Council of Europe publishes recommendations on principles for media and communication governance and the impacts of digital technologies on freedom of expression

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On 6 April 2022, the Committee of Ministers of the Council of Europe adopted recommendations to member states on principles for media and communication governance and on the impacts of digital technologies on freedom of expression. These recommendations, along with a further recommendation on electoral communication, are designed to encourage the member states to introduce future-oriented governance systems that guarantee to protect freedom of expression and freedom of the media, while also respecting communication rights and the fundamental values of the Council of Europe. Both recommendations urge the member states to take the principles laid down into account in their domestic legislative frameworks and to make adjustments where necessary.

The recommendation on media and communication governance is designed to be a key recommendation that updates previous declarations of the Committee of Ministers and Parliamentary Assembly of the Council of Europe and promotes coherent governance, especially in the light of changes to online communication. In particular, it aims to harmonise standards and obligations that apply to traditional media actors as well as online platforms. This was the remit given to the Committee of Experts on Media Environment and Reform (MSI-REF), which spent two years preparing the draft recommendation. The recommendation lays down five procedural and ten substantive principles for national media and communication governance. It calls on the member states to review their existing legislative frameworks and adapt them where necessary in accordance with the aforementioned principles, as well as evaluate at regular intervals if they require further updating. The principles should therefore be promoted at both national and international levels, and all relevant stakeholders should be included in the process of developing and reviewing media and communication governance.

The recommendation’s scope is defined in its appendix, which points out that actors that are not responsible for editorial control over content have begun to play an essential role in public communication since the adoption of the Recommendation on a new notion of media in 2011. A differentiated approach to governance should therefore take into account the different actors and their potential influence, not only looking at state regulation and authorities, but also

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facilitating co- and self-regulatory models. The five procedural principles concern the transparency and accountability of governance, the need to take into account the interests of all groups in society, independence and impartiality, and agility and flexibility. The substantive principles state that applicable fundamental rights should be at the heart of governance so that different rights and objectives can be balanced in a proportionate way. Media freedom, media pluralism and the sustainability of journalism must also be safeguarded. The principles also refer to the transparency of content production, which includes the need to ensure compliance with content obligations and professional standards. Other principles concern content dissemination, with new obligations aimed at platform providers in particular. Governance must ensure functioning markets in the online sector, which could entail the modernisation of competition law, and ensure that data is used not only in accordance with data protection rules, but also fairly. Combating the dissemination of illegal content and responding appropriately to potentially harmful content should be achieved through risk-based and human rights-compliant moderation of content disseminated via platforms and better reporting systems for users. Governance should be used to mitigate the risks posed by algorithmic curation, selection and prioritisation. The final two principles relate to the use of content and call for individuals to be guaranteed access to new forms of communication and content. Finally, through media literacy and opportunities to participate, users should be empowered to use media and platforms responsibly. Appended to the recommendation is a detailed Explanatory Memorandum, which explains each of the 15 principles in depth and provides guidance on how they should be applied to governance.

Meanwhile, the Expert Committee on Freedom of Expression and Digital Technologies (MSI-DIG) prepared a separate recommendation that was adopted by the Committee of Ministers on the same day. This recommendation is designed to ensure that the extended opportunities for freedom of expression provided through the use of digital technologies are not overshadowed by the risks and negative consequences that can result, in particular when the necessary digital infrastructures are only provided by private companies. Taking into account the rights enshrined in Article 10 of the European Convention on Human Rights, the member states and private actors, especially intermediaries, must help ensure that digital technologies serve rather than curtail freedom of expression. The appendix to the recommendation explains the conditions that should apply under Article 10 to self-regulation and state regulation governing intermediaries and online platforms. For example, processes for moderating user-generated content on such platforms should be established in advance in order to ensure that such moderation is not arbitrary, while responses to problematic content should be proportionate. Accountability rules and simple redress mechanisms are also important. Access for researchers to related data and mechanisms, and support for such research, should facilitate evidence-based rule-making in the future.

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By adopting these two recommendations, as well as the recommendation on electoral communication, the Committee of Ministers has taken an important step towards the modernisation of media and communication governance in the member states, bringing it into line with the new conditions of the online world. The recommendations therefore have the potential to take similar approaches adopted at European Union level through the Digital Services Act and Digital Markets Act outside the narrower territory of the EU, and to establish a framework for future governance – both in the EU member states and in the EU itself where it has relevant jurisdiction – in compliance with fundamental rights.

Recommendation CM/Rec(2022)11 of the Committee of Ministers to member States on principles for media and communication governance

https://go.coe.int/HcFzG

Explanatory Memorandum to Recommendation CM/Rec (2022)11

https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a5bd7c

Recommendation CM/Rec(2022)13 of the Committee of Ministers to member States on the impacts of digital technologies on freedom of expression

https://go.coe.int/nVL0P

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