

***Bureau of the Steering
Committee on Media
and Information Society
– CDMSI-BU***



24/05/2017

Report of the 11th meeting (11-12 May 2017)

(Strasbourg, Council of Europe Offices, Agora building, room GO4)

1. Opening of the meeting

The CDMSI Chair, Elfa Ýr Gylfadóttir (Iceland) opened the meeting. The gender distribution among 5 attendants was 3 women (60%) and 2 men (40%).

Jan Kleijssen, Director of Information Society and Action against Crime, welcomed the Bureau to its third meeting under the current mandate of the CDMSI. He mentioned the work done by both committees of experts subordinated to the CDMSI in revising the draft texts being prepared. In that respect, he emphasized the important on-going work on the roles and responsibilities of intermediaries and a future consultation with the technical community envisaged during the up-coming EuroDIG meeting.

Mr Kleijssen up-dated the Bureau on progress related to the project for a platform for co-operation with major internet companies, as part of the Council of Europe Strategy for Internet Governance 2017-2019. Although the exact frame is still not confirmed, the project meets wide agreement and enthusiasm from part of the corporate community to collaborate more closely with the Council of Europe. On the Organisation's side, such collaboration would help achieve products that would best correspond to operational reality and raise awareness of CoE standards. The Secretary General's objective is to present a proposal to the Committee of Ministers before or immediately after the summer.

Jan Kleijssen informed the Bureau on the state of play of future mandates for the CDMSI and possible subordinate committees of experts that will include a number of topics suggested by the CDMSI. He also recalled important past and up-coming events, that will be detailed under relevant items during the meeting:

- ICANN58 meeting (11-16 March 2017, Copenhagen);
- the publication of the new SG's annual report "State of democracy, human rights and the rule of law: Populism - How strong are Europe's checks and balances" on 20 April 2017;
- the publication of the study "Journalists under pressure" on 20 April 2017;
- two conferences in March and April: conference on the Dialogue between the ECtHR and the media freedom community (24 March), and the conference on Freedom of Expression Online (28 April 2017, in Nicosia, Cyprus);
- the Spring conference of the data protection commissioners (27 April 2017, Limassol, Cyprus);
- a meeting of the E-commerce Member States Expert Group, (27 April 2017, Brussels);

- a colloquium on the role of media actors in a world of terrorism (A difficult equation between the right to be informed, media freedoms and media ethics), (19 June 2017, Strasbourg);
- the World Summit on the Information Society (WSIS) 2017 (16 June 2017, Geneva);
- the European Dialogue on Internet Governance (EuroDIG) (6-7 June 2017, Tallinn)
- a Conference to be co-organised with the OSCE Chairmanship (Austria) and the CM Chairmanship of the Czech Republic on "The roles and responsibilities of internet intermediaries" (13 October 2017 in Vienna, awaiting confirmation from the Austrian Ministry of Foreign Affairs)

2. Adoption of the agenda

The Bureau adopted the agenda of its meeting in view of the preparation of the 12th CDMSI meeting, which will take place from 20 to 23 June 2017. The annotated agenda appears in Appendix 1. The list of participants appears in Appendix 2.

3. Standard setting

3.1 Committee of experts on media pluralism and transparency of media ownership (MSI-MED)

The Bureau took note of the information provided by Urška Umek, secretary of the MSI-MED, on its third meeting (29-30 March 2017) and the committee's progress on its deliverables. It discussed the draft texts, made comments and gave guidance to the Secretariat as to further work. In general the Bureau members welcomed and lauded the development of all three deliverables of the MSI-MED, notably the thoroughly revised draft recommendation on media pluralism and transparency of media ownership and welcomed the coverage of the topics addressed by the two studies.

Draft Recommendation on media pluralism and transparency of media ownership.

The Bureau took note of the progress of the work. The members indicated some further current challenges regarding the technological and societal development of the media landscape that could be added to the preamble; they also expressed the need for a cautious approach when imposing legislative obligations on the member states regarding sensitive areas such as measurement of media pluralism, keeping and updating of media ownership databases, etc.

Having regard to the existing CoE recommendations addressing the topics of media pluralism and transparency of media ownership, the Bureau members and the secretariat emphasised the importance of finding the right balance between guiding the member states' efforts toward effective media pluralism, and the various realities which may impact the achievability of more wide-reaching or sensitive guidelines in some member states. The issue will be further discussed in the June plenary meeting of the CDMSI to reach some general guidelines on the balance between the maximum and the realistic effect of the recommendation.

All comments made, including concrete drafting suggestion will be forwarded to the MSI-MED to be taken into account in a further version.

Draft feasibility study on the use of the Internet in electoral campaigns.

The secretariat informed the Bureau on the state of play of this work and of the comments received that will still need to be considered. The members observed that in the light of the present conditions many factors adversely influence the fairness and transparency of electoral processes. About the use of the internet in election campaigns, the Bureau suggested to focus more on micro targeting and related issues of declining privacy.

Draft feasibility study on gender equality in media coverage of elections.

The Bureau was informed of the progress of the study, which, given that the topic goes beyond the capacity of media experts, was commissioned to an expert on gender equality and appreciated the visible progress made with the study.

3.2 Committee of experts on internet intermediaries (MSI-NET)

The Bureau took note of the information provided by Charlotte Altenhöner-Dion, secretary of the MSI-NET, on its third meeting (27-28 March 2017) and the committee's progress on its deliverables. It examined the draft texts, made comments and gave guidance to the secretariat as to further work. It also took note of the up-dated MSI-NET roadmap.

Draft recommendation on internet intermediaries.

The Bureau welcomed the receipt of the second revised version which incorporates the discussions from the 3rd MSI-NET meeting (version of 5 May 2017). It welcomed the new structure and approach of the recommendation as clearer and more firmly based on legal principles. It appreciated the streamlining of intermediary responsibilities into a specific chapter, which in its structure corresponds to the chapter on member states' obligations.

The Bureau members indicated, however, that the approach taken towards intermediaries and their roles and responsibilities could still be stricter, particularly given the current context and debate in Europe and the various initiatives in member states to introduce firmer regulatory measures. While confirming the importance of clearly differentiating between intermediary and editorial functions performed by internet platforms, Bureau members expressed the view that internet intermediaries are increasingly playing editorial roles, be it via the operation of algorithms, which was an aspect that should be more reflected in the recommendation. Following a vivid discussion, the Bureau tasked the secretariat to submit to the CDMSI the second revised version (MSI-NET(2016)05rev2) for its discussion at the CDMSI plenary. It further tasked the secretariat to inform the CDMSI that the CoE work related to the roles and responsibilities of intermediaries will be presented at the EuroDIG (6-7 June), in the context of a workshop on human rights in the digital age, and based on that same version, and agreed that external consultations be launched over the summer.

All comments made, including concrete drafting suggestions, will be forwarded to the MSI-NET to be taken into account in the on-going revision process.

Draft study on human rights dimensions of automated data processing techniques (in particular algorithms) and possible regulatory implications.

The Bureau welcomed the new structure of the study which emphasises the human rights most directly affected, and expressed support for the on-going revision process on basis of the MSI-NET discussions. It welcomed the proposal to add a small chapter on possible future human rights impacts that are not yet fully explored. The Bureau further agreed with the proposal to refrain from adding recommendations at the end of the study, but to summarise the main concerns in form of a conclusion that formulates some policy objectives for member states with respect to the use of algorithms, and to map out areas of concern that require further research.

The Bureau further agreed with the revised roadmap which foresees the final review of the study by the MSI-NET at its fourth meeting in September 2017, and approval of the study by the CDMSI in its December plenary.

4. Co-operation activities

The Bureau took note with interest of the information by the secretariat on on-going and future co-operation programmes and activities, as reflected in document MEDIA-COOP(2017)01: 12 projects are currently implemented, among which a new one in Moldova, mostly funded by voluntary contributions and the EU but also by the ordinary budget of the Council of Europe.

The secretariat particularly informed the Bureau of a Colloquium on the role of media actors in confronting terrorism on 19 June in Strasbourg. The date, on the eve of the plenary meeting of the CDMSI was chosen to enable CDMS members to take part in it. One session will be moderated by Elfa Ýr Gylfadóttir, chairperson of the CDMSI.

5. Implementation of Council of Europe adopted standards

5.1 Conference "Promoting dialogue between the ECtHR and the media freedom community" (24 March 2017, Strasbourg)

The secretariat reported on the conference organised by the European Centre for Press and Media Freedom with a substantial assistance of the secretariat. It covered three main topics: the interplay between freedom of expression and privacy, the new challenges of access to information and the protection of whistle-blowers and the protection of journalists during protests. A report will soon be available on the conference web page.

5.2 Initiatives in member States

The secretariat recalled this standard item that aims at sharing of information on initiatives related to the CDMSI area of work between members but also as an early warning tool that would help the secretariat to transmit information

through the organisation and/or gather elements to answer possible questions from the Secretary General.

The Bureau welcomed the approach that states could orally or in writing share information during the meetings, in particular about topics the Committee is working on.

Matthias Traimer mentioned a court decision regarding Facebook and hate speech and will report more in details at the plenary meeting. Besides, he also mentioned the work undertaken by Austria to comply to the CM Recommendation on internet freedom in assessing the level of internet freedom. Lastly, he shared information about an Austrian initiative on media and inclusion of persons with disabilities. This topic sparked a discussion during which the Bureau suggested to work more on questions of access to information and portrayal and involvement of marginalised/vulnerable groups notably in the digital age.

5.3 Fear in journalism – new title: Journalists under pressure – Unwarranted interference, fear and self-censorship in Europe

The Bureau received in-depth information on the study “Journalists under Pressure” that was published at the same time as the Secretary General’s annual Report on Democracy, Human Rights and the Rule of Law in Europe 2017. The study attracted a lot of media coverage and reactions. The Bureau was also informed of the follow-up to be given as part of the implementation of the CM recommendation on protection of journalism and safety of journalists and other media actors.

5.4 Platform to promote protection of journalism and safety of journalists

The Bureau was informed on developments regarding the platform to promote protection of journalism and safety of journalists: two new organisations have joined the group of partner NGOs (International News Safety Institute and Rory Peck Trust) and some technical changes (update to the database and better search functions). It expressed concern about the low number of replies by member states but also about the future of this useful instrument and was reminded that voluntary contributions are a good way to give concrete support. The Bureau suggested that the Directorate of Policy Planning, which is running the platform, be invited to a CDMSI plenary in the next biennium.

5.5 Internet governance

Internet Governance Strategy 2017-2019

The Bureau took note of information by the Secretariat on the state of play of the implementation of the Council of Europe Strategy on Internet Governance 2016-2019, adopted on 30 March 2016 by the Committee of Ministers. The Secretary General will present an intermediary report to the Committee of Ministers at the end of 2017. A first up-date was given to permanent representations during a meeting organised by the CM Thematic Coordinator on Information Policy (TC-Inf) in February.

Activities part of in the Strategy include a platform for co-operation with Business, which was mentioned in detail by J. Kleijssen (see item 1) as well as continuous engagement of the Council of Europe in international internet governance fora (EuroDIG, WSIS, IGF...), which was welcomed by the Bureau.

EuroDIG (6-7 June 2017, Tallinn). Several secretariat members will participate. Among others the work of the MSI-NET will be presented in a workshop entitled "*Realising Rights Online: From Human Rights Discourses to Enforceable Stakeholder Responsibilities*".

As it had been the case for the last edition, the Council of Europe will have a strong involvement in 2017 edition with several major events, notably, a side event on cybercrime (cybersecurity) and one on data protection. Besides, focus will be put on the media situation in Ukraine. CDMSI members are encouraged to attend EuroDIG.

Besides, a side event will be organised

Internet Governance Forum (18-21 December 2017, Geneva)

The IGF being organised in Europe this year, this will give the opportunity for a stronger involvement of the Council of Europe and to showcase its work. Specific events will be organised, in particular on human rights angles of different areas such as social, economic and cultural aspects of internet governance, but also children protection, among others.

The Bureau also took note of the participation of the Council of Europe in the Russian IGF and Belarus IGF.

ICANN

The Bureau took note of information on the secretariat's participation to ICANN meetings in Copenhagen (11-16 March 2017) (see item 7) as well as on work and trends at ICANN that have strong human rights angles: more descriptive domain names for the third round of attribution, which have possible impact on freedom of expression and hate speech; the issue of public safety and cybercrime; and data protection.

6. European Convention on Transfrontier Television

The Bureau expressed disappointment about the low level of response to the questionnaire of 13 March 2017 (11 out of 47 member states, among them 8 out of 34 Parties to the Convention). It discussed at length how to best ensure more input and that every member state takes a position at the upcoming plenary. It decided that a letter by the Chair should strongly encourage responses to the questionnaire and in particular to its question 3 on the impact of the non-revision of the Convention on non-EU member states.

7. Data Protection

The Bureau took note with interest of the information provided by the Secretariat on the on-going work in the field of data protection:

- Modernisation of Convention 108
the draft is still pending for discussions at the CM Group of rapporteurs on legal questions (GR-J) and possible solutions are being discussed;
- Guidelines on the protection of individuals with regards to the processing of personal data in a world of big data were adopted by the T-PD;
- ICANN58, (11-16 March 2017, Copenhagen):
for the first time, privacy and principles of data protection were on the agenda of ICANN with the secretariat organising and facilitating very successful Privacy Day high level events during the ICANN58 meeting. This should continue at ICANN59;
- Health data, police data:
The T-PD is currently working on a recommendation on the protection of health data, and a guide on police data; the drafts will be discussed during its plenary meeting in June;
- the Spring conference of the data protection commissioners (27 April 2017, Limassol, Cyprus):
the modernisation of Convention 108 was on the agenda and all participants strongly encouraged all parties to move forward in order to achieve a most needed instrument.

8. Work of other Council of Europe institutions and bodies

8.1 Secretary General's initiatives

2017 Secretary General's Report on Democracy, Human Rights and the Rule of Law in Europe : Populism – How strong are Europe's checks and balances?

The Bureau took note of the information provided on the preparation and publication of the Secretary General's 4th Annual Report on the State of Democracy, Human Rights and the Rule of Law 2017, which was presented to the Committee of Ministers on 24 April. A substantial chapter is devoted to the freedom of expression, prepared by the Media and Internet Division. It also noted that each chapter provides proposals for actions. As previous editions, the chapter discussed the main concerns and challenges in five sub-chapters, providing an assessment of developments in member states according to a set of measurement criteria. The Division also contributed to the fifth chapter on *Inclusive Societies* with an insert regard the media coverage of the "refugee crisis" and migration-related issues generally. This box was based on a report prepared in co-operation with the London School of Economics in 2016.

8.2 Committee of Ministers

Conference: Freedom of expression online: Evolving European jurisprudence and standard setting activities in the digital age (28 April, Nicosia)

The Bureau was informed of the conference, which took place under the chairmanship of the Republic of Cyprus of the Committee of Ministers of the Council of Europe activities and was co-organised with the Cypriot Supreme Court.

Matthias Traimer reported on his attendance to the conference and his intervention, where he in particular emphasised the reciprocal relationship between standard-setting work carried out by the CDMSI and the case-law of the ECtHR. Overall, he provided very positive feedback on the conference and the collaboration with judges and lawyers. .

Committee of Ministers Thematic Coordinator on Information Policy – TC-Inf

The Bureau was informed of activities carried out by the TC-INF Ambassador Christina Galugaru and agreed to invite her for an exchange of views at the upcoming plenary meeting.

8.3 Parliamentary Assembly of the Council of Europe

The secretariat informed the Bureau on the state of play of CDMSI comments on a series of PACE recommendations and on CM replies, when appropriate.

The Bureau was informed that PACE sub-committee on media, culture and education has a new secretary and decided to invite him to the CDMSI plenary meeting in June.

8.4 Congress of Local and Regional Authorities of the Council of Europe

CPLRE Recommendation 398(2017) – Open data for better public services

The secretariat recalled that the CDMSI had been invited to provide comments on the recommendation. The Bureau discussed a draft prepared by the secretariat and tabled during the meeting and made comments. A revised version will be sent to the Bureau for endorsement. To be able to meet the deadline, the secretariat will then resort to written procedure and forward the draft to the CDMSI for comments and/or adoption.

8.5 Commissioner for Human Rights

The Bureau took note of the Commissioner's Annual Activity Report for 2016 and agreed to invite a representative of the Commissioner's office for an exchange of views during the June plenary meeting of the CDMSI.

8.6 Conference of INGOs of the Council of Europe

The secretariat recalled the exchange of views between the Chairpersons of the CDMSI and the one of the Conference of INGOs.

The Bureau took note a report on the discussions held during the winter session of the Conference of INGOs. It suggested that, as part as the dissemination and awareness raising efforts on the work of the CDMSI, texts adopted be systematically transmitted to the Conference, thus benefitting from a multiplying effect offered by civil society organisations.

8.7 Committee of Experts on Terrorism (CODEXTER)

The Bureau took note of information by the secretariat on the state of play of CDMSI comments on a draft recommendation on terrorists acting alone.

Besides, it decided to invite the co-secretary of CODEXTER at the June plenary meeting of the CDMSI, for an exchange of views, *inter alia*, on possible overlapping working topics and synergy in the work of both committees.

8.8 Steering Committee for Human Rights (CDDH)

The secretariat informed the Bureau on work undertaken by the CDDH, which on many topics, concerns the CDMSI. The Bureau decided to ask one of its members to take part in the CDDH work.

8.9 Ad hoc Committee for the Rights of the Child (CAHENF)

The Bureau took note of the state of play of CDMSI comments on a draft recommendation on [comprehensive] guidelines to empower, protect and support children's [safe access to their rights on the internet] [rights in the digital environment], that was processed by written procedure. It noted that the CAHENF will launch a consultation on the draft, from mid-June to end September. The secretariat will keep the CDMSI informed of follow-up.

8.10 Steering Committee for Culture, Heritage and Landscape (CDCPP)

The secretariat informed the Bureau on background for a draft recommendation on the Challenges of Big Data for Culture, Literacy and Democracy and on the state of play of the CDMSI comments on this draft, which were processed by written procedure and fully taken into account. It will keep the CDMSI informed of further developments.

8.11 European Committee on Legal Co-operation (CDCJ)

The Bureau took note of the adoption of the Recommendation on legal regulation of lobbying activities in the context of public decision-making and regretted that the CDMSI comments were not taken into account.

8.12 European Audio-visual Observatory

The Bureau agreed that a representative of the Observatory be invited to inform the CDMSI on the work of the Observatory for an up-date on the activities and last developments.

8.13 Participation of CDMSI members in meetings and events

Elfa Ýr Gylfadóttir (Iceland) reported on her participation on behalf of the CDMSI in the conference "Human Rights: a reality for all", organised in the framework of the Cyprus chairmanship of the Committee of Ministers (27-28 March 2017, Nicosia).

Matthias Traimer (Austria) reported on his participation on behalf of the CDMSI in the conference on Freedom of Expression Online (28 April 2017, in Nicosia).

9. Other organisations

European Union

The Bureau expressed the wish that this item be a standard one to enable outgoing and in-coming chairmanship of the EU to share information on their priorities relevant to CDMSI work. It was informed that the up-coming Estonian EU Chairmanship will focus on developing an innovative, secure, digital and inclusive Europe and agreed to invite the Estonian delegate to share information with the CDMSI on this topic.

Given the importance of the European Commission work on the revision of the Audio Visual Media Services Directive (AVMS) for the CDMSI, the Bureau agreed to invite a representative of the dedicated working group to up-date the Committee during the 12th CDMSI plenary meeting on the topic and therefore tasked the secretariat to take the necessary steps.

10. CDMSI work programme and working methods

10.1 Reflection on a future ministerial conference

The Bureau pursued its reflexions on possible items for a future ministerial conference and the challenge in finding a host country. It was decided to approach such countries that will be future CoE Committee of Ministers Chairs as they have a closer link to the CoE and recent experience with its events (Czech Republic, Denmark, Croatia, Finland, and France).

It agreed to propose to the CDMSI the topic of "Threats to democracy" as an umbrella topic for a conference. Besides, it also agreed to find guidance and inspiration in the 4th SG's report (2017) for further topics.

Consequently, the secretariat will up-date its note on the subject (CDMSI(2016)Misc6) for the plenary meeting.

11. Draft agenda of the 12th CDMSI meeting (20 – 23 June 2017)

The Bureau approved the draft provisional agenda for the 12th plenary meeting of the CDMSI with the addition of a standard item on European Union chairmanships.

12. Any other business

The Bureau took note of the application of the organisation IFEX to observer status with the CDMSI and decided to invite their representatives to present their application at the 12th plenary meeting of the CDMSI

The meeting was closed at 13.20

Appendix I

Meeting agenda

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 - 3.1 *Committee of experts on Media Pluralism and Transparency of Media Ownership (MSI-MED)*
 - 3.2 *Committee of experts on Internet Intermediaries (MSI-NET)*
4. Cooperation activities
5. Implementation of Council of Europe adopted standards and best practices
 - 5.1 *Conference "Promoting dialogue between the ECtHR and the media freedom community"*
 - 5.2 *Initiatives in member states*
 - 5.3 *Fear in journalism – new title: Journalists under Pressure – Unwarranted interference, fear and self-censorship in Europe*
 - 5.4 *Platform to promote protection of journalism and safety of journalists*
 - 5.5 *Internet governance*
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8. Work of other Council of Europe institutions and bodies
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 - 8.4 *Congress of Local and Regional Authorities of the Council of Europe*
 - 8.5 *Commissioner for Human Rights*
 - 8.6 *Conference of INGOs of the Council of Europe*
 - 8.7 *Committee of Experts on terrorism (CODEXTER)*
 - 8.8 *Steering Committee for Human Rights (CDDH)*
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 - 8.10 *Steering Committee for Culture, Heritage and Landscape (CDCPP)*
 - 8.11 *European Committee on Legal co-operation (CDCJ)*
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12. Any other item

Appendix II – list of participants

11th meeting of CDMSI Bureau meeting
Thursday 11 and Friday 12 May 2017

Room G04, Agora

Participants

The gender distribution among 5 attendants was 3 women (60%) and 2 men (40%).

Ms Elfa Ýr Gylfadóttir, Iceland (Chair)
Media Commission, Ministry of Education, Science and Education, Reykjavik

Mr Emir Povlakić, Bosnia-Herzegovina (Vice-Chair)
Head of Division for Licensing, Digitalization and Coordination in Broadcasting,
Communications Regulatory Agency, Sarajevo

Ms Joanna Chansel, France
Bureau des affaires européennes et internationales, Direction générale des médias et des
industries culturelles, Ministère de la culture et de la communication, Paris

Mr. Christoffer Lärkner, Sweden (excused)
Department of Culture, Stockholm

Ms Maja Raković, Serbia (excused)
Ministry of Foreign Affairs, Belgrade

Mr Matthias Traimer, Austria
Federal Chancellery, Head of Department, Media Affairs and Information Society, Federal
Chancellery, Constitutional Service, Vienna

Ms Pien van den Eijnden, the Netherlands
Senior legal adviser. Ministry of the Interior and Kingdom Relations, The Hague

Secretariat

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

Mr Patrick Penninckx, Head of Information Society Department, Directorate General
Human Rights and Rule of Law

Ms Silvia Grundmann, Head of Media and Internet Division, Directorate General of
Human Rights and Rule of Law, Secretary to the Steering Committee on Media and
Information Society

Ms Charlotte Altenhöner-Dion, Administrator, Media and Internet Division, Directorate
General Human Rights and Rule of Law

Mr Peter Kimpian, Administrator, Data Protection Unit, Directorate General Human Rights
and Rule of Law

Ms Christina Lamprou, Administrator, Media and Internet Division, Directorate General
Human Rights and Rule of Law

Ms Elana Lopatina, Administrator, Media and Internet Division, Directorate General
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Ms Malgorzata Pek, Administrator, Media and Internet Division, Directorate General
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Ms Urška Umek, Administrator, Media and Internet Division, Directorate General Human
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Ms Anne Boyer-Donnard, Principal Administrative Assistant, Media and Internet Division,
Directorate General Human Rights and Rule of Law
Ms Julia Whitham, Administrative Assistant, Media and Internet Division, Directorate
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Interpreters

Michael HILL

Rémy JAIN

Angela BREWER