Committee of Ministers: Recommendation on the roles and responsibilities of Internet intermediaries

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On 7 March 2018, the Committee of Ministers adopted a Recommendation on the roles and responsibilities of Internet intermediaries, and follows a draft Recommendation that was finalised by the Committee of experts on Internet intermediaries in 2017 (see IRIS 2018-1/5). The Recommendation begins with a Preamble, setting out the functions of Internet intermediaries, which are a wide, diverse and rapidly evolving range of players that facilitate interactions on the Internet between natural and legal persons by offering and performing a variety of functions and services. These services include connecting users to the Internet, enabling the processing of information and data, or hosting web-based services (including for user-generated content). Others aggregate information and enable searches; they give access to, host and index content and services designed and/or operated by third parties. Some facilitate the sale of goods and services, including audio-visual services.

In order to provide guidance to all relevant actors faced with the complex task of protecting human rights in the digital environment, the Recommendation then sets out a number of recommendations for member states, including that member states implement the "Guidelines for States on actions to be taken vis-à-vis Internet intermediaries with due regard to their roles and responsibilities" (which are annexed to the Recommendation) when devising and implementing legislative frameworks relating to Internet intermediaries. Furthermore, member states should engage in a regular, inclusive and transparent dialogue with all relevant stakeholders, with a view to sharing and discussing information and promoting the responsible use of emerging technological developments related to Internet intermediaries that impact the exercise and enjoyment of human rights and related legal and policy issues. Moreover, member states should encourage and promote the implementation of effective age- and gender-sensitive media and information literacy programmes to enable all adults, young people and children to enjoy the benefits (and minimise the exposure to risks) of the online communications environment.

As mentioned above, the Recommendation includes Guidelines for States on actions to be taken vis-à-vis Internet intermediaries, which are set out in a seven-page appendix. The Guidelines firstly set out the obligations of States − including the obligation that any request, demand or other action by public authorities addressed to Internet intermediaries aimed at restricting access (including the

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blocking or removal of content), or any other measure that could lead to a restriction of the right to freedom of expression − shall be prescribed by law, pursue one of the legitimate aims foreseen in Article 10 of the ECHR, be necessary in a democratic society and be proportionate to the aim pursued. State authorities should carefully evaluate the possible impact (even if unintended) of any restrictions before and after applying them, while seeking to apply the least intrusive measure necessary to meet the policy objective. Notably, State authorities should obtain an order from a judicial authority or other independent administrative authority whose decisions are subject to judicial review, when demanding that intermediaries restrict access to content. Moreover, the Guidelines include provisions on legal certainty and transparency, safeguards for freedom of expression, safeguards for privacy and data protection, and access to an effective remedy. The second section of the Guidelines concerns the responsibilities of Internet intermediaries. For example, any interference by intermediaries with the free and open flow of information and ideas − be it by automated means or not − should be based on clear and transparent policies and be limited to specific legitimate purposes (such as restricting access to illegal content), as determined either (i) by law or by a judicial authority or other independent administrative authority whose decisions are subject to judicial review, or (ii) in accordance with their own content-restriction policies or codes of ethics, which may include flagging mechanisms. Lastly, there are detailed provisions on transparency and accountability, content moderation, the use of personal data, and access to an effective remedy.

Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries, 7 March 2018

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