into technical features of online services that constitute vital safeguards for the enjoyment of privacy and other human rights online.
22. States should pay particular attention to the effects of their interventions, or lack thereof, on the accessibility to, and inclusion on, platforms of all users, regardless of their socio-economic status, disabilities, or other inherent disadvantages.

Principles for platforms

23. Given the central role that platforms have in enabling the exercise of the right to freedom of expression, they bear a responsibility to incorporate user safety and empowerment considerations into all their key service design decisions, including those related to artificial intelligence and other algorithmic systems, in a manner that fosters an enabling online environment.
24. Protecting the safety of users and content creators should be a key consideration in the development, design, governance, and operation of platforms. The integration of safety considerations into the design and operation of platforms, especially those of significant influence, contributes to maximising the effective exercise of the right to freedom of expression by creating environments where users and content creators can participate without fear of violence, harassment or undue interference. At the same time, such measures should not be pursued at the expense of media pluralism, diversity of voices, or the open and inclusive nature of public discourse. Any interventions should be transparent, proportionate and grounded in international human rights law, ensuring that efforts to promote safety do not lead to the marginalisation or silencing of minority or dissenting perspectives.
25. Whenever platforms have a significant user base in a country, region, or territory, they should ensure they understand the specificities of user safety risks associated with the local context, including gender-specific risks, designate contact points for communication and compliance, and employ a sufficient number of staff or contractors who are versed in local political, cultural, and social contexts and who are fluent in the applicable official languages to assess risks and implement appropriate responses.

Principles for content creators

26. All content creators have a responsibility to contribute to a healthy, informed, and democratic public discourse, which is respectful of the rights of others. The level of their responsibility may vary according to factors such as the nature and form of the content and its contribution to debate on matters of public interest. The particular role, professional standing, or position in society of the content creator may entail specific and additional responsibilities, as well as corresponding accountability mechanisms. Content creators who reach a significant audience or claiming professional expertise bear a heightened duty to act in good faith, to uphold principles of accuracy, fairness, and integrity and to respect the rights of others.

IV. Principles for legal frameworks on online safety and user empowerment and their implementation and enforcement

27. States have a positive obligation to effectively address the risk of harm online. States may act on this responsibility through adopting and enforcing legal frameworks that:
 - a. specify what and when constitutes legally restricted content (content rules);
 - b. specify when and how internet intermediaries might be liable, along with users, for violations of content rules (intermediary liability rules);

- c. impose systemic duties and responsibilities on intermediaries, such as platforms, to improve online safety, user empowerment, and accountability through improvements to their systems and processes (online safety, user empowerment, and platform accountability rules).
28. States should clearly distinguish between responses to risks posed by the dissemination of legally restricted content and risks posed by lawful content. Legally restricted content should be addressed through proportionate restrictive measures, in accordance with the principles on content rules set out below. Lawful content should be addressed by States through alternative, proportionate ways of mitigating risks, including user empowerment measures, in the framework of online safety, user empowerment and platform accountability frameworks, in accordance with section V below. Systemic duties and responsibilities imposed on intermediaries regarding lawful content or behaviour should not be used to circumvent the legislative process by introducing content-specific restrictions that do not have a proper basis in law. This should not prevent States from holding platform accountable as to how they apply and enforce content rules and restrictions deriving from their own contractual rules.
 29. The blocking or banning of an entire online service, domain or website is an exceptionally severe interference with the right to freedom of expression. Any such action should conform to a very high standard of justification and both operators and users should have recourse to effective legal redress.
 30. States should not exert pressure on internet intermediaries to introduce measures that affect the availability of online content through means other than those prescribed by law. Internet intermediaries should have recourse to legal mechanisms to defend themselves against such forms of pressure.
 31. Any legal framework for online safety and user empowerment that potentially restricts freedom of expression should comply with article 10 of the Convention and align to the guidelines developed in the Appendix to Recommendation CM/Rec(2022)13 on the impacts of digital technologies on freedom of expression, as well as the procedural principles outlined in Recommendation CM/Rec(2022)11 on principles for media and communication governance.
 32. Any legal framework for online safety and user empowerment applicable to internet intermediaries and to their relations with States and users, as well as any action taken in compliance with such frameworks, should align with the principles set forth in Section 1 of the Appendix to Recommendation CM/Rec(2018)2 on the Roles and Responsibilities of internet intermediaries.
 33. Regulatory interventions affecting platforms should be proportionate and graduated to the platforms' size, market share, or impact, so as not to overburden micro and small actors while taking into account the heightened responsibilities of platforms of significant influence.
 34. In order to be effective, regulation of online safety should be coherent across borders, and states should cooperate to avoid fragmentation.

Content rules

35. Rules that restrict the publication of certain types of information and behaviours or their dissemination or accessibility online (content rules) should comply with the requirements of article 10 of the Convention. They are to be provided by law, they should define with sufficient foreseeability, clarity and precision which content is restricted, require restrictions to be proportionate, provide an avenue for redress, and, when relevant, specify any associated duties and responsibilities of internet intermediaries. Any such rules should be based on evidence gathered transparently. The material, remedial and geographic scope of legally restricted content must be proportionate to avoid collateral censorship or removal of lawful content.
36. Legally restricted content should be identified in a sufficiently clear manner by the law, so to ensure foreseeability and predictability and prevent abuse in its application. Such requirements may vary depending on the severity of the restriction that is placed on freedom of expression.
37. Content rules should only provide for restrictions that are necessary and proportionate to the gravity and harmful potential of the proscribed content. They may range from fully-fledged prohibitions of expressions or behaviour under criminal, administrative or civil law that should be removed or blocked, to measures affecting the accessibility, distribution, or visibility of content in specific circumstances, such as age-related limits on accessibility, specific rules for audiovisual media service providers or commercial advertisements, measures for the realisation of the right to be forgotten, or restrictions imposed only during elections. Restrictions imposed on legal but regulated

content must be always assessed case by case and should not be presumed to be less severe as restrictions placed on illegal content. Legally restricted content therefore varies in degrees of severity and the imminence of risks. Given that the online environment continuously evolves, resulting in novel situations and challenges, member States should periodically review whether their content laws are sufficiently clear and up to date to deal with emerging challenges in specific areas.

38. States may only enforce content-specific restrictions of content that is legally restricted, and any such restrictions should be in line with the requirements of Article 10 of the Convention. Any enforcement of legal restrictions to content on platforms by public authorities shall be prescribed by law and exercised within the limits conferred by it, with safeguards against selective, discriminatory, or arbitrary application. Restrictive measures should always be limited to those that are necessary and proportionate in a democratic society.
39. Restrictive measures should in principle be taken only on the basis of formal orders by a judicial authority, or another independent public authority whose decisions are subject to judicial review. Mere notices received from public authorities should not be afforded the same legal effects as orders only because they are received from public authorities.
40. Platforms may introduce further restrictions for lawful user-generated content and behaviour through their contractual policies, such as terms of service agreements and community standards. In doing so, they should fully assess and take into account the impact of restrictions on the human rights of users. Such contractual policies should be transparent, clearly communicated, and elaborated in consultation and with meaningful input from users and communities of users.
41. States should encourage the development and promotion of transparent, inclusive and rights-based self-regulatory frameworks for content creators for whom such frameworks do not yet exist. These mechanisms should support content creators in adhering to ethical standards, enhancing the quality and trustworthiness of content, and foster accountability.

Intermediary liability rules

42. The dissemination of specific pieces of legally restricted user-generated content may result in liability by internet intermediaries, including online platforms. Considering the role that intermediaries play as facilitators of freedom of expression, such liability should be differentiated and graduated to their respective technological capabilities and economic resources, so that each of them benefits from both the appropriately differentiated form of protection and is subject to the appropriately graduated level of responsibility.
43. State authorities should not directly or indirectly impose a general obligation on intermediaries to monitor content which they merely give access to, or which they transmit or store, be it by automated means or not.
44. Internet intermediaries, including online platforms, should not in principle be held criminally or otherwise liable for third-party content which they merely give access to or which they only transmit, store, and organise, as long as they act expeditiously to restrict access after becoming aware of the legally restricted nature of specific pieces of content, including through transparent, accessible and effective notice-based procedures. The conditions and timeframes for the removal of illegal content or the enforcement of other restrictions should be established by domestic law and be differentiated taking into account the nature of the content and the seriousness and imminence of the risk deriving from its dissemination.
45. States should prevent over-blocking of lawful content by internet intermediaries as a result of regulation or action by public authorities that holds them disproportionately liable for legally restricted content provided by users of their services.
46. When legislation requires platforms to remove, block, restrict access to, or reduce the visibility of legally restricted content, safeguards should be in place to prevent disproportionate restrictions. The State remains ultimately responsible for ensuring the protection of rights and cannot transfer this obligation to private entities. The same principle applies to co-regulatory frameworks where platforms act under the direction of the state or its authorities. Any measures taken by private actors in response to State instructions should respect freedom of expression and other fundamental rights. When implementing lawful orders, platforms should provide users with sufficient information to enable them to challenge such decisions.

Online safety, user empowerment, and platform accountability rules

47. Online safety, user empowerment, and platform accountability legislation is essential to promote an enabling online environment that furthers freedom of expression. Empowerment duties for platforms are a core element of online safety and platform accountability laws. A core objective of online safety regulatory interventions should be to ensure that users are empowered to confidently navigate the online environment, effectively respond to its risks, and take control of their online experiences.
48. Online safety, user empowerment, and platform accountability legislation should focus on the systemic duties and responsibilities that platforms should bear to create an enabling online environment. Systemic duties and responsibilities of platforms should address the systems and processes of platforms and focus on aspects such as the overall design, procedures, governance, and operation of their services. They should cover issues of transparency, content curation and moderation, design practices, risk management, and corporate governance.
49. Member States should require online platforms to design their services in a manner that incorporates user safety by default and by design, respecting the right to freedom of expression and the need for a pluralistic information environment. Platforms should ensure that their algorithms and user interface designs do not amplify content that can facilitate abuse or whose amplification carries a clear risk of harm.
50. Member States should require platforms of significant influence to carry out a risk assessment of decisions relating to the design, operation, and use made of their services, including their contractual policies, so as to closely consider the impact that their services have on human rights, democracy and the rule of law. If such assessments conclude that proposed interventions pose risks, they should also include concrete measures to prevent or mitigate such risks, which platforms should be bound to implement before introducing design changes.
51. When undertaking risk assessments, platforms should proactively consult affected stakeholders and provide participation opportunities for the general public in a timely and continuous manner. The outcomes of such consultations should be taken into due account.
52. Member States should require platforms to produce public documentation on their risk and human rights impact assessments to allow the public to study how they reflect and act upon the risks of harm on their services. Information may be retained or redacted when necessary for the protection of a legitimate aim, especially when publication would adversely affect the safety of users, taking into account the public interest served by disclosure.
53. States should support the public, experts, and researchers to identify priority risk areas on various online services and effective risk mitigation strategies. States should proactively empower the public to be able to scrutinise, provide input, and comment on how risk assessments and mitigation measures in such rules and regulations are implemented.
54. States should ensure that regulatory authorities tasked to supervise, implement, or enforce the legislative framework for online safety, accountability and empowerment are independent in law and practice, are adequately resourced, rely on evidence, and always carefully consider the types of risks which they are supervising.

V. Measures for online safety and user empowerment by design

General

55. States should adopt evidence-based legislative frameworks imposing the empowerment duties set out below on platforms. The scope and conditions of such duties should be further refined based on evidence that would be assessed through an inclusive consultative process. The key empowerment duties, which should be compulsory for all platforms, are:
 - a. design-related duties, such as those ensuring to users the right to personalise their online experience, opt out of specific types of recommendations, hide types of content, block other users, or opt into third-party labelling of content;
 - b. transparency-related duties, such as those ensuring to users the right to generally understand recommender systems and monetisation mechanisms, the right to inspect the provenance of advertising, and the right of researchers to study the platform and use the platform to study society;

- c. fair process duties, such as those ensuring to users the right to be notified about content moderation decisions, to understand their legal or contractual basis, and to contest platforms' content moderation decisions;
 - d. collective action-related duties that enable users to individually and collectively flag violations of contractual breaches, notify legally restricted content, and benefit from professional representation.
56. The management of online risks should always explore how these risks can be tackled - either wholly or as part of a comprehensive intervention - by granting users more agency over their online experience. User-centred curation and moderation of content and behaviour, such as adjusting the scope of lawful content that can be prioritised or restricted by specific users, including with help from third parties, should be encouraged, and, where appropriate, required. Such user-centred content curation and moderation should devolve power but not responsibility over online risks to users.
 57. Empowerment duties imposed on platforms should be proportionate and graduated to their size, market share, or impact, so as not to overburden micro and small actors while taking into account the heightened responsibilities of platforms of significant influence.
 58. Platforms of significant influence should be opened up to third-party recommender and content moderation systems to facilitate a broader range of user options.
 59. In accordance with their responsibilities as referred to in para. 23 above, platforms are encouraged to implement empowerment measures even if they are not obligated to do so under the applicable legal frameworks.

Empowerment by design

60. Platforms should design their services in ways that maximise user empowerment.
61. The design of recommender systems and content moderation systems for lawful content should allow users to personalise their online experience based on their preferences. This should be done through easily accessible and user-friendly tools allowing users to opt out of specific types of recommendations, hide types of content, or block users. Platforms of significant influence should also allow users to choose third parties to assist them with the curation and moderation of content.
62. Platform design should enhance the ability of users to make informed choices about the content they engage with, including by facilitating third-party labelling of content by experts, fact-checkers, or communities. Users should be allowed to act upon such labels in their settings to further personalise their online experience by hiding or prioritising content corresponding to specific labels.
63. Platform design should proactively promote user empowerment and safety for persons with impairments. This should include ensuring that persons with impairments can use and deploy third-party tools to address accessibility barriers that hinder their ability to benefit from safety and empowerment measures.
64. In line with Recommendation CM/Rec(2018)7 of the Committee of Ministers to member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment, States should require the use of effective systems of age assurance to ensure children are protected from products, services and content in the digital environment which are legally restricted with reference to specific ages. In particular, such systems should be required for platforms that predominantly provide services or content that is legally restricted to protect minors. Such systems should use methods that respect freedom of expression and that are consistent with the best interests of the child, and with the protection of personal data and privacy. When requiring the implementation of such systems, States should provide safeguards to ensure they do not result in disproportionate exclusion of children from online spaces and restriction of their right to participate in debate on matters of public interest. Safeguards should be provided also in order to ensure that they do not create or exacerbate exclusion from the online space of people belonging to marginalised groups.
65. States should require the development, production and regular update by platforms of age-appropriate and effective parental tools to mitigate risks for children in the digital environment. Such tools should be developed and deployed taking into account children's evolving capacities, in accordance with their age and maturity. They should not reinforce discriminatory attitudes, infringe children's right to privacy or their best interests, or deny children the right to freedom of expression and information.

66. The deployment of age assurance systems or parental tools should not be understood as, or result in, devolving responsibilities for online safety from platforms to parents and children.
67. Platforms should not obstruct the ability of their users, including content creators, to move their online profiles to other complementary or competing platforms.

Transparency

68. Platforms should meaningfully explain how they design their recommender systems so that users can understand what information is given priority in content curation.
69. Platforms should disclose the details of their content moderation practices and periodically publish aggregate statistics about the number and types of content moderation decisions on their services.
70. Platforms should describe what algorithmic systems they rely on for content moderation in which areas of content and publish qualitative reports on the accuracy and safeguards applied to such tools.
71. Platforms should be transparent about the identity of their advertisers, the use of advertisement targeting techniques, and spending for each advert.
72. Platforms should be transparent about what user-generated content is monetised on their services, by whom, and about the basic principles used to allocate resources to content creators.
73. Researchers should be allowed to obtain access to public and non-public data of platforms, including personal and confidential data they hold, to study the nature of risks and the effectiveness of various mitigation strategies. Any access granted by platforms should include safeguards to protect personal data, security, and confidential commercial information.
74. Researchers should be allowed to use platforms to conduct research when it is conducted within established principles of research integrity and ethics.

Procedural rights

75. Platforms should state clearly and unambiguously the contractual rules under which they offer their services to the public. Rules applicable to user content and behaviour should be sufficiently predictable to avoid arbitrariness of potential sanctions. Contractual rules applicable to children should be explained in a way which children are likely to understand.
76. Any significant changes to contractual policies should be notified in advance and meaningfully explained to the affected users, in terms that allow them to understand the changes, and how these changes will affect their future activity.
77. Users and content creators should be able to effectively challenge content moderation decisions of platforms that affect their right to freedom of expression, including their right to receive information, or other rights.
78. Any content moderation decisions of platforms that target or affect specific users, including restrictions imposed on the visibility of user content, monetisation, and account privileges, should be swiftly notified and explained to the users who have created the content or accounts affected by the decision. Such a notification must specify the grounds for the decision, explain the decision-making process, and specify any possibilities of appeal, in a non-technical, clear, and age-appropriate language. Where appropriate, platforms should notify also any other identifiable user who is directly affected or impacted by the content and who has opted to receive such notifications.
79. Content moderation decisions of platforms that have a significant impact on users should be subject to external independent appeals, such as out-of-court dispute settlement bodies, or another form of independent oversight. Such appeals should be accessible, transparent, heard swiftly within transparent timeframes, and provide effective remedies.

Collective action of users

80. Users should have the possibility to easily flag breaches of contractual rules by other users to online platforms. Platforms should provide flaggers with sufficient feedback about follow-up to their flags.
81. Users should have the possibility to submit a notice relating to potentially legally restricted content. Platforms should provide notifiers with sufficient feedback about follow-up to their notice. If the

content moderation decision of a provider is not satisfactory, notifiers should be given a possibility to appeal the decision in accordance with para. 79 above.

82. States should encourage the establishment of professionals who act as experts at notifying legally restricted content or flagging contractual breaches on online platforms. States should incentivise the recognition of such professionals by granting them certain privileges, such as priority of assessment and appeals, financing, or better access to technical interfaces.
83. States should encourage the formation of professional user groups who can act as experts in defending user and content creator interests before online platforms or State authorities. States can grant these user groups privileges such as priority appeals, financing, better access to technical interfaces, or a right of collective action against infringement of the rights of users.