

# COMBATING HATE SPEECH



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

# COMBATING HATE SPEECH

French edition:

*La lutte contre le discours de la haine*

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# Recommendation CM/Rec(2022)16<sup>1</sup>

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## of the Committee of Ministers to member States on combating hate speech

*(Adopted by the Committee of Ministers on 20 May 2022  
at the 132nd Session of the Committee of Ministers)*

### **PREAMBLE**

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the member States of the Council of Europe have committed themselves to guaranteeing the rights and freedoms enshrined in the European Convention on Human Rights (ETS No. 5, “the Convention”) to everyone within their jurisdiction, and that human rights and freedoms are universal, indivisible, interdependent and interrelated, and apply both offline and online;

Underlining that the preparation and implementation of policies and legislation to prevent and combat hate speech require careful balancing of the right to respect for private and family life (Article 8 of the Convention), the right to freedom of expression (Article 10 of the Convention) and the right to be free from discrimination in respect of protected Convention rights (Article 14 of the Convention);

Stressing that, in order to effectively prevent and combat hate speech, it is crucial to identify and understand its root causes and wider societal context, as well as its various expressions and different impacts on those targeted;

Noting that hate speech is a deep-rooted, complex and multidimensional phenomenon, which takes many dangerous forms and can be disseminated very quickly and widely through the internet, and that the persistent availability of hate speech online exacerbates its impact, including offline;

Realising that hate speech negatively affects individuals, groups and societies in a variety of ways and with different degrees of severity, including by instilling fear in and causing humiliation to those it targets and by having a chilling effect on participation in public debate, which is detrimental to democracy;

Being aware that individuals and groups can be targeted by hate speech on different grounds, or combinations of grounds, and acknowledging that those persons and groups need special protection, without detriment to the rights of other persons or groups;

Taking into account that hate speech interferes with and often violates the right to respect for private life and the right to non-discrimination, which are essential for safeguarding the human dignity of those targeted by hate speech and for ensuring that they are not excluded from public debate;

Reaffirming its profound commitment to the protection of the right to freedom of expression, which is one of the essential foundations of a democratic and pluralistic society, as guaranteed by Article 10 of the Convention, which protects the freedom to hold opinions and to receive and impart information and ideas, without interference by public authority and regardless of frontiers;

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1. In accordance with Article 10.2c of the Rules of Procedure for the meetings of the Ministers’ Deputies, the Republic of Bulgaria reserves the right of its government to comply or not with Chapter I “Scope, definition and approach” of the Recommendation. Following Decision No. 13/2018 of the Constitutional Court, the term “gender identity” is incompatible with the legal order of the Republic of Bulgaria.

Underlining that freedom of expression is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population;

Recalling that the exercise of the right to freedom of expression carries with it duties and responsibilities and that any restriction of this right must be in strict accordance with Article 10, paragraph 2, of the Convention and thus narrowly construed and comply with the requirements of lawfulness, necessity and proportionality to the legitimate aims;

Acknowledging that expressions aimed at the destruction of any of the rights and freedoms set forth in the Convention do not enjoy protection under it, in accordance with its Article 17 on the prohibition of abuse of rights;

Being aware that hate speech is defined and understood in differing ways at the national, European and international levels and that it is crucial to develop a common understanding of the concept, nature and implications of this phenomenon and to devise more effective policies and strategies to tackle it;

Considering that measures to combat hate speech should be appropriate and proportionate to the level of severity of its expression; some expressions of hate speech warrant a criminal law response, while others call for a civil or administrative law response, or should be dealt with through measures of a non-legal nature, such as education and awareness raising, or a combination of different approaches and measures;

Underlining that, in light of their positive obligation to secure the effective exercise of fundamental freedoms and prevent human rights violations, member States must address hate speech and ensure a safe and enabling environment for public debate and communication, including when these take place on platforms or through other services run by private actors;

Acknowledging that offensive or harmful types of expression which are not severe enough to be legitimately restricted under the Convention should be addressed through measures of a non-legal nature;

Underscoring the crucial role that the media, journalists and other types of public watchdog play in democratic societies and the fact that they can make an important contribution to combating hate speech by exposing, reporting on, criticising and condemning hate speech, as well as by providing channels and forums for counter-speech and contributing more broadly to pluralism and societal cohesion;

Being aware that internet intermediaries can facilitate public debate, in particular through the digital tools and services they make available, while at the same time highlighting that those tools and services can be used to disseminate, quickly and widely, worrying volumes of hate speech, and underlining that internet intermediaries should ensure that their activities do not have or facilitate an adverse impact on human rights online and address such impacts when they occur;

Recognising that legislative and policy measures to prevent and combat online hate speech should be kept under regular review in order to take into account the fast evolution of technology and online services and, more widely, digital technologies and their influence on information and communication flows in contemporary democratic societies; and acknowledging that those reviews should take into account the dominance of certain internet intermediaries, the power asymmetry between some digital platforms and their users, and the influence of these dynamics on democracies;

Concluding, in the light of the foregoing considerations, that a comprehensive approach is needed to prevent and combat hate speech effectively offline and online, comprising a coherent strategy and a wide-ranging set of legal and non-legal measures that take due account of specific situations and broader contexts;

Acknowledging the importance of multistakeholder co-operation and the key roles that public institutions and private and non-governmental stakeholders can play in identifying and implementing measures to prevent and combat hate speech, to promote a culture of inclusiveness and to help those targeted by hate speech to assert their rights;

Building on existing Council of Europe treaties and other relevant standard-setting instruments, drawing on the relevant case law of the European Court of Human Rights and the findings and recommendations of the Council of Europe's monitoring bodies, in particular Recommendation Rec(97)20 of the Committee of Ministers to member States on "hate speech", Recommendation Rec(97)21 of the Committee of Ministers to member States on the media and the promotion of a culture of tolerance and General Policy Recommendation No. 15 on combating hate speech of the European Commission against Racism and Intolerance, and being cognisant of the broader international and European human rights standards;

Aiming to provide guidance to all those who are faced with the complex task of preventing and combating hate speech, including in the online environment,

Recommends that the governments of member States:

1. take all necessary measures to ensure prompt and full implementation of the principles and guidelines appended to this recommendation;
2. take appropriate measures to give encouragement and support to national human rights institutions, equality bodies, civil society organisations, the media, internet intermediaries and other stakeholders to adopt the measures that are outlined for them in the principles and guidelines appended to this recommendation;
3. protect human rights and fundamental freedoms in the digital environment, including by co-operating with internet intermediaries, in line with Recommendation CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries, and other applicable Council of Europe standards;
4. promote the goals of this recommendation at national, European and international levels and engage in dialogue and co-operation with all stakeholders to achieve those goals;
5. ensure that this recommendation is translated into national, regional and minority languages, and disseminated as widely as possible and through all accessible means among competent authorities and stakeholders;
6. review regularly the status of implementation of this recommendation with a view to enhancing its impact and inform the Committee of Ministers about the measures taken by member States and other stakeholders, the progress achieved and any remaining shortcomings.

## APPENDIX TO RECOMMENDATION CM/REC(2022)16

### Principles and guidelines on a comprehensive approach to combating hate speech

#### 1. Scope, definition and approach

1. The aim of the following principles and guidelines is to assist member States and other relevant stakeholders in preventing and combating hate speech in a comprehensive way, including in the online environment, in order to ensure effective protection against hate speech within the framework of human rights, democracy and the rule of law.
2. For the purposes of this recommendation, hate speech is understood as all types of expression that incite, promote, spread or justify violence, hatred or discrimination against a person or group of persons, or that denigrates them, by reason of their real or attributed personal characteristics or status such as “race”,<sup>2</sup> colour, language, religion, nationality, national or ethnic origin, age, disability, sex, gender identity and sexual orientation.
3. As hate speech covers a range of hateful expressions which vary in their severity, the harm they cause and their impact on members of particular groups in different contexts, member States should ensure that a range of properly calibrated measures is in place to effectively prevent and combat hate speech. Such a comprehensive approach should be fully aligned with the European Convention on Human Rights and the relevant case law of the European Court of Human Rights (the Court) and should differentiate between:
  - a. i. hate speech that is prohibited under criminal law; and  
ii. hate speech that does not attain the level of severity required for criminal liability, but is nevertheless subject to civil or administrative law; and
  - b. offensive or harmful types of expression which are not sufficiently severe to be legitimately restricted under the European Convention on Human Rights, but nevertheless call for alternative responses, as set out below, such as: counter-speech and other countermeasures; measures fostering intercultural

2. Since all human beings belong to the same species, the Committee of Ministers rejects, as does the European Commission against Racism and Intolerance (ECRI), theories based on the existence of different “races”. However, in this document, the term “race” is used in order to ensure that those persons who are generally and erroneously perceived as “belonging to another race” are not excluded from the protection provided for by the legislation and the implementation of policies to prevent and combat hate speech.



dialogue and understanding, including via the media and social media; and relevant educational, information-sharing and awareness-raising activities.

4. In assessing the severity of hate speech and determining which type of liability, if any, should be attributed to any specific expression, member States' authorities and other stakeholders should, following the guidance provided by the relevant case law of the Court, take into account the following factors and the interplay between them: the content of the expression; the political and social context at the time of the expression; the intent of the speaker; the speaker's role and status in society; how the expression is disseminated or amplified; the capacity of the expression to lead to harmful consequences, including the imminence of such consequences; the nature and size of the audience, and the characteristics of the targeted group.
5. To prevent and combat hate speech, member States should pursue a comprehensive approach, prepare and implement broad policies, legislation, strategies or action plans, allocate appropriate resources for their implementation, and engage the various stakeholders specified in section 3 of this appendix.
6. When preparing and implementing such policies, legislation, strategies or action plans against hate speech, member States should pay due attention to the importance of:
  - a. clarifying which types of expression fall outside of the protection provided by freedom of expression;
  - b. pursuing a principled, human rights-based approach that takes account of the specific features of different media and digital technologies and the potential impact of hate speech that is disseminated through them on the targeted persons and groups;
  - c. taking a concerted and collaborative multistakeholder approach due to the multidimensional nature of hate speech;
  - d. ensuring that all relevant stakeholders are aware of and sensitive to the cumulative effects of hate speech that is based on multiple grounds, including the need for an age- and gender-sensitive approach; and
  - e. actively reaching out to those targeted by hate speech and incorporating their perspectives into laws, policies and other responses to hate speech.

## 2. Legal framework

7. To prevent and combat hate speech in the offline and online environments, member States should ensure that a comprehensive and effective legal framework is in place, consisting of appropriately calibrated provisions of civil, administrative and criminal law. Criminal law should only be applied as a last resort and for the most serious expressions of hatred.
8. To the extent that this legal framework allows for restrictions to be placed on the exercise of the right to freedom of expression, member States should ensure that the legislation fully meets the requirements of Article 10, paragraph 2, of the European Convention on Human Rights and the relevant case law of the Court and that it allows judicial and other authorities to apply it in accordance with those requirements, including those of accessibility, foreseeability and precision of the law, and to take into account the factors for the assessment of the severity of hate speech mentioned in paragraph 4 above.
9. Member States should establish effective legal and practical safeguards against any misuse or abuse of hate speech legislation, in particular for the purpose of inhibiting public debate and silencing critical voices, political opponents or persons belonging to minorities.
10. Member States should empower equality bodies, national human rights institutions and civil society organisations that have a legitimate interest in combating hate speech to assist and represent those targeted by hate speech in legal proceedings and to bring legal actions in respect of hate speech, including, where applicable, in their own name.

### Criminal law

11. Member States should specify and clearly define in their national criminal law which expressions of hate speech are subject to criminal liability, *such as*:
  - a. public incitement to commit genocide, crimes against humanity or war crimes;
  - b. public incitement to hatred, violence or discrimination;
  - c. racist, xenophobic, sexist and LGBTI-phobic threats;

- d. racist, xenophobic, sexist and LGBTI-phobic public insults under conditions such as those set out specifically for online insults in the Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS No. 189);
  - e. public denial, trivialisation and condoning of genocide, crimes against humanity or war crimes; and
  - f. intentional dissemination of material that contains such expressions of hate speech (listed in a-e above) including ideas based on racial superiority or hatred.
12. Member States should ensure that effective investigations are conducted in cases where there is reasonable suspicion that an act of hate speech punishable by criminal law has occurred.

### **Civil and administrative law**

13. Member States should ensure that effective legal protection against hate speech is provided under their civil law and administrative law, in particular general tort law, anti-discrimination law and administrative offences law.
14. Member States should ensure that their anti-discrimination legislation applies to all expressions of hate speech prohibited under criminal, civil or administrative law.
15. Member States should ensure that public authorities or institutions are required by law to actively prevent and combat hate speech and its dissemination and to promote the use of tolerant and inclusive speech.

### **Legislation regarding online hate speech**

16. Member States should ensure that their legislation addressing hate speech covers offline as well as online hate speech and contains clear and foreseeable provisions for the swift and effective removal of online hate speech that is prohibited under criminal, civil or administrative law.
17. Member States should define and delineate, in line with Recommendation CM/Rec(2018)2 of the Committee of Ministers to member States on the roles and responsibilities of internet intermediaries, the duties and responsibilities of State and non-State actors in addressing online hate speech. Member States should furthermore create clear rules and procedures for effective co-operation with and between those actors regarding the assessment and investigation of online hate speech that is prohibited under criminal, civil or administrative law.
18. Member States should require internet intermediaries operating within their jurisdiction to respect human rights, including the legislation on hate speech, to apply the principles of human rights due diligence throughout their operations and policies, and to take measures in line with existing frameworks and procedures to combat hate speech.
19. Member States should ensure that mechanisms are in place for the reporting of cases of online hate speech to public authorities and private actors, including internet intermediaries, and clear rules for the processing of such reports.
20. Removal procedures and conditions as well as related responsibilities and liability rules imposed on internet intermediaries should be transparent, clear and predictable and those procedures should be subject to due process. They should guarantee users the right to an effective remedy delivered through transparent oversight and timely, accessible and fair appeal mechanisms, which are ultimately subject to independent judicial review.
21. Member States should take into account the substantial differences in the size, nature, function and organisational structure of internet intermediaries when devising, interpreting and applying the legislative framework governing the liability of internet intermediaries, as provided by Recommendation CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries, in order to prevent a possible disproportionate impact on smaller internet intermediaries.
22. Member States should establish by law that internet intermediaries must take effective measures to fulfil their duties and responsibilities not to make accessible or disseminate hate speech that is prohibited under criminal, civil or administrative law. Important elements for the fulfilment of this duty include: rapid processing of reports of such hate speech; removing such hate speech without delay; respecting privacy and data-protection requirements; securing evidence relating to hate speech prohibited under criminal law; reporting cases of such criminal hate speech to the authorities; transmitting to the law-enforcement services,

on the basis of an order issued by the competent authority, evidence relating to criminal hate speech; referring unclear and complex cases requiring further assessment to competent self-regulatory or co-regulatory institutions or authorities; and foreseeing the possibility of implementing, in unclear and complex cases, provisional measures such as deprioritisation or contextualisation.

23. Member States should establish by law that internet intermediaries and authorities must provide the individuals and institutions concerned with a short and precise explanation of the reasons for their decision to block, take down or deprioritise hate speech or not to block, take down or deprioritise reported items.

24. Member States should have a system in place for the disclosure of subscriber information in cases where competent authorities have assessed that online hate speech is in breach of the law and authors and disseminators are unknown to the competent authorities. Member States should ensure that any disclosure of available information on their identity is in line with European and international human rights law.

25. Member States should regularly publish reports containing comprehensive information and statistics on online hate speech, including content restrictions, and on State authorities' requests to platforms to take down content on the grounds that it is hate speech, subject to the protection of personal data in accordance with European and international standards. They should furthermore establish by law that relevant internet intermediaries are under an obligation to regularly produce and publish transparency reports showing disaggregated and comprehensive data on hate speech cases and content restrictions.

26. Member States should ensure that independent authorities, in co-operation with internet intermediaries, civil society organisations and other stakeholders, regularly assess and improve the content moderation systems in place in order to improve the detection, reporting and processing of online hate speech, while eliminating the causes of unjustified content restriction and over-compliance.

27. Member States should ensure that their legislative framework sets out a legal duty for media operating online not to disseminate hate speech that is prohibited under criminal, civil or administrative law, that it makes appropriate provision for the restriction or disabling of access to such hate speech posted by third parties in their comments sections or collaborative spaces on their platforms and that it subjects such restrictions ultimately to independent judicial review.

### **3. Recommendations addressed to key actors**

#### **Public officials, elected bodies and political parties**

28. Public officials, particularly those in leadership positions, should, given their position of influence, avoid engaging in, endorsing or disseminating hate speech. They should be encouraged to publicly promote a culture of human rights and to condemn hate speech firmly and promptly, while respecting freedom of expression and information, including criticism and information that may offend, shock or disturb the State or any sector of the population.

29. Parliaments, other elected bodies and political parties should be encouraged to put in place specific policies to address and combat hate speech, in particular in the context of electoral campaigns and in the debates of representative assemblies. To this end, they should adopt a code of conduct which provides for an internal complaint and sanction procedure. They should also avoid any expression that is likely to foster intolerance and should openly condemn hate speech.

#### **Internet intermediaries**

30. Within their duty to comply with all applicable laws and to respect human rights, internet intermediaries should identify expressions of hate speech that are disseminated through their systems and act upon them in the framework of their corporate responsibility, in line with Recommendation CM/Rec(2016)3 on human rights and business and Recommendation CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries.

31. Internet intermediaries should ensure that human rights law and standards guide their content moderation policies and practices with regard to hate speech, explicitly state that in their terms of service and ensure the greatest possible transparency with regard to those policies, including the mechanisms and criteria for content moderation.

32. Internet intermediaries should carefully calibrate their responses to content identified as hate speech on the basis of its severity, as outlined in paragraph 4 above, and elaborate and apply alternatives to the removal of content in less severe cases of hate speech.

33. Internet intermediaries should make all necessary efforts to ensure that the use of automation or artificial intelligence tools is overseen by human moderation and that content moderation takes into account the specificities of relevant legal, local, cultural, socio-political and historical contexts. In their efforts to take specificities into account, they should consider decentralising content moderation.

34. Internet intermediaries should appoint a sufficient number of content moderators and ensure that they are impartial, have adequate expertise, are regularly trained and receive appropriate psychological support. Internet intermediaries should furthermore ensure that trusted flaggers and fact-checkers are trained in human rights standards that apply to hate speech.

35. Internet intermediaries should establish effective co-operation with civil society organisations that work on hate speech, including on the collection and analysis of data, and support their efforts to improve policies, practices and campaigns to address hate speech.

36. Internet intermediaries, including social media, should review their online advertising systems and the use of micro-targeting, content amplification and recommendation systems and the underlying data-collection strategies to ensure that they do not, directly or indirectly, promote or incentivise the dissemination of hate speech.

37. Internet intermediaries should develop internal processes that enable them to detect and prevent risks to human rights with regard to the assessment and treatment of hate speech and should subject themselves to regular independent, comprehensive and effective human rights impact assessments and audits.

### Media

38. The media, journalists and other actors should fulfil their public watchdog role in a democratic society and contribute to public debate; they should enjoy the freedom to report on hatred and intolerance and to choose their reporting techniques, styles and mediums, subject to the proviso that they strive to provide the public with accurate and reliable information.

39. The media and journalists should be encouraged to promote a culture of tolerance and understanding, in accordance with Recommendation Rec(97)21 on the media and the promotion of a culture of tolerance.

40. Public-service media should make a particularly substantial contribution to this, given their mandate to serve all sections of society and to enhance societal cohesion. They should not use or disseminate hate speech and, as part of their public mission, they should actively promote intergroup dialogue and understanding as well as the airing of content that portrays in a positive and supportive manner the diversity of voices and sources in the community they serve.

41. The media and journalists should, in their efforts to provide accurate and reliable information, avoid derogatory stereotypical depiction of individuals, groups and communities and give voice to diverse groups and communities in society, especially when reporting on matters of particular public interest and during election periods. They should avoid provoking prejudice and making any unnecessary references to personal characteristics or status.

42. Independent national regulatory authorities and media co-regulatory and/or self-regulatory bodies should play a positive role in addressing hate speech. They should be independent from the government, publicly accountable and transparent in their operations.

### Civil society organisations

43. Civil society organisations should be encouraged to set up specific policies to prevent and combat hate speech and, where appropriate and feasible, provide training for their staff, members and volunteers. Civil society organisations should also be encouraged to co-operate and co-ordinate between themselves and with other stakeholders on hate speech issues.

## 4. Awareness raising, education, training and use of counter-speech and alternative speech

44. Member States should prepare and implement effective strategies to explore and address the root causes of hate speech, which include disinformation, negative stereotyping and stigmatisation of individuals and groups.

45. As part of their comprehensive approach to preventing and combating hate speech, member States should take a range of concrete measures to promote awareness raising, education, training, counter-speech, alternative speech and intercultural dialogue, in accordance with their experience and knowledge.

46. Member States should raise awareness of the extent of hate speech and the harm it causes to individuals, communities and democratic societies as a whole, the criteria used to assess it and ways to counter it, in particular through encouraging and supporting initiatives by relevant authorities, national human rights institutions, equality bodies and civil society organisations, including those representing individuals or groups that are likely to be targeted by hate speech.

47. Member States should ensure that human rights education, education for democratic citizenship and media and information literacy, all of which should address offline and online hate speech, are part of the general education curriculum.

48. Member States should set up and strengthen educational and awareness-raising initiatives, programmes and user tools for children and young people, parents and carers, educators, youth workers and volunteers working with children that enable them to understand and deal with hate speech. Member States should ensure that children and young people are able to participate effectively in the elaboration of such initiatives, programmes and tools.

49. Member States should take specific measures to support formal and non-formal educational activities and cultural programmes for the general public that enhance commitment to human rights as part of a pluralistic democratic society, encourage critical thinking, promote equality and intercultural and interfaith dialogue, and strengthen the competences needed to identify and counter hate speech.

50. Member States should make available effective and targeted training programmes for all those involved in preventing and combating hate speech, including the members and staff of law-enforcement services, security forces, prosecution services, the judiciary and the personnel of medical services and other public bodies, with a view to enabling them to identify and avoid the use of hate speech, to be sensitive to the needs of persons targeted by hate speech and assist them in seeking redress, to address and report its use by others and to limit its impact on those affected.

51. Member States should support awareness-raising and training programmes that engage with perpetrators of hate speech in order to address their prejudices and discriminatory actions and expressions. In appropriate cases, a court or prosecution service could enforce participation in such programmes as an alternative sanction, with the aim of achieving restorative justice.

52. Member States should, without encroaching on the independence of the media, encourage and support training for media professionals and journalists, as part of their initial and ongoing education, on how to recognise, report on and react to hate speech, as well as on how to avoid using and disseminating it and, more generally, on the role of journalists and the media in promoting a culture of human rights and inclusive public debate.

53. Member States should encourage public figures, such as politicians, high-level officials and religious, economic and community leaders to firmly and promptly condemn the use of hate speech, use counter-speech and alternative speech and promote intergroup understanding, including by expressing solidarity with those targeted by hate speech.

54. Member States should encourage and support national human rights institutions, equality bodies, internet intermediaries, the media and civil society organisations to create and promote counter-speech and alternative speech, and to involve those targeted by hate speech in this process, without encroaching on their independence. Member States should furthermore support capacity-building and training initiatives to facilitate access to the media for persons belonging to minorities or other groups, including through the establishment of community media, minority media organisations and other public forums where intergroup dialogue can take place.

## **5. Support for those targeted by hate speech**

55. Member States should put in place effective support mechanisms that help those targeted by hate speech to cope with the harm they suffer. Such mechanisms should include psychological, medical and legal assistance and could involve civil society organisations. Regarding hate speech which is prohibited by criminal, civil or administrative law, member States should also provide for free legal aid, where appropriate. Due attention should be given to persons belonging to minorities and other groups, and such mechanisms should adopt an age- and gender-sensitive approach.

56. Member States should, including in co-operation with civil society organisations, establish and implement awareness-raising and educational measures for persons and groups targeted by hate speech to make them aware of their rights, of the possibility to obtain redress through civil, administrative and criminal proceedings and of the support mechanisms in place. Such measures should be easily accessible and understandable, including in different languages, and generally tailored to the specific needs of relevant persons and groups.

57. Member States should encourage and facilitate the reporting of hate speech by creating effective mechanisms to identify and promptly remove any legal and non-legal obstacles to such reporting. Member States should also ensure that persons reporting hate speech are protected against any adverse treatment or consequences as a result of making a complaint and that sanctions are imposed on the perpetrators in the event of renewed victimisation.

## **6. Monitoring and analysis of hate speech**

58. Member States should ensure that their policies, legislation, strategies and action plans against hate speech are based on evidence and duly reflect an age- and gender-sensitive approach. To this end, member States should identify, record, monitor and analyse trends and ensure the collection and dissemination, by criminal justice authorities, of disaggregated data on criminal hate speech, including reported and prosecuted cases and, as far as possible, the means of its dissemination, its reach and the different expressions of and grounds for hate speech and intersectional hate speech, in compliance with existing European human rights and data-protection standards. In this connection, member States should, as appropriate, collaborate with relevant key stakeholders.

59. In addition, member States should, as far as possible, seek to understand and collect data on victim perceptions and the perceived prevalence of non-criminal but harmful speech, in collaboration with relevant key stakeholders and in compliance with existing European human rights and data-protection standards.

60. Member States should take appropriate measures to ensure that law-enforcement services effectively record and monitor complaints concerning hate speech and that they set up an anonymised archive of complaints in accordance with existing European human rights and data-protection standards.

61. Member States should make data, information and analysis of hate speech and ongoing trends publicly available in accordance with existing European human rights and data-protection standards.

## **7. National co-ordination and international co-operation**

62. In order to ensure national co-ordination, member States should engage in regular, inclusive and transparent consultation, co-operation and dialogue with all relevant stakeholders.

63. Member States should co-operate with each other with a view to promoting consistency in legal standards and approaches to preventing and combating hate speech, in accordance with the provisions of this Recommendation. They should furthermore adhere to and effectively implement relevant European and international instruments, engage with intergovernmental organisations and exchange information and best practices.



# Explanatory Memorandum

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## Recommendation CM/Rec(2022)16 of the Committee of Ministers to member States on combating hate speech

1434th meeting, 11, 13 and 17 May 2022

Steering Committee on Anti-Discrimination, Diversity and Inclusion (CDADI)  
and Steering Committee on Media and Information Society (CDMSI)

### INTRODUCTION

1. Hate speech is a complex and multidimensional phenomenon that has far-reaching and dangerous consequences in democratic societies. It not only affects the dignity and human rights of the individual directly targeted, but also of persons belonging to the same minority or group as those directly targeted. Hate speech leads to dangerous divisions in society as a whole, affects the participation and inclusion of all those targeted by it and threatens democracy. The targets of hate speech become increasingly excluded from society, forced out of the public debate and silenced. History shows that hate speech has also been intentionally used to mobilise groups and societies against each other in order to provoke violent escalation, hate crime, war and genocide.
2. Hate speech also inhibits targeted individuals from freely sharing and imparting ideas, to voice their concerns and be adequately represented. Hate Speech can be a means to intimidate or silence minority groups, human rights defenders and NGO representatives. A similar consideration applies also to politicians as well as journalists and other media actors reporting on matters of public interest. The grave chilling effect hate speech has on journalists and other media actors reporting on matters of public interest has been addressed in the book *A Mission to Inform: Journalists at Risk Speak Out*, co-authored by Prof Marilyn Clark and Mr William Horsley. Launched in October 2020, it presents powerful testimonies of how media professionals, due to their investigations, can become the target of severe and 'sometimes international' propaganda and hate speech campaigns. The book emphasises the alarming impact that hate speech can have when addressed against women journalists, especially in the online environment. At the same time the misuse or threatened use of different types of legislation, including hate speech laws, can prove equally effective to silence contributions to the public debate.
3. The persistence and worrying increase of hate speech, especially online, and its impact on the enjoyment of human rights and democracy in Europe have been documented by the monitoring bodies of the Council of Europe, the European Union Agency for Fundamental Rights (FRA), various other intergovernmental organisations, civil society organisations, internet intermediaries, and other bodies. In its recent country monitoring and annual reports, the European Commission against Racism and Intolerance (ECRI) describes, based on detailed statistics and studies, the persistence and increase of ultra-nationalistic, xenophobic, racist, and LGBTI-phobic hate speech in various member States. This hate speech is frequently encountered on the Internet (see in particular ECRI's recent annual reports and the chapters on hate speech in its fifth and sixth cycle country monitoring reports). It should be underlined that such rises in hate speech and in particular waves of hate speech should be seen as a specific warning sign that a violent escalation may be imminent, and that resolute action is needed to preserve democratic stability and security.
4. To avoid such dangerous escalation and rather establish and maintain inclusive societies, it is important that member States take effective and sustainable action against hate speech. This Recommendation



provides member States with comprehensive guidance on preventing and combating hate speech. It builds on the 1997 Committee of Ministers' Recommendation Rec(97)20 on "hate speech", which at the time was adopted together with Recommendation Rec(97)21 on the media and the promotion of a culture of tolerance.

5. It is a complex endeavour to protect persons targeted by hate speech and maintain respect for their private life (Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 005), hereinafter 'the Convention'), while safeguarding the right to freedom of expression (Article 10) and upholding the right to be free from discrimination in the enjoyment of the rights and freedoms set forth in the Convention (Article 14). This endeavour necessitates a constant and careful balancing of the fundamental rights and freedoms involved (for details see §§ 24 et seq. below).

6. The Recommendation on combating hate speech, hereinafter 'the Recommendation', contains a broad definition of hate speech (§2 of the Recommendation) and distinguishes within this definition different layers of hate speech (§3 of the Recommendation). It furthermore provides factors for assessing the level of severity of hate speech and guidance for developing appropriate and proportionate responses for those different layers of hate speech (§§4 et seq. of the Recommendation). The Recommendation pursues a comprehensive approach to preventing and combating hate speech. Therefore, it not only deals with the necessary legal framework for combating hate speech but also contains important guidance for addressing the root causes of hate speech through non-legal means, in particular through the recommendations made in Chapter 4 on awareness-raising, education, training and the use of counter- and alternative speech. The different constitutional and legal orders and the varying situations in the member States, will make it necessary to explore various avenues for implementing this Recommendation.

7. Hate speech is targeted at many different persons. Racist hate speech for example targets persons belonging to ethnic, cultural, linguistic or religious minorities including Roma and Travellers,<sup>1</sup> Jews, Muslims, Black people, migrants and persons with a migration background including asylum seekers, refugees, internally displaced persons and irregularly present migrants, and people belonging to other minorities; sexist hate speech often targets women; and LGBTI-phobic hate speech targets lesbian, gay, bisexual, transgender and intersex persons. This Recommendation and its Appendix (the Recommendation) contain measures to protect and assist not only those directly targeted by hate speech, but also those who are indirectly targeted (for example members belonging to a certain minority or group of the person directly targeted) and hence are affected by hate speech. To designate all these persons, it uses the general term "persons targeted by hate speech", which also covers all different layers of hate speech with varying degrees of severity (§§ 3 and 4 of the Recommendation). It is for the competent authorities and the judiciary and not for the perpetrator to decide whose human rights are affected by hate speech and who has suffered harm from it. The term "persons targeted by hate speech" is broader than the term victim, which is defined in § 202 of this Explanatory Memorandum.

8. Many persons (for example, black Muslims or lesbian Roma women) are targeted by hate speech on different, intersecting and cumulative grounds, which further worsens their situation (see ECRI's annual reports 2018, § 15 and 2019, § 13). For instance, the Committee of Ministers' Recommendation CM/Rec(2019)1 on preventing and combating sexism underlines that women and girls can be subject to multiple and intersecting forms of discrimination and sexism, including sexist hate speech. They are particularly exposed to it if they are practicing certain professions such as journalist or politician.

9. In recent years, hate speech has increasingly been spread through the internet. Preventing and combating online hate speech poses specific challenges, as it can be disseminated as never before across the world in a matter of seconds. It can sometimes remain persistently available online (see European Court of Human Rights (the Court), *Delfi AS v. Estonia*, no. 64569/09, 16 June 2015 [Grand Chamber], § 110; and *Annen v. Germany*, no. 3690/10, 26 November 2015, § 67). The member States have the ultimate obligation to protect human rights and fundamental freedoms also in the digital environment (§ 1.1.3 of CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries). This includes the duty to protect individuals against violations, including potential violations, committed by other private persons and organisations (*Plattform "Ärzte für das Leben" v. Austria*, no. 10126/82, 21 June 1988, §§ 32 et seq.). In connection to this, the Recommendation acknowledges the central role of internet intermediaries for the functioning of the internet and online communication. It furthermore recalls their responsibilities with regard to online hate speech in line

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1. The term "Roma and Travellers" is used at the Council of Europe to encompass the wide diversity of the groups covered by the work of the Council of Europe in this field: on the one hand a) Roma, Sinti/Manush, Calé, Kaale, Romanichals, Boyash/Rudari; b) Balkan Egyptians (Egyptians and Ashkali); c) Eastern groups (Dom, Lom and Abdal); and, on the other hand, groups such as Travellers, Yenish, and the populations designated under the administrative term "Gens du voyage", as well as persons who identify themselves as Gypsies. The present is an explanatory footnote, not a definition of Roma and/or Travellers.

with CM/Rec(2016)3 on human rights and business and CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries (for details see §§ 30 et seq. of this Recommendation).

10. Many different actors should be involved in preventing and combating hate speech. They comprise: public entities including elected bodies and authorities at the federal, regional and local levels and their representatives and staff, in particular in the fields of education, media regulation, policing, public media and the judiciary, national human rights institutions and equality bodies, but also other stakeholders such as political parties, public figures, internet intermediaries, privately owned media including commercial, local and minority media organisations, professional associations, civil society organisations, human rights defenders, faith-based actors, representatives of minority and other groups, social partners, academia and research institutes. The Recommendation aims to guide member States and all those stakeholders in developing comprehensive policies, strategies and action plans for preventing and combating hate speech in an effective way, while upholding freedom of expression. Chapter 3 addresses specific recommendations to relevant key actors.

11. The Recommendation has been developed by the Committee of Experts on combating hate speech (ADI/MSI-DIS), which was established as a subordinate body to the Steering Committee on Anti-discrimination, Diversity and Inclusion (CDADI) and the Steering Committee on Media Information Society (CDMSI). In line with its terms of reference, the Recommendation builds on the case-law of the Court, which has, under Article 32 of the Convention, final jurisdiction to interpret and apply the Convention and its Protocols through its case-law. Its judgments not only serve to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing, in line with its Article 19, to the observance by the member States of the engagements undertaken by them as Contracting Parties (*Ireland v. the United Kingdom*, no. 5310/71, 18 January 1978, §154). The Recommendation complements existing Council of Europe relevant instruments, including CM/Rec(2019)1 on preventing and combating sexism.

12. The following principles and guidelines are organised into seven chapters. Each chapter sets out relevant measures that member States and other relevant actors should take to prevent and combat hate speech in order to fulfil their duties and responsibilities under the Convention. The implementation of these principles and guidelines ensures the protection of the relevant human rights and fundamental freedoms, in particular those addressed in Articles 8, 10 and 14 of the Convention, in full respect of the principle of the rule of law. Its prompt and full implementation should be regularly reviewed.

## 1. SCOPE, DEFINITION AND APPROACH

### On paragraph 1:

13. The Recommendation aims to assist member States in combating hate speech in a comprehensive way. It contains legal and non-legal measures to address not only hate speech off and online, but also its root causes. In this way, it helps to prevent people from resorting to hate speech and promotes the use of inclusive speech.

14. The Recommendation underlines the need for a multi-stakeholder approach, as outlined in its chapter 7, and that key actors can make specific contributions to prevent and combat hate speech as outlined in chapter 3 of the Recommendation and its Explanatory Memorandum.

### On paragraph 2:

15. To date, no authoritative, legally binding definition of hate speech exists at the European or international levels. Existing definitions and descriptions of the term are often political in nature and are formulated in a broad manner. They generally cover speech that generates and amplifies hate and that is often also rooted in intolerance and hate (see Recommendation No. R (97)20 on "Hate Speech", § 1; the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Article 4; the UN International Covenant on Civil and Political Rights (ICCPR), Article 20.2; PACE Resolution 2275(2019) on the role and responsibilities of political leaders in combating hate speech and intolerance § 1; PACE Resolution 2144 (2017) on ending cyberdiscrimination and online hate § 2; Preamble to ECRI's GPR No. 15 on combating hate speech, § 6; and United Nations Strategy and Plan of Action on Hate Speech, p.10).

16. The legal definition of hate speech in respective national laws differs at present and reflects the scale, prevalence and impact of specific types of hate speech in different social contexts. This situation is in keeping

with principles of proportionality and necessity for the minimisation of criminalisation measures except to the extent necessary to address illegal harms.

17. The present Recommendation also understands the term of hate speech in a broad way, as it is intended to help member States to develop legislation, policies, strategies and action plans that prevent and combat the proliferation of hate in a comprehensive way. This includes through awareness-raising and education and measures that aim to protect all those targeted by hate speech. The definition covers all three layers of hate speech that are distinguished in § 3 of the Recommendation according to their level of severity.

18. The broad terms of the definition also cover a wide range of different expressions of hate speech, including those listed in §§ 11 and 13 of the Recommendation, several of which have been defined in European and/or international legally binding and non-binding instruments (see §§ 55-57, 61,63 of the Explanatory Memorandum). They include, direct and public incitement to commit genocide; incitement to hatred, violence or discrimination; racist, xenophobic, sexist and LGBTI-phobic threats and insults; denial, trivialisation and condoning, of genocide, of crimes against humanity and of war crimes which have been found by courts to have occurred, and of the glorification of persons convicted for having committed such crimes; the advocacy, promotion or incitement, in any form, of the denigration, hatred or vilification of a person or group of persons; as well as any harassment, negative stereotyping, or stigmatization in respect of those persons or group of persons; the justification of all the preceding types of expression; and the intentional dissemination of material that contains such expression (see in this respect also Preamble to ECRI GPR No. 15 on combating hate speech).

19. The list of grounds used in this Recommendation entails a range of personal characteristics and status, by reason of which persons or groups of persons are distinguishable from each other, and which are generally regarded as impermissible grounds for discrimination. The list of grounds is purposefully open-ended. Indeed, the definition provided in the Recommendation is to be interpreted in line with the evolutive nature of the rights of the Convention, notably Article 14. It also builds on other relevant international instruments (for details see the Court's Guide on Article 14 of the European Convention on Human Rights and on Article 1 of Protocol No. 12 to the Convention, Prohibition of discrimination, §§ 87 et seq.; Article 2.1 of ICCPR; Article 2.2 of the International Covenant on Economic, Social and Cultural Rights; and, ECRI GPR No. 15 on combating hate speech). The definition also covers hate speech on multiple grounds. The open-ended list allows for the adaptation of responses to hate speech with respect to evolving societal developments. The Recommendation takes into account that the scale, nature and impact of hate speech on different grounds and in different social contexts may vary and considers member States better placed to decide on the appropriate responses.

20. Provisions to be taken by member States and other stakeholders to address discrimination on grounds of sex and/or gender expressed in the form of sexist hate speech are also outlined in CM/Rec(2019)1 on preventing and combating sexism (cf. its Preamble and §§ I.A.1, I.A.10, II.B.1, II.C.3, II.F.2, II.H.3).

21. The definition furthermore covers cases in which the targeted person (see the definition of this term in § 7 of this Explanatory Memorandum) is perceived or presumed to have a certain personal characteristic or status, whereas in reality this person does not have it. An example would be that a perpetrator insults a person for adhering to a certain religion but in reality, they adhere to another or no religion.

22. The definition also covers hate speech in connection with all different forms of racism in line with Article 14 of the Convention. This includes antisemitism, anti-Muslim racism and intolerance and discrimination against Christians and persons belonging to religious or belief minorities, as mentioned in Article 9 of the Convention and the case-law of the Court, as well as antigypsyism, anti-Black racism, and xenophobia both in general and in connection with migration.

23. The definition should contribute to developing a common understanding of hate speech in the member States. As hate speech increasingly spreads through the internet and beyond the borders of a single member State, stronger international co-operation is needed for preventing and combating its proliferation at the international level (see also §§ 62-63 of the Recommendation).

### On paragraph 3:

24. The Recommendation distinguishes different layers of hate speech according to their severity. Bearing in mind the need to protect the values underlying the Convention and considering that the rights under Articles 8 and 10 of the Convention deserve equal respect, a balance must be struck that retains the essence of both rights (*Perinçek v. Switzerland*, no. 27510/08, 15 October 2015 [Grand Chamber], § 110). According to the case-law of the Court, member States have, under Article 8 of the Convention, a positive obligation to protect

victims of hate speech which reaches a certain level or threshold of severity, including through criminal law (*Delfi AS v. Estonia*, cited above, §§ 153 and 159; *Beizaras and Levickas v. Lithuania*, no. 41288/15, 14 May 2020, § 125; *Budinova and Chaprazov v. Bulgaria*, no. 12567/13, 16 February 2021, §§ 62 et seq.; and for more details see below §§ 37 et seq. of the Explanatory Memorandum). While the means of securing compliance with Article 8 in the sphere of providing protection against acts of individuals is in principle within the State's margin of appreciation, effective deterrence against grave acts where essential aspects of private life are at stake requires efficient criminal-law provisions (*Beizaras and Levickas v. Lithuania*, cited above, § 110).

25. At the same time, Article 10.2 of the Convention recognises that the exercise of the freedoms enshrined in Article 10.1 "may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society" in order for specific interests to be safeguarded (national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary). Bearing in mind the scope of Article 10.2 and taking into due consideration the principle of proportionality, member States may need to resort to civil and administrative law provisions for the protection of victims of hate speech (*Perinçek v. Switzerland*, cited above, § 273). Such administrative and civil law provisions as with criminal sanctions also contribute to the protection of victims from discrimination under Article 14 of the Convention. For some States, criminal law is the sole basis for regulating criminal hate speech with non-criminal hate speech having no legal meaning. However, in these cases, such criminal law may encompass measures, as part of a criminal justice remedy, which other States may typically regard as civil law measures – such as fines and compensation as part of a criminal sanction (e.g., in lieu of or supplementary to a custodial or prison sentence).

26. In practice, member States address the most serious cases of hate speech through criminal law, and sometimes in parallel through civil law with regard to compensation. Less severe cases are dealt with through administrative or civil law only.

27. When dealing with cases concerning incitement to hatred and freedom of expression, the Court uses two approaches which are provided for by the Convention: the approach of exclusion from the protection of the Convention, provided for by Article 17 (prohibition of abuse of rights), where the comments in question amount to hate speech and negate the fundamental values of the Convention; and the approach of setting restrictions on protection, provided for by Article 10.2, of the Convention, this approach is adopted where the speech in question, although it is hate speech, is not apt to destroy the fundamental values of the Convention.

28. To address hate speech comprehensively, it is important to address, in an appropriate and proportionate manner, offensive or harmful forms of expression which do not have sufficient severity to warrant restriction under the Convention. Such an approach is in line with the underlying aims of this Recommendation, in particular the need to pursue a comprehensive strategy when dealing with the phenomenon of hate speech.<sup>2</sup>

29. There are offensive or harmful types of expressions that amount, for the purposes of this Recommendation, to hate speech, but do not entail criminal, civil or administrative liability. They are in principle protected by Article 10 of the Convention, whose protection also extends to speech that offends, shocks and disturbs the State or any sector of the population (*Handyside v. United Kingdom*, no. 5493/72, 7 December 1976, § 49).

30. As provided by Article 10.2, whoever exercises the rights and freedoms enshrined in the first paragraph of that Article undertakes certain "duties and responsibilities". In the specific context of religious opinions and beliefs, the Court has ruled that there "may legitimately be included an obligation to avoid as far as possible expressions that are gratuitously offensive to others and thus an infringement of their rights, and which therefore do not contribute to any form of public debate capable of furthering progress in human affairs" (*Otto-Preminger-Institut v. Austria*, no. 13470/87, 20 September 1994, § 49; Venice Commission, 2010, Blasphemy, insult and hatred: finding answers in a democratic society, § 73; and, UN Human Rights Committee, *Malcolm Ross v. Canada*, Communication No. 736/1997, U.N. Doc. CCPR/C/70/D/736/1997 (2000), § 11.6).

31. Such hate speech that does not entail criminal, civil or administrative liability, can nevertheless cause or amplify prejudice, intolerance and hatred, raise concerns in terms of tolerance, civility, inclusion and respect for the rights of others, and threaten social cohesion and democratic stability. Therefore, in a democratic society, it is appropriate to address the root causes of such hate speech through non-legal measures such as the promotion of dialogue and an ethic of communication, awareness-raising, education - including media

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2. The role of this Explanatory Memorandum is to provide further explanation on the Recommendation and its comprehensive approach. The aim is to guide member States and other stakeholders in addressing hate speech in all its forms from a comprehensive perspective and should not be understood as being intended to interfere with the independence of the Court.

and internet literacy initiatives, and counter-narratives. Equality bodies, national human rights institutions and civil society organisations should play a prominent role in these fields.

#### On paragraph 4:

32. The Court has developed a set of factors that should be applied for assessing the severity of hate speech and for calibrating appropriate responses and remedies. The factors are:

- ▶ the content of the speech (*Leroy v. France*, no. 36109/03, 2 October 2008, §§ 38 et seq.);
- ▶ the political and social context at the time the speech was made (*Leroy v. France*, cited above, § 38 et seq.; *Delfi AS v. Estonia*, cited above, §§ 142-146; *Perinçek v. Switzerland*, cited above, § 205);
- ▶ the intention of the speaker (*Jersild v. Denmark*, no. 15890/89, 23 September 1994, § 31-37);
- ▶ the speaker's role and status in society (*Féret v. Belgium*, no. 15615/07, 16 July 2009, §§ 63 et seq.; see also General recommendation No. 35, Combating racist hate speech of the Committee on the Elimination of Racial Discrimination (hereinafter, CERD); the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (hereinafter, Rabat Plan of Action); and, the Guide on Article 10 of the European Convention on Human Rights, Freedom of expression, § 225);
- ▶ the form of its dissemination (*Savva Terentyev v. Russia*, no. 10692/09, 28 August 2018, § 79; *Delfi AS v. Estonia*, cited above, § 110; *Stomakhin v. Russia*, no. 52273/07, 9 May 2018, § 131; and, *Jersild v. Denmark*, cited above, § 32-33);
- ▶ the manner in which the statements are made, and their capacity – directly or indirectly – to lead to harmful consequences, including imminence (*Perinçek v. Switzerland*, cited above, § 205; *Savva Terentyev v. Russia*, cited above, § 32-33);
- ▶ the nature and size of the audience (*Vejdeland and Others v. Sweden*, no. 1813/07, 9 February 2012, §§ 51-58; and *Lilliendahl v. Iceland*, no. 29297/18, 11 June 2020, §§ 38-39);
- ▶ the characteristics of the targeted group, for instance its size, its degree of homogeneity, its particular vulnerability or history of stigmatisation, and its position vis-à-vis society as a whole (*Budinova and Chaprazov v. Bulgaria*, cited above, § 63).

33. It is the interplay between these various factors which is decisive in a particular case, and not simply one factor taken alone (*Perinçek v. Switzerland*, cited above, § 208; *Budinova and Chaprazov v. Bulgaria*, cited above, § 63). In addition, the Court considers that member States have a certain margin of appreciation with regard to the assessment whether measures to combat hate speech are “necessary” in the sense of Article 10.2 of the Convention (*Perinçek v. Switzerland*, cited above, § 196).

34. The Court uses similar factors to determine whether hate speech reaches the minimum threshold with regards to Article 8 of the Convention (for details see § 42 below). Those factors should not only be used by State actors, including law enforcement services, but also by all other stakeholders that are involved in addressing and countering hate speech offline and online, including internet intermediaries. These factors are there to help all actors to devise appropriate and proportionate measures to deal with the different layers and expressions of hate speech. Disputed cases should be brought before the judiciary in order to allow it to provide for binding decisions.

35. § 15 of the General recommendation No. 35 of the CERD defines similar factors for the assessment of whether hate speech reaches the level where it should be declared a criminal offence: (1) Content and form of speech; (2) Economic, social and political climate; (3) Position or status of the speaker; (4) Reach of the speech; and (5) Objectives of the speech. The CERD recommendation drew from § 29 of the Rabat Plan of Action, which was adopted in 2012 by experts at the end of a series of conferences organised by the UN Office of the High Commissioner for Human Rights, and which contains for the same purpose the following factors: (1) Social and political context; (2) Status of the speaker; (3) Intent to incite the audience against a target group; (4) Content and form of the speech; (5) Extent of its dissemination; and (6) Likelihood of harm, including imminence.

#### On paragraph 5:

36. The comprehensive approach to combating hate speech, which is pursued by this Recommendation, requires that policies, legislation, strategies and action plans cover the different areas of action dealt with

in Chapters 2, and 4 to 7 of this Recommendation. Such actions involve a broad range of public and private key actors as addressed in Chapter 3 of this Recommendation. Appropriate human and financial resources should be allocated to the implementation of any policies deemed necessary.

#### On paragraph 6:

37. When developing and implementing this comprehensive approach to prevent and combat hate speech, member States should take into account a number of cross-cutting issues.

38. Member States' authorities should, as further detailed in §§ 47 et seq. of the Explanatory Memorandum, clarify, in line with the Convention and related case-law, when hate speech should be prohibited under criminal, civil or administrative law.

39. When developing and implementing policies, legislation, strategies and action plans to prevent and combat hate speech, member States should balance the need to protect the rights of those targeted by hate speech with the right to freedom of expression. At the same time, they should take into account that such policies have different consequences on a wide range of public and private media actors, with specific features in both traditional and digital media. Member States should also duly take into account that the digital environment, including tools such as recommender systems and automated content moderation tools, continue to evolve at a quick pace. A definition of the term "content moderation" is provided by the Explanatory Memorandum to the Guidance Note on Content Moderation adopted by the CDMSI at its 19<sup>th</sup> plenary meeting on 19-21 May 2021 (Content Moderation: Best practices towards effective legal and procedural frameworks for self-regulatory and co-regulatory mechanisms of content moderation (hereinafter, Guidance Note on Content Moderation)).

40. Hate speech not only targets an individual person but also communities and groups and is often amplified by its wide distribution through the internet and other channels. In order to prevent and combat its distribution in an effective and comprehensive way, a wide range of actors in the public and private spheres need to be mobilised and co-operate (for more details see Chapters 3 and 7 in particular).

41. The effects of hate speech can be even more amplified when it is based not only on one, but on several grounds. Women belonging to a national minority for example can become the target of hate speech not only on the ground of their sex, but also their ethnic origin. The cumulative effects of such hate speech and the interaction of the different grounds and biases can have the effect that those targeted by it find themselves in a particularly vulnerable situation and need specific protection and assistance (for more details see for example the Explanatory Memorandum to ECRI's GPR No. 14 on combating racism and racial discrimination in employment, § 1). When elaborating and implementing policies, strategies and action plans to prevent and combat hate speech, member States and other key actors (see Chapter 3) should furthermore pursue an age and gender sensitive approach. This approach needs to take into account the interests and concerns of every person and group, explore their specificities and needs, and aim at designing better policies and specific actions to meet those needs.

42. When developing policies, strategies or action plans to prevent and combat hate speech, member States should involve not only the various stakeholders concerned but also persons who are actually or potentially targeted by hate speech. This should happen from the beginning of the process in order to give a central place to the targeted persons' experiences and needs.

## 2. LEGAL FRAMEWORK

#### On paragraph 7:

43. Hate speech, as understood in § 2 of the Recommendation, interferes with the dignity and psychological well-being, and in some cases physical integrity, of its targets, which are protected under Article 8 of the Convention. As outlined in §§ 24-25 of this Explanatory Memorandum, member States have a positive obligation under Article 8 of the Convention to protect victims of hate speech when it reaches a certain level or threshold of severity, including through criminal law (*Delfi AS v. Estonia*, cited above, §§ 153 and 159; *Beizaras and Levickas v. Lithuania*, cited above, § 125; *Budinova and Chaprazov v. Bulgaria*, cited above, §§ 62 et seq.). It cannot be excluded that hate speech of a particular level of intensity, and depending on the context, may also amount to inhuman or degrading treatment and thus also violate Article 3 of the Convention (see in this connection *Király and Dömötör v. Hungary*, no. 10851/13, 17 January 2017, §§ 41-42). Article 10 of the Convention and the principles of proportionality require that member States put in place less serious forms

of interferences with the regards to the right to freedom of expression for protecting victims of hate speech, such as administrative and civil law provisions.

44. Many member States have ratified binding international instruments that contain concrete obligations with regard to the content of legal provisions, for example the ICERD, the ICCPR, the UN Convention on the Prevention and Punishment of the Crime of Genocide (hereinafter, Genocide Convention), the Council of Europe's ETS No. 189 Additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (hereinafter, ETS No. 189 APCCC), and the International Labour Organisations' Convention (No. 111) concerning discrimination in respect of employment and occupation, 1958. Member States are encouraged to continue ratifying and implementing these instruments, as relevant, in order to ensure increasingly homogeneous standards at international level and to avoid fragmentation, in particular with regard to preventing and combating online hate speech. EU member countries are also bound by instruments such as the EU Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law, and are under an obligation to transpose the contents of the EU equal treatment directives 2000/43/EC, 2004/113/EC, 2006/54/EC and 2010/41/EU into their national legislation.

45. As stated in § 25 above, any restriction on the right to freedom of expression must be provided by law, pursue a legitimate aim and be necessary in a democratic society (Article 10.2 of the Convention). In the most severe cases of hate speech, the perpetrator is precluded from invoking the protection provided by Article 10 of the Convention. Article 17 of the Convention removes this protection when such speech is incompatible with the values proclaimed and guaranteed by the Convention. According to case-law of the Court, these values include tolerance, social peace and non-discrimination (*Pavel Ivanov v. Russia*, no. 35222/04, 20 February 2007, § 1; and, *Fouad Belkacem v. Belgium*, no. 34367/14, 27 June 2017, § 33), gender equality (*Kasymakhunov et al. v. Russia*, nos. 26261/05 and 26377/06, 14 March 2013, § 110), and justice and peace (*M'Bala M'Bala v. France*, no. 25239/13, 20 October 2015, § 33).

46. Civil, administrative and (as a last resort) criminal law must only be used to sanction cases of hate speech that attain a certain level of seriousness, which is, according to case-law of the Court, needed for Article 8 to come into play (see also § 24 above). According to relevant case-law, there needs to be an assessment as to whether a negative public statement about a social group can be seen as affecting the "private life" of individual members of that group to the point of triggering the application of Article 8 of the Convention in relation to them. In this connection, the Court applies the factors listed in § 4 of the Recommendation (*Budinova and Chaprazov v. Bulgaria*, cited above, §§ 62-63; and, *Behar et al. v. Bulgaria*, no. 29335/13, 16 February 2021, §§ 65 et seq.).

#### On paragraph 8:

47. Member States should use clear and precise terminology and definitions, and refrain from using vague and blanket terms in their legislation addressing hate speech, they should also provide guidance for its interpretation and application. Thus, decisions become predictable and transparent. In other words, the wording of legal provisions should enable individuals to regulate their conduct and to foresee the consequences of their actions (*Altuğ Taner Akçam v. Turkey*, no. 27520/07, 25 January 2012, § 93 et seq.; and, *Delfi AS v. Estonia*, cited above, § 121). This also helps national courts to develop consistent case-law.

48. Limitations to the right to freedom of expression should be construed narrowly, be fully in line with Article 10.2 of the Convention and take into account the factors defined in § 4 of the Recommendation for the assessment of the severity of hate speech and the appropriate level of response. In accordance with the Court's case-law, any restriction must respond to a pressing social need, be the least intrusive measure available, not be overly broad, and be proportionate, so that the benefit to the protected interest outweighs the harm to freedom of expression, including with respect to the sanctions it authorises (see for reference the Guide on Article 10 of the European Convention on Human Rights, Freedom of expression).

49. Legal clarity in legislation addressing hate speech should not only serve the purpose (i) of Article 7 of the Convention (no punishment without law), but also (ii) provide clarity, including the minimum threshold for criminalisation, (iii) delineate speech which is protected by freedom of expression, and (iv) act as a safeguard against abuse (on this aspect see *Budinova and Chaprazov v. Bulgaria*, cited above, §§ 61 et seq.). According to the Court's case-law, it is vitally important that criminal law provisions directed against expressions that stir up, promote or justify violence, hatred or intolerance, clearly and precisely define the scope of the relevant offences. The provisions must be strictly construed in order to avoid a situation where the State's discretion to prosecute for such offences becomes too broad and potentially subject to abuse through

selective enforcement (*Savva Terentyev v. Russia*, cited above, § 85; and, *Altuğ Taner Akçam v. Turkey*, cited above, §§ 93-94).

#### On paragraph 9:

50. Legislation addressing hate speech as well as frameworks for content moderation (for details see §§ 16 et seq. of the Recommendation) should not be misused or abused, for example for inhibiting public debate, silencing political opponents, journalists, the media, minority groups or other contributors to public debate, including critical voices (see CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries, §§ 1.3. and 1.4.). In this respect, the Court has underlined that there is little scope under Article 10 to prohibit restrictions on the right to freedom of expression in the sphere of political debate and issues of public interest, and that the limits of acceptable criticism are wider for the government than for a private individual (*Dink v. Turkey*, no. 2668/07, 14 September 2010, § 133; and, *Perinçek v. Switzerland*, cited above, § 197). Legal and practical safeguards comprise the clear formulation of hate speech legislation (see above §§ 47 et seq. of the Explanatory Memorandum). There needs to be a transparent legislative process with consultation of stakeholders, rules about immunity for elected officials, a human rights compliant framework for content moderation, regular assessment of legislation addressing hate speech, content moderation systems for internet intermediaries (see §§ 26 and 34 of the Recommendation), and scrutiny by media and academia of hate speech cases and possible abuses of legislation addressing hate speech.

#### On paragraph 10:

51. Often, those who are directly or indirectly targeted by hate speech are afraid and reluctant to report and initiate legal proceedings themselves. Therefore, it is important to ensure that there are institutions in place which can represent them or initiate legal action on their behalf or even instead of them.

52. In cases where instances of hate speech reach the minimum level of seriousness required by Article 8 (see § 33 above) for action to be taken, member States should ensure that equality bodies and national human rights institutions have the mandate to provide legal advice and assistance to those targeted by hate speech. This is in order to secure their rights before institutions, adjudicatory bodies and courts in line with national provisions. Where appropriate, this should include the right to represent them, with their consent, before such institutions, adjudicatory bodies and courts. Also, as appropriate, to bring cases of individual and structural discrimination or intolerance in the national human rights institution's or equality body's own name (see ECRI GPR No. 2 on equality bodies to combat racism and intolerance at national level, §§ 14-15; of the same tenor are the EU's equal treatment Directives 2000/43/EC, 2004/113/EC, 2006/54/EC and 2010/41/EU).

53. Furthermore, non-governmental organisations set up for the purpose of assisting people targeted by hate speech to realise their right to a defence, including in court, should be able to act as their representative before institutions, adjudicatory bodies and courts, in line with national provisions. According to the Court, recourse to collective bodies such as associations is, in modern-day societies, one of the accessible means, sometimes the only means, available to the individuals to defend their particular interests effectively. Moreover, the standing of associations to bring legal proceedings in defence of their members' interests is recognised by the legislation of most European countries (see *Beizaras and Levickas v. Lithuania*, cited above, § 81). Similar rights are given to them also in the fields of civil and administrative law (see ECRI GPR No. 7 on national legislation to combat racism and racial discrimination, § 25; and further examples provided in the EU's equal treatment Directives 2000/43/EC, 2004/113/EC, 2006/54/EC and, 2010/41/EU).

## Criminal Law

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#### On paragraph 11:

54. As part of the positive obligation of member States to protect those targeted by hate speech, the most serious expressions of hate speech should be criminalised. This does not only serve the punitive function of criminal law, but also sends a clear signal to potential perpetrators and society as a whole (general preventive function of criminal law), that such expressions constitute criminal offences. Incitement to violence or threats of violence and other types of content should be clearly determined in national law based on the national prevalence, relevance and severity of other types of hate speech.

55. When defining in their national criminal law which expressions of hate speech constitute criminal offences, for the purpose of this Recommendation, member States should base themselves on the relevant binding and non-binding international standards, in particular the ICERD, the Genocide Convention, the



Additional Protocol to the Cybercrime Convention, the EUFD 2008/913/JHA, the case-law developed by the Court, and ECRI's GPR No. 7 on national legislation to combat racism and racial discrimination along with the explanatory memoranda to those documents.

56. The Court underlines that it may be justified to impose serious criminal-law sanctions in cases of hate speech, even on journalists or politicians (*Budinova and Chaprazov v. Bulgaria*, cited above, § 90; regarding hate speech from politicians see also § 29 of the Recommendation). In the light of the principle of proportionality, criminal law should only be applied for the most serious expressions of hate. The Court has indeed acknowledged that criminal sanctions, including those against individuals responsible for the most serious expressions of hatred or inciting others to violence, could be invoked only as an ultima ratio measure. That being so, it has also held that where acts that constitute serious offences are directed against a person's physical or mental integrity, only efficient criminal-law mechanisms can ensure adequate protection and serve as a deterrent factor. The Court has likewise accepted that criminal-law measures are required with respect to direct verbal assaults and physical threats motivated by discriminatory attitudes (*Beizaras and Levickas v. Lithuania*, cited above, § 111). Less serious expressions should be dealt with under civil and administrative law. Cases that do not reach the minimum threshold for action to be taken under Article 8 of the Convention should be dealt with through non-legal measures such as, for example, awareness-raising and education.

57. Most of the aforementioned standards concentrate on racist hate speech, however, various international documents call on member States to criminalise speech that spreads hatred in relation to other grounds, such as sex, sexual orientation or gender identity. For instance, § I.A.1. of CM/Rec(2019)1 on preventing and combating sexism, invites member States to consider legislative reforms that define and criminalise sexist hate speech, and the ECRI country monitoring reports and the Yogyakarta Principles (Principle 5B) recommend criminalising hate speech on the grounds of sexual orientation and gender identity. Member States are strongly encouraged to cover these grounds in their criminal legislation and to consider further extending this list of grounds.

58. Member States should not only verify whether they have fully complied with the obligations they have assumed through the ratification of binding instruments, but they are strongly encouraged to ratify additional instruments. They should also implement the relevant general and country specific recommendations that monitoring bodies and other instances of the Council of Europe, the UN and other intergovernmental organisations, have addressed to them.

59. Member States of the Council of Europe have ratified or are bound by one of the following instruments that contain obligations to criminalise incitement to genocide, incitement to hatred and violence, and some also, incitement to discrimination: Article IIIc of the Genocide Convention, Article 4a ICERD, Articles 3 and 1 APCCC, and Article 1.1a and d of the EUFD 2008/913/JHA. While incitement to crimes against humanity or war crimes is in principle already covered by incitement to violence (cf. § 11b of the Recommendation), it was felt important to mention incitement to these crimes explicitly in § 11a of the Recommendation alongside incitement to commit genocide, bearing in mind Article 25.3.b of the Rome Statute of the International Criminal Court (criminal responsibility if a person "orders, solicits or induces" such a crime). In this context, the non-binding standard in § 18a of ECRI GPR No. 7 on national legislation to combat racism and racial discrimination and the case-law of the Court on Holocaust denial should also be mentioned (see for example *Garaudy v. France*, no. 65831/01, 24 June 2003; *Witzsch v. Germany*, no. 7485/03, 13 December 2005; and *Nachtmann v. Austria*, no. 36773/97, 9 September 1998).

60. Articles 4 and 5 of APCCC and §§ 18b and c of ECRI GPR No. 7 on national legislation to combat racism and racial discrimination contain provisions on the criminalisation of racist and xenophobic motivated threats and insults. The denial, gross minimisation, approval or justification of genocide or crimes against humanity, as defined by international law, should be made a criminal offence under Article 6 APCCC; Article 1c and d EUFD 2008/913/JHA; and, § 18e of ECRI GPR No. 7. The ECRI GPR No. 7 recommends also the criminalisation of the denial, with a racist aim, of war crimes. The dissemination of hateful material and of ideas based on racial superiority should be made a criminal offence under Article 3 APCCC; Article 1b EUFD 2008/913/JHA; Article 4a ICERD; and, §§ 18d and f of ECRI's GPR No. 7.

61. Under Articles 3, 5 and 6 APCCC, member States may reserve the right not to apply measures to address the dissemination of racist and xenophobic material, racist and xenophobic motivated insults and denial, gross minimisation, approval or justification of genocide or crimes against humanity. A good number of member States have indeed made reservations in this regard when ratifying this instrument. While this reflects a general tendency to de-criminalise insults and to prohibit them under civil and administrative law, it can also be observed that defamation can be criminalised (regarding the criminalisation of racist defamation see § 18b of ECRI GPR No. 7 on national legislation to combat racism and racial discrimination).

62. Where member States do not make the aforementioned expressions of hate speech regular criminal offences, they are strongly encouraged to address them as criminal offences of lesser gravity, such as misdemeanours or leave them to private prosecution. If member States do not make such expressions of hate speech criminal offences at all or consider that certain expressions do not attain a sufficient level of seriousness to be tackled through criminal law provisions, they should still prohibit them under civil or administrative law.

63. Article 4.b ICERD contains another binding obligation that can make an important contribution to effectively combat hate speech, which is to declare organisations that promote and incite racial discrimination illegal and prohibit them. Further, participation in such organisations can be recognised as a criminal offence (see also the similar recommendation in § 18g of ECRI GPR No. 7 on national legislation to combat racism and racial discrimination). In this connection, reference should also be made to case-law of the Court under Article 11 of the Convention which acknowledges that a State is entitled to take preventive measures to protect democracy vis-à-vis associations or movements. This can be done if a sufficiently imminent prejudice to the rights of others threatens to undermine the fundamental values on the basis of which a democratic society exists and functions. One such value is the coexistence of members of society free from racial segregation, without which a democratic society is inconceivable (see *Vona v. Hungary*, no. 35943/10, 9 July 2013, § 57). It should also be recalled that according to case-law of the Court, associations which engage in activities contrary to the values of the Convention cannot benefit from the protection of Article 11 by reason of Article 17 which prohibits the use of the Convention in order to destroy or excessively limit the rights guaranteed by it (see *W.P. and Others v. Poland*, no. 42264/98, 2 September 2004, concerning a prohibition on forming an association whose memorandum of association had anti-Semitic connotations).

#### On paragraph 12:

64. The positive obligations of member States under the Convention also encompass procedural requirements such as the duty for member States to carry out effective investigations into cases of criminal hate speech, off and online (see in particular cases where the physical integrity of the person targeted was affected *Király and Dömötör v. Hungary*, cited above, §§ 61 et seq.; and, *Beizaras and Levickas v. Lithuania*, cited above, § 129).

65. To be able to fulfil their positive obligation to effectively investigate cases of punishable hate speech, member States should give special attention to hate speech which is directed at vulnerable persons and groups. This can be done by actively reaching out to them and taking effective measures to facilitate and encourage the reporting of criminal hate speech to the law enforcement services (regarding the issue of underreporting of punishable hate speech see § 57 of the Recommendation; for details regarding the issue of building confidence with minorities and other groups see §§ 11 and seq. of ECRI GPR No. 11 on combating racism and racial discrimination in policing). Those targeted by hate speech should be informed about their rights, in particular their right to participate in legal proceedings.

66. Recognising that criminal prosecution is an *ultimum remedium*, the member States' focus should be on removing (online) hate speech, in order to prevent continuous victimisation. When criminal prosecution is opportune, investigations by the police, the prosecution or other bodies, must furthermore be effective in the sense that they are capable of leading to the establishment of the facts and a determination that the impugned expression meets the legal definition of criminal hate speech. Investigations should moreover lead to the identification and eventually, if appropriate, the punishment of those responsible. The authorities must as from their very first intervention take every reasonable step to collect and secure all evidence concerning the impugned expression. The conclusions of the investigation must be based on thorough, objective, age and gender-sensitive and impartial analysis of all the relevant elements, including whether the impugned expression was motivated by one or more prohibited grounds and whether it amounted to a threat or incitement to hate, discrimination or violence (see in this respect §§ 11 et seq. of ECRI GPR No. 11 on combating racism and racial discrimination in policing and §§ 66 et seq. of its Explanatory Memorandum and §§ 255 et seq. of The Hartford Guidelines on Speech Crimes in International Criminal Law).

67. The police and prosecution services should furthermore put a specific focus on the investigation of criminal online hate speech and particular attention should be paid to the effective implementation of the Cybercrime Convention and its Additional Protocol, where applicable (see §§ 79 et seq. of the Explanatory Memorandum on regulating online hate speech). In this regard, an increasing number of member States have created specific police and prosecution units that specialise in the prosecution of online hate speech (for more details, see the sections on hate speech in the country monitoring reports of ECRI).

68. In this context, member States should also regulate under which conditions internet intermediaries are obliged to hand over IP addresses and other data to law enforcement agencies that are necessary to identify the author of hate speech (for more details see also below §§ 101 et seq.).

69. It should finally be mentioned that the prosecution services often have, with regard to less severe cases of hate speech, under the general rules of national criminal procedural law, a certain margin of appreciation as to whether to prosecute or not such cases. For those cases, in which the prosecution services decide not to initiate or pursue an investigation, those targeted by hate speech should have the possibility to seek redress under civil and administrative law or, where applicable, resort to private prosecution.

## Civil and Administrative Law

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### On paragraph 13:

70. Administrative and civil law is another important legal venue for protecting the rights of those targeted by hate speech with regard to Convention rights (for examples of civil law cases see *Delfi AS v. Estonia*, cited above, §§ 21 et seq.; and, *Aksu v. Turkey*, nos. 4149/04 and 41029/04, 15 March 2012, [Grand Chamber], §§ 19 et seq.; for examples of administrative law cases see *Balsytė-Lideikienė v. Lithuania*, no. 72596/01, 4 November 2008, §§ 3 et seq.; and, *Mouvement Raëlien v. Switzerland*, no. 16354/06, 13 July 2012). Civil and administrative proceedings can sometimes be carried out in parallel to criminal proceedings (the person targeted by hate speech could, at the same time, report the case to law enforcement services and ask in parallel for compensation under civil, and sometimes administrative law). In hate speech cases that do not reach the highest level of severity in the sense of § 3 of the Recommendation, civil and administrative proceedings may be the only legal venue for dealing with hate speech. Both legal avenues lead to different outcomes: while criminal proceedings generally lead to a punishment, civil and administrative proceedings often lead to the payment of a compensation or a prohibition of resorting to hate speech. Civil and administrative proceedings will generally be the less serious form of interference with regard to the right to freedom of expression. At the same time, the rules on the burden of proof and the level of proof required differ between both avenues and it will often be easier to hold the author of hate speech liable under civil and administrative law.

71. It should be noted, that for some member States, criminal law is the sole basis for regulating criminal hate speech and non-criminal hate speech has no legal meaning. However, in these cases, such criminal law may encompass measures, as part of a criminal justice remedy, which other States may typically regard as civil law measures – such as fines and compensation as part of a criminal sanction (e.g., in lieu of or supplementary to a custodial or prison sentence).

72. Under civil law, violations of the dignity, psychological integrity and reputation of a person (regarding the protection of those elements under Article 8 of the Convention see *Király and Dömötör v. Hungary*, cited above, § 41; and, *Beizaras and Levickas v. Lithuania*, cited above, § 117) generally result in claims for compensation and injunctive relief, often under general tort law and the specific rules on state liability for violation of the right for protection of human dignity, reputation and well-being. This protection tends to be wider than the one under criminal law, as it encompasses a wide range of violations including insults, slander and libel, related to a broad range of prohibited grounds, also where such forms of hate speech do not constitute a criminal offence.

73. Unlike for the criminal law provisions on hate speech, no specific provisions have been developed under general tort law or the rules on State liability, that would allow for a more precise description regarding which expressions of hate speech are prohibited by law. Certain expressions of hate speech could also be prohibited and defined as administrative offences in media laws or laws on electronic communication. Regarding the question of whether an instance of hate speech should be dealt with through criminal or through civil or administrative law, the criteria described in § 4 of the Recommendation should be applied.

74. Hate speech can also fall under the definition of discrimination under European and national anti-discrimination legislation where the author treats the person targeted differently from other persons in relevantly similar situations without an objective and reasonable justification (for this definition see for example *D.H. et al. v. the Czech Republic*, no. 57325/00, 13 November 2007, [Grand Chamber], § 175; and, *Beizaras and Levickas v. Lithuania*, cited above, § 114), or it can constitute as harassment as defined in anti-discrimination law. Under Article 2.3 of the Council Directive 2000/43/EC, harassment shall be deemed to be discrimination within the meaning of the directive, when an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

75. Member States should foresee that the civil and administrative remedies for violation of the prohibition of hate speech include payment of compensation, deletion, blocking, injunctive relief and publication of an acknowledgment that a statement constituted hate speech as well as, under administrative law, fines and loss of licence.

#### **On paragraph 14:**

76. Member States should ensure that their anti-discrimination legislation applies to all expressions of hate speech covered by §§ 11 and 13 of the Recommendation in order to create a system in which all those targeted by hate speech can obtain redress and in particular compensation for hate speech without filing a complaint with the law-enforcement authorities. Through this clarification, those targeted by hate speech will also be able to seek aid and assistance from equality bodies that should have an explicit mandate to address hate speech and have standing to initiate legal actions either on behalf of the person targeted or, where applicable, in their own name. In this respect, the existence of free legal aid for discrimination cases is another important element to ensure that those targeted by hate speech can enforce their rights (§§ 4a and 14 to 16 of ECRI GPR No. 2 on equality bodies to combat racism and intolerance at national level). Where anti-discrimination legislation also defines administrative offences, cases of double punishment should be excluded.

#### **On paragraph 15:**

77. Public authorities or institutions, such as the police, educational institutions, including schools and public media, have a crucial role to play in the fulfilment of member States' positive obligation to prevent and combat hate speech and its dissemination. According to Article 4c ICERD, State Parties shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination. Given their considerable influence on State policies and the public discourse, and given their specific duty to respect human rights, the Recommendation requires member States to ensure that public authorities or institutions and their representatives avoid resorting to hate speech.

78. Member States should furthermore introduce into their legislation the duty of public authorities to promote the use of tolerant and inclusive speech. This principle is for example expressed in Article 6 of the ETS No. 157 Framework Convention for the Protection of National Minorities, which stipulates that the Parties shall encourage a spirit of inclusiveness and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media. Similarly, ECRI recommends in §§ 2 and 8 of its GPR No. 7 on national legislation to combat racism and racial discrimination that the constitutions of member States should enshrine the commitment of the State to promote equality and that the law should place public authorities under a duty to do so. Those duties and an encouragement to speak out against hate speech could be included in the legislation or codes of conduct that regulate the behaviour of civil servants and public employees.

### **Legislation regarding online hate speech**

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79. In recent years, hate speech has massively, quickly and widely proliferated through the Internet. To limit the harm done by online hate speech, member States should enact effective legislation for preventing its publication and for ensuring its removal where it has already been published. Given the big amount of online hate speech and given the fact that quick action is needed to avoid its wide proliferation, member States cannot alone ensure this task, but need to ensure that internet intermediaries contribute to it.

80. The term internet intermediaries can be defined as a wide, diverse, and rapidly evolving range of players, facilitating interactions on the internet between natural and legal persons by offering and performing a variety of functions and services. Some connect users to the internet, enable the processing of information and data, or host 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, and enable other commercial transactions, including payments. Intermediary services may also be offered by traditional media, for instance, when space for user-generated content – such as comments – is offered on their platform (§§ 4 to 5 of CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries).

### **On paragraph 16:**

81. It is the member States that have the ultimate obligation to protect human rights and fundamental freedoms also in the digital environment (§ 1.1.3. of CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries). Therefore, they should elaborate a clear legal framework for preventing and combating hate speech online in line with the aforementioned Recommendation CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries and the Guidance note on best practices towards effective legal and procedural frameworks for self-regulatory and co-regulatory mechanisms of content moderation (Guidance Note on Content Moderation), adopted by the Steering Committee for Media and Information Society (CDMSI). These legal frameworks should primarily concentrate on online hate speech that is prohibited under criminal, civil or administrative law (§ 3.1 of the Recommendation), but also motivate internet intermediaries and other stakeholders to address offensive or harmful types of online expression which do not have sufficient severity to legitimately be restricted under the Convention (see § 3.2 of the Recommendation).

82. Member States should harmonise the legal frameworks among themselves and work toward the enactment of common standards at international level (see §§ 62-63 of the Recommendation), as online hate-speech spreads over national borders and harmonisation is needed to prevent and combat online hate speech in an effective way. Removal procedures and conditions should respect freedom of expression, be transparent, clear and predictable. The same should apply to the responsibilities and liability rules imposed on internet intermediaries.

### **On paragraph 17:**

83. It is of great importance that member States elaborate in their legislation on online hate speech, the roles and responsibilities of all stakeholders and delineate those of State actors and those of private actors and civil society organisations in a clear way. State actors include: the police and prosecution services, regulatory authorities, independent national human rights institutions and equality bodies. The private actors include: the media, relevant internet intermediaries, self-regulatory bodies and civil society organisations including so-called trusted flaggers (an individual or entity which is considered by a hosting service provider to have particular expertise and responsibilities for the purposes of tackling illegal content online, a possible definition is provided in § 4g of EU Commission, Recommendation C(2018) 1177 final on measures to effectively tackle illegal content online).

84. Valuable guidance on this topic is not only contained in CM/Rec (2018)2 on the roles and responsibilities of internet intermediaries, but also in the Guidance Note on Content Moderation adopted by CDMSI.

85. Member States should also define how State and non-State actors should co-operate in dealing with online hate speech. One way of organising such co-operation is the setting up of so-called co-regulatory systems and bodies, where both, public authorities and private actors contribute to the handling of online hate speech (for details see Models of Governance of Online Hate Speech, by Alexander Brown, 2020).

### **On paragraph 18:**

86. As the infrastructure and platforms that internet intermediaries provide are used for the quick dissemination of large amounts of hate speech, it is of high importance that member States ensure that internet intermediaries respect human rights and apply the principles of human rights due diligence. These are described in §§ 20 et seq. of CM Rec (2016)3 on Human rights and business and § 17 of the Guiding Principles on Business and Human Rights, which were endorsed by the United Nations Human Rights Council in 2011. As described in § 136 of this Explanatory Memorandum, it should be ensured that measures to combat online hate speech are not only assured through the development of automated systems, but that individual representatives of internet intermediaries are attributed the responsibility to oversee such systems.

### **On paragraph 19:**

87. Member States should ensure that mechanisms are in place to file reports on online hate speech, which are in breach of the legislation on hate-speech or the intermediary's terms of service.

### **On paragraph 20:**

88. Removal procedures and conditions should be transparent, clear and predictable, as well as any related responsibilities and liability rules imposed on internet intermediaries. To ensure this transparency, any decision that public or private actors take in this context should be published, at least in a summarised and

anonymised form. It should also be made public whether the content had initially been flagged by private parties, public authorities, automated tools or trusted flaggers.

89. It should be possible to file an appeal against the decision not to remove, contextualise or deprioritise the reported hate speech content to an internal or external review mechanism, or directly to the judiciary. In any case, it should be possible to ultimately seek independent judicial review. The recommendation implies that the member States are free to designate either a court or an independent administrative tribunal for this task. The same possibility should be guaranteed when content has been deemed to violate criminal, civil or administrative law or the intermediaries' terms of service and has therefore been removed, contextualised or deprioritised.

90. With regard to internal remedies, internet intermediaries should provide for the possibility to appeal to an independent regulator or oversight mechanism, without preventing or in any way limiting a users' right to seek judicial redress (§ 1.5.2. of CM/Rec(2018)2).

#### **On paragraph 21:**

91. § 21 of the Recommendation takes up important aspects from § 1.1.5. of CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries and foresees that member States should take into account the substantial differences between internet intermediaries when devising, interpreting and applying the legislative framework that governs their liability (see also Guidance Note on Content Moderation, § 21 and the related parts of its Explanatory Memorandum). Depending on whether intermediaries produce or manage the content available on their platforms or play a curatorial or editorial role, including through the use of algorithms, State authorities should apply, as stipulated in § 1.3.9. of CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries, an approach that is both graduated and differentiated. They should also determine appropriate levels of protection, as well as duties and responsibilities according to the role that the intermediaries play in the content production and dissemination processes, while paying due attention to their obligation to protect and promote pluralism and diversity in the online distribution of content.

#### **On paragraph 22:**

92. As mentioned above, the positive obligation of member States to protect those targeted by hate speech in an effective way applies also to online hate speech. Given the extraordinarily large amount of online hate speech that is rapidly and widely disseminated through the internet, member States should ensure, through their legislation, that internet intermediaries contribute to the fulfilment of this positive obligation. Member States should furthermore provide guidance to internet intermediaries, in particular to those that produce or manage content available on their platforms or play a curatorial or editorial role including through the use of algorithms, on the processes for dealing with online hate speech that is potentially in breach of criminal, civil or administrative law. The related obligations for different types of internet intermediaries should be differentiated as described in § 21 of the Recommendation.

93. At the same time, member States should ensure that legal and regulatory frameworks do not result in overcompliance or discriminatory implementation. This is particularly relevant for content that is legal but possibly undesirable in a democratic society and where it is recognised that human rights must also be upheld (for details see §§ 14c and 28 et seq. of the Guidance Note on Content Moderation and the relevant parts of its Explanatory Memorandum). For these reasons, member States should clarify in their legislation that internet intermediaries will not be held liable if they have decided, based on a solid factual and legal assessment, not to remove content which is later qualified by competent authorities as being in breach of criminal, civil or administrative law or in the removal of content, which is later qualified as legal.

94. An important element of such regulation is to foresee the possibility for internet users and other stakeholders to report hate speech that is potentially prohibited under criminal, civil or administrative law in an easily accessible way to internet intermediaries (see § 86 above). Those intermediaries should be put under an obligation to treat such reports in a quick and efficient manner and within a transparent procedure that leads, where appropriate, to the quick and effective removal of online hate speech. Those reports should contain sufficient information to enable the internet intermediary to assess whether the reported content constitutes hate speech which is prohibited under criminal, civil or administrative law. The quality of reports can be improved by an appropriate design of the reporting form.

95. In this context it is desirable to remove online hate speech prohibited under criminal, civil or administrative law as quickly as possible. Research shows that the lifespan of social media posts is often only several minutes. This implies that the harm of hate speech that is distributed through such platforms is already done within a short time period. Against this background, some member States have imposed a duty on internet

intermediaries to withdraw content which is in breach of the law within 24 hours. On the other hand, such short time-limits can be insufficient to carefully assess cases that require extensive factual research or complex legal reasoning (unclear and complex cases). For cases which often require a factual or legal in-depth assessment, longer timeframes have been defined; member States also allow for the possibility that internet intermediaries refer such complex or unclear cases to an independent regulatory body. This body can be a public authority such as a public media regulator, a human rights institution or an equality body, an independent self-regulatory body that is organised by one or several internet intermediaries, or a co-regulatory body which is organised by both, public and private entities (for more details see Guidance Note on Content Moderation, pp. 11 et seq. and Models of Governance of Online Hate Speech, by Alexander Brown, 2020).

96. In a considerable number of cases online hate speech is taken down, but the related evidence is not secured and transmitted to law enforcement services. To remedy this situation, member States should stipulate that internet intermediaries should secure evidence of online hate speech that is potentially in breach of criminal, civil or administrative law (see § 2.3.6 of CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries). Member States should also make clear the conditions under which they should transmit this evidence to the law enforcement services. The transmission of such evidence should be made subject to a prior order by a competent authority. Data protection legislation and principles should be respected by all actors in order to avoid excessive data processing.

97. In unclear and complex cases, provisional measures could be taken to prevent hasty removal of potentially legal content. Instead of being fully removed, such content could be de-prioritised or contextualised. In this context, de-prioritisation would mean that a content moderator or the algorithm governing the dissemination of content would give a lower priority to the content in questions and thus lead to a less wide dissemination. Contextualisation means that content is published with a note that indicates that the content in question could constitute hate speech. De-prioritisation and contextualisation could also be seen as less severe interferences under the principle of proportionality, until the final decision of the responsible platform body or other mechanism is taken.

98. Member States should ensure that internet intermediaries comply with the existing legal and regulatory frameworks, for example through oversight by an independent regulator with appropriate powers. The legislation should also foresee that internet intermediaries designate a legal representative in the country who represents the intermediary in legal matters and can receive any notification on behalf of the intermediary.

#### **On paragraph 23:**

99. Member States should stipulate in their legislation that internet intermediaries provide a clear explanation for any decision to block, take down or deprioritise content on the basis of the legislation on hate speech or the intermediary's terms of service, in order to create transparency for those affected by these decisions (see also § 2.3.3 of CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries). It could be sufficient that the internet intermediary provides the user with the exact text and paragraph number of the legal provision or of the terms of service on the basis of which the content moderator or an automated system had taken the decision to block, take down, contextualise or deprioritise the content in question. Should it turn out that this requirement is too burdensome for smaller intermediaries, member States could consider restricting it to cases where a user actively requests an explanation for such a decision; in this case it should be ensured that the explanation is provided within a short enough time period that would also fit into any existing time-limit for bringing legal action.

100. In practice, certain internet intermediaries block accounts, for example in cases of repeated publishing of hate speech. Member States should consider enacting legislation that governs this area, defining the conditions under which an account can be temporarily or permanently blocked. Such legislation should also contain safeguards against any misuse of such powers, stipulate that any decision on the temporary or permanent blockage of an account must be reasoned, and foresee the possibility of an appeal to the judiciary.

101. If information is not published by an individual, but by an institution (this term should be understood in a wide sense and encompasses for example public or private legal persons and any other organisation or entity), the reasons for any decision that restricts content should be made accessible to this institution.

#### **On paragraph 24:**

102. Those targeted by hate speech often have problems to identify the author of online hate speech. Due to the anonymity of the perpetrator, even the police, the prosecution services and other authorities in charge of investigating cases of online hate speech, are often not able to identify the perpetrator and to successfully

investigate hate speech cases. Obtaining subscriber information from service providers, including from providers in other jurisdictions, is therefore essential for successful investigations into hate speech cases (see the definition of subscriber information in Article 18.3 of Convention on Cybercrime (ETS No. 185) hereinafter Convention on Cybercrime). The same applies to domain name registration information held by registrars or registries where Internet domains are used for hate speech. On the other hand, anonymity on the Internet is important to permit freedom of expression (on those concurring rights and interests see *K. U. v Finland*, no. 2872/02, 2 December 2008, § 49).

103. Indications concerning the grounds for ordering the production of subscriber information are provided in Article 18 of the Convention on Cybercrime, and the scope as well as conditions and safeguards for this and other procedural powers are outlined in Articles 14 and 15 of that Convention. Further guidance can be found in the T-CY Guidance Note #10. Production orders for subscriber information (Article 18 Budapest Convention), which was adopted by the Cybercrime Convention Committee in 2017. In cases of hate speech that is prohibited under civil or administrative law, appropriate procedures for requesting subscriber information should also be put in place.

104. Although not binding on the member States of the Council of Europe, according to § 138 of the Explanatory Report to the Cybercrime Convention, the term ‘competent authority’ refers to a judicial, administrative or other law enforcement authority, that is empowered by domestic law to order, authorise or undertake the execution of procedural measures for the purpose of collection or production of evidence, with respect to specific criminal investigations or proceedings. The Second Additional Protocol to the Convention on Cybercrime, approved by the Committee of Ministers on 17 November 2021 and expected to be opened for signature in May 2022, provides for direct co-operation with service providers in other countries for the production of subscriber information (Article 7) and for the disclosure of domain name registration information (Article 6). Like the Convention, these measures are limited in scope (they apply to specific criminal investigations and proceedings) and are subject to the rule of law (Article 13) and data protection safeguards (Article 14). They furthermore allow for declarations and reservations to permit Parties to meet domestic human rights, rule of law or constitutional requirements.

105. The “European and international human rights laws” comprise, inter alia, the European Convention on Human Rights and the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, where applicable, the General Data Protection Regulation (EU) 2016/679 (GDPR).

#### **On paragraph 25:**

106. Member States should make available to the public, detailed data and information on content that has been restricted in accordance with national legislation on hate speech and require by law that relevant internet intermediaries produce and publish transparency reports. Those reports serve the purpose of ensuring transparency about restrictions to freedom of expression and serve as a basis for the regular evaluation of whether the restrictions made by the public authorities and internet intermediaries are necessary and proportionate in the sense of Article 10.2 of the Convention (see § 1.2.3 of CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries, and Guidance Note on Content Moderation, §§ 39-44 ). This reporting also serves the purpose of ensuring that content moderation is carried out in a non-discriminatory way.

107. The reports published by member States should contain, as far as possible, information on: the protected characteristics engaged; the different expressions of hate speech; disaggregated statistical data about cases dealt with by the police, the prosecution, the judiciary under criminal law and their outcomes in terms of investigations, indictments, judgments and content restrictions; cases dealt with by the judiciary under civil and administrative law; whether content was restricted on the basis of criminal, civil or administrative law or on the basis of the internet intermediary’s terms of service; the number, nature, and legal basis of the content restriction requests transmitted to online platforms; actions taken as a result of those requests; content restrictions based on mutual legal assistance treaties; measures taken to respect data protection law and principles; the categories of persons targeted by hate speech and of persons publishing hate speech; and any key drivers for increased occurrences such as electoral campaigns or other events that could have triggered waves of hate speech (for details see § 12 of ECRI GPR No. 11 on combating racism and racial discrimination in policing, §§ 12 and 65 et seq. of its Explanatory Memorandum; and, § 3 of ECRI GPR No. 15 on combating hate speech, and §§ 72 et seq. of its Explanatory Memorandum).

108. The reports of internet intermediaries should, among other things, contain: the protected characteristics engaged; the different expressions of hate speech; on what basis the content was removed (civil, administrative or criminal law or terms of service); the number, nature, and legal basis of all content restriction



requests received from the authorities; the categories of persons targeted by hate speech and of persons publishing hate speech; key drivers for the occurrence of hate speech (see above); information on the number of and training for content moderators – including information on the technologies, automated systems and criteria used, and the time needed for the detection of hate speech and the treatment of such cases through content moderation and recommender systems; and measures taken to respect data protection law and principles. Member States should further require internet intermediaries to make the data publicly available in a consistent format and proactively disseminate it to academic researchers, civil society organisations and other relevant stakeholders (for details see also CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries, §§ 2.2.3. and 2.2.4).

109. Member States should foresee that smaller internet intermediaries are subject to lighter reporting duties than larger ones and that the reporting duties are restricted to internet intermediaries that produce or manage the content on their platforms or play a curatorial or editorial role including through the use of algorithms.

#### On paragraph 26:

110. Member States should ensure that independent authorities (for example equality bodies or national human rights institutions) regularly assess, together with other stakeholders, the impact of the content moderation systems in place. They should pay particular attention to the question of whether the existing systems – including automated systems – provide effective protection for those targeted by hate speech and strike an appropriate balance with the right to the freedom of expression for those who publish content on the internet. A specific focus should be put on the question of whether the existing systems bear risks of underreporting or of over-compliance and whether the existing internal and external appeal mechanisms lead to appropriate results (see also CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries, §§ 1.1.4 and 1.1.5). The reports mentioned in § 25 of the Recommendation are an important basis for those assessments.

111. In this context, member States should foresee that representative samples of hate speech cases, which have not been subject to a judicial review, are regularly assessed in order to establish whether content restrictions were justified or not, and whether data protection laws and principles were respected.

112. Based on the results of those assessments, the authorities and other stakeholders should take appropriate measures to further develop the legal frameworks and the content moderation systems in place, in order to improve the detection, reporting and processing of online hate speech, while eliminating the causes for unjustified content restrictions and over-compliance.

#### On paragraph 27:

113. This paragraph calls on member States to require by law that online media do not spread hate speech reaching a certain threshold of severity. Also, subject to independent judicial review, the law should ensure that online media specifically cover third parties' posts in the comments sections and other interactive or collaborative spaces on their platforms, such as blogs incorporated into their publications' websites. This should be in line with the findings of the Court in the specific circumstances envisaged in the case of *Delfi AS v. Estonia*, cited above, § 115-117 (see also Council of Europe Recommendation CM/Rec(2011)7 on a new notion of media and Recommendation CM/Rec(2014)6 on a Guide to human rights for Internet users).

### 3. RECOMMENDATIONS ADDRESSED TO KEY ACTORS

114. This chapter of the Recommendation addresses selected key actors that play important roles in democratic societies, in particular in respect of public debate, and are thus in a position to make specific and significant contributions to preventing and combating hate speech. All of these actors are bound by applicable law governing hate speech, but also have specific duties and responsibilities arising from the particular roles they play.

#### Public officials, elected bodies and political parties

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##### On paragraphs 28 and 29:

115. For the purpose of this Recommendation, the term 'public officials' encompasses members of the legislature, the government, the judiciary, and other public authorities. Public officials should not only refrain from engaging in, endorsing or disseminating hate speech but also play a positive role in addressing and combating hate speech and are therefore encouraged to condemn it in all relevant circumstances.

116. At the same time, public officials and politicians should be mindful to not eagerly label any critical voices as hate speech. Freedom of expression applies not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population (*Handyside v. United Kingdom*, cited above, § 49).

117. Given their position of authority, politicians and other high-ranking public officials have broader possibilities for spreading their speeches. The impact of political hate speech is also greater on potential offenders who feel empowered in the replication of intolerant and biased conduct. In *Erbakan v. Turkey*, no. 59405/00, 6 July 2006, § 56, the Court held that it was crucially important that in their speeches politicians should avoid making comments liable to foster intolerance.

118. Politicians have indeed both a political obligation and a moral responsibility to refrain from using hate speech and stigmatising language, and to condemn promptly and unequivocally its use by others as silence may be interpreted as approval or support. The enhanced protection of freedom of expression that they enjoy also strengthens their responsibility in this area (§ 5 of the PACE Resolution 2275(2019) on the role and responsibilities of political leaders in combating hate speech and intolerance; see also in this connection *Sanchez v. France*, no. 45581/15, 2 September 2021<sup>3</sup>).

119. Special attention should be paid to hate speech during election periods, as it is considerably amplified between political opponents as well as among their target electorate. During an election period, the positions of the candidates for the election tend to become more rigid and the formulas come to take the upper hand over reasonable arguments. The impact of racist and xenophobic discourse then becomes greater and more damaging (*Féret v. Belgium*, cited above, § 76). In this connection, the Court recalls that it is of crucial importance that politicians in their public discourse should avoid disseminating statements likely to foster intolerance. They are subject to the duties and responsibilities laid down in Article 10.2 of the Convention and should be particularly attentive to the defence of democracy and its principles, especially in an electoral context (*Sanchez v. France*, cited above, § 89).

120. In their efforts to encourage politicians and political parties to address and condemn hate speech, parliaments, other elected bodies and political parties, should encourage greater uptake of and adherence to the revised Charter of European Political Parties for a Non-Racist Society. This was adopted by the Council of Europe's Congress of Local and Regional Authorities in 2017. In developing specific policies against hate speech, member States may find further inspiration and guidance from ECRI GRP No. 15 on combating hate speech.

## Internet intermediaries

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121. Internet intermediaries play a key role in enabling people around the world to communicate with each other and share information. They have become considerably powerful at the national and international levels and have had an increasingly decisive impact on human rights, fundamental freedoms and democracy. For instance, they moderate and rank content, including through the automated processing of personal data, and thereby influence users' access to information online in ways comparable to media, or they perform other functions that resemble those of publishers (See CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries, § 5).

122. Considering the prevalence of online hate speech in the systems run by internet intermediaries and the harm it causes to the individuals and groups targeted, there has been growing awareness of the need for corporate human rights accountability of internet intermediaries for curtailing online hate speech on their respective platforms.

### On paragraph 30:

123. In accordance with CM/Rec(2016)3 on Human rights and business, member States should effectively implement the UN Guiding Principles on Business and Human Rights and ensure that all business enterprises which are domiciled or operate within their jurisdiction comply with all applicable laws and respect human

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3. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. It was referred to the Grand Chamber on 17 January 2022. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for the supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

rights (“the corporate responsibility to respect human rights”). This means that they should not violate the human rights of others and address adverse human rights impacts they are involved in.

124. This entails the responsibility to comprehensively address the different layers (see § 3 of the Appendix to the Recommendation) and expressions (see § 18 of this Explanatory Memorandum) of online hate speech, which exist independently of the State’s ability or willingness to fulfil their own human rights obligations and applies to internet intermediaries regardless of their size, sector, operational context, ownership structure or nature (see § 2.1.1 CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries). However, the means of addressing online hate should be calibrated according to the severity of the human rights impact the service provided may have (see §§ 3 and 4 of the Recommendation and CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries, §§ 2.1.1. and 2.1.2). Furthermore, any request, demand or other action by public authorities addressed to internet intermediaries to restrict access (including blocking or removal of content), or any other measure that could lead to a restriction of the right to freedom of expression, should be prescribed by law, pursue one of the legitimate aims foreseen in Article 10 of the Convention, be necessary in a democratic society and be proportionate to the aim pursued (CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries, §§ 1.3.1. and 1.3.5). If internet intermediaries are required to take down content under domestic legislation which, in their view, violates human rights law and standards, they should seek the revocation or modification of the request, explore legal options to challenge national law and seek assistance from stakeholders.

#### **On paragraph 31:**

125. The human rights law and standards referred to in § 31 of the Recommendation encompass the list set out in §§ 15 and 44 of the Explanatory Memorandum, as well as the relevant case-law of the Court, the Convention on Cybercrime No. 185 and, where applicable Additional Protocol No. 189, ECRI GPR No. 15 on combating hate speech, General Comment No. 34 of the Human Rights Committee on Article 19 of the ICCPR on Freedoms of opinion and expression, CERD/C/GC/35 Combating racist hate speech, the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination and the recommendations of UN special procedures mandate-holders, especially those of the Special Rapporteur on the right to freedom of opinion and expression.

126. Within the international and national legal frameworks for online hate speech, internet intermediaries should design their own specific policies and terms regarding content moderation and data processing and clearly state them in their terms of service, to which all users must agree before using their platforms and systems. Those policies and terms of service should respect the rules for data protection (see the Council of Europe ETS No. 108 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data and Convention 108+ Convention for the protection of individuals with regard to the processing of personal data).

127. Regarding online hate speech, many internet intermediaries have, in response to their legal duties, human rights responsibilities and increasing public calls to respect international and national legal frameworks, enacted regulations and setup infrastructures and mechanisms that allow users to flag potentially abusive content which is then transmitted to content moderators for review. These content moderation policies are enforced by content moderators and automated content moderation tools that assess whether such content is in line with the legal requirements and the terms of service of the internet intermediary. Internet intermediaries should ensure the employment of a sufficient workforce for content moderation and decent working conditions for employees (see also CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries, § 2.3.4).

128. To fulfil their corporate responsibility to respect human rights, internet intermediaries should be guided by the requirements of human rights law and standards in the process of development and deployment of algorithmic systems, in their content moderation policies, and in the decision-making of their oversight mechanisms. The greater the impact and the potential damage to the objects of legal protection and the higher the value of the services for the exercise of human rights, the greater the precautions that the intermediary should employ when developing and applying their terms and conditions of service, community standards and codes of ethics. This should be with the aim to prevent the spread of abusive language and imagery, of hatred and of incitement to violence (see CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries, § 2.1.2; and, CM/Rec(2020)1 on the human rights impacts of algorithmic systems).

129. Transparency of internet intermediaries’ human rights and hate speech policies is necessary to ensure, through internal and external assessment, that content moderation does indeed respect human rights and

effectively informs users on what behaviour is permitted or not (see §§ 47 et seq. and §§ 106 et seq. of this Explanatory Memorandum; for more details see Guidance Note on Content Moderation, § 40).

130. To ensure the greatest possible transparency and accessibility of their human rights and hate speech policies, internet intermediaries should develop their terms of service, in full respect of legislation, the case-law of the Court and the criteria provided in § 4 of the Recommendation. Their terms of service should include the standards for assessing, moderating and imposing restrictions on hate speech which is in breach of criminal, civil or administrative law or violates their terms of service. They should furthermore publish all related rules and provide information on the procedures and ways of appeal, as well as any changes to them, and make them available to the public in all relevant languages, including regional and minority languages, where relevant and to the extent possible. Internet intermediaries should furthermore be transparent about the parameters used in recommender systems and inform users about any changes in this regard in an appropriate, comprehensible, and timely manner (for details see Guidance Note on Content Moderation, §§ 20 and 40).

131. Internet intermediaries should ensure that the average reader can understand their terms of service, rules and standards, and foresee the results of their practical application. Internet intermediaries are therefore encouraged to provide examples of hate speech that are in breach of the legislation or their terms of service.

132. To enhance transparency of their removal mechanisms, internet intermediaries should publish periodic online reports that include comprehensive and disaggregated data on hate speech removals, including information about the types and forms of hate speech and categories of users generating hate speech (i.e., individuals and State or non-State actors). Internet intermediaries should disseminate such information amongst academic researchers, civil society organisations, networks, non-governmental organisations, research centres and other relevant stakeholders.

#### **On paragraph 32:**

133. Policies for the moderation of potential hate speech should be elaborated on the basis of the criteria listed in § 4 of the Recommendation and their interplay (for details see §§ 32-35 of the Explanatory Memorandum).

134. Beyond the binary choice to remove content or not to remove it, content moderation offers a range of tools such as temporary or permanent demotion, demonetisation or tagging as problematic (See Guidance Note on Content Moderation, § 13). Other tools that could be used as proportionate responses to online hate speech comprise de-amplification, supporting initiatives including in the sphere of education, that encourage the reporting of hate speech, counter- and alternative speech, and the promotion of human rights, democratic values and inter-group understanding. Such tools could in particular be applied to offensive and harmful types of expressions which do not have sufficient severity to legitimately be restricted under the Convention (see § 3.2 of the Recommendation).

#### **On paragraph 33:**

135. Considering that AI tools and automated algorithmic systems can be biased or have other weaknesses, human oversight mechanisms should be established to ensure that human intervention is possible whenever needed to safeguard human rights, democracy, and the rule of law (Council of Europe Ad Hoc Committee on Artificial Intelligence (CAHAI), Feasibility Study, CAHAI(2020)23, § 104).

136. To ensure that content moderation takes into account the specificities of relevant legal, local, cultural, socio-political and historical contexts, internet intermediaries should involve representatives of groups targeted by online hate speech into the development and continuous assessment of their content moderation. They should ensure that the concerns of such groups are duly taken into account in the design, development and implementation of their content moderation tools and practices, with the aim to ensure that they detect and address all hate speech on their platforms.

137. Where appropriate, content moderation should be decentralised to enable the proper representation of local cultures and communities in the actual content moderation decisions and to allow content moderators to gather relevant expertise. Internet intermediaries should allocate adequate human resources to the content moderation work in all the geographical areas they cover. In their effort to decentralise content moderation, internet intermediaries should take into account inter-State tensions.

### On paragraph 34:

138. The internet intermediaries should hire a sufficient number of content moderators to allow for an appropriate assessment of potential hate speech.

139. The impartiality of content moderators is important to avoid any factor which could undermine the transparency and objectivity (i.e., absence of biases) of their approach to content moderation, such as affiliation with the person who reported or published the content.

140. Content moderators should be provided with adequate initial and ongoing training on international and national human rights standards and legislation addressing hate speech, their relationship with the intermediaries' terms of service and their internal standards, as well as on the action to be taken in case of conflict. Such training could be provided internally or externally, including through associations of intermediaries. The scope of the training should correspond to the importance of the intermediaries' role and the impact that their actions may have on the ability of users to exercise their freedom of expression (see CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries, § 2.3.4). Any training on hate speech should provide the content moderators with a sound understanding of relevant local, cultural, socio-political, and historical contexts, as well as addressing languages, particularly minority languages, and offer a comprehensive and up-to-date knowledge of relevant linguistic nuances.

141. Content moderators, trusted flaggers and fact-checkers refer to both human and algorithmic systems. Therefore, internet intermediaries should properly disclose whether users will be subjected to algorithmic decision making, including personalised content curation (see in this connection CM/Rec (2020)1 on human rights impacts of algorithmic systems).

142. As content moderators are constantly exposed to harmful content, careful attention must be given to their working conditions and their mental health. Internet intermediaries should therefore ensure that content moderators have access to appropriate psychological support (for more details see CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries, § 2.3.4). Internet intermediaries should ensure those standards also when they outsource content moderation to third parties, possibly based in other countries with different and less protective labour laws (see Guidance Note on Content Moderation, § 34).

### On paragraph 35:

143. Civil society organisations should have access to reliable and adequate data in order to be able to contribute to improving hate speech policies and practices of national authorities and internet intermediaries (see Guidance Note on Content Moderation).

144. An effective co-operation between internet intermediaries and civil society organisations requires that they engage in a regular, inclusive and transparent dialogue, "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" (CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries, §12), including in the field of hate speech.

145. The goals and targets of this co-operation, as well as responsibilities and duties of the parties involved, should be clearly defined and take into account the fast-changing nature of the online environment.

146. Co-operation between internet intermediaries and civil society organisations in combating hate speech should include the development and continuous improvement of reporting mechanisms for online hate speech. An illustration of such co-operation would be the evaluation of the implementation of the 2016 EU Code of Conduct on countering hate speech online. This features several monitoring exercises where civil society organisations notified IT companies over a period of several weeks about content that was potentially in breach of criminal law provisions, which transpose the EUFD 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law (see for more information the 5th evaluation of the Code of Conduct, Factsheet, June 2020).

### On paragraph 36:

147. Online advertising systems, micro-targeting, content amplification systems as well as recommendation systems are technologies that use a wide collection of user data to enable the creation and distribution of personalised content.

148. Those technologies can facilitate the amplification of hate speech, disinformation, and the dissemination of discriminatory stereotypes in relation to any of the grounds indicated in § 2 of the Recommendation. In this context, it has already been emphasised that particular attention should be paid also to the specific challenges that these technologies pose with regard to gender equality and gender stereotypes, as the use of algorithms can transmit and strengthen existing gender stereotypes and contribute to the perpetuation of sexism (CM/Rec(2019)1 on preventing and combating sexism).

149. In all phases of the processing, including data collection, internet intermediaries should assess what impact those technologies will have on human rights and avoid any potential biases, including unintentional or hidden ones. They should also be assessing the risk of discrimination or other adverse impacts on the human rights and fundamental freedoms of data subjects. In addition, they “should critically assess the quality, nature, origin and amount of personal data used, reducing unnecessary, redundant or marginal data during the development, and training phases and then monitoring the model’s accuracy as it is fed with new data” (T-PD(2019)01 Guidelines on Artificial Intelligence and Data Protection, § II.4). Subsequently, internet intermediaries should provide transparency on these systems, their explainability and any opt-out clauses or opt-in clauses.

#### **On paragraph 37:**

150. Content moderation, whether done by a human or a machine, is not infallible. Therefore, internet intermediaries should, on an ongoing basis, conduct internal assessments of the direct or indirect human rights impacts of their products, services, systems, policies and practices. In this framework, they should regularly assess their content moderation systems with a particular focus on the freedom of expression and the right to respect for private life, equality and non-discrimination, and ensure that these rights are protected. These assessments should serve the purpose of evaluating the effectiveness of the policies, regulations and measures that internet intermediaries employ to address hate speech, and ensure that they achieve their objectives (see § 26 of the Recommendation).

151. Human rights impact assessments should be conducted within a clear regulatory framework, including oversight by an independent regulatory authority or independent stakeholders with relevant expertise, and in an inclusive and transparent manner. The assessments should cover internet intermediaries’ products, services and systems (see CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries, § 2.1.4), and the risk assessment criteria should consider whether any individual or group is disproportionately impacted by hate speech. The extent to which an internet intermediary should carry out human rights impact assessments should depend on its size (see § 21 of the Recommendation).

152. During such human rights impact assessments, it should be ensured that representatives of groups targeted by hate speech are involved and that inputs from targeted communities and stakeholder groups, including civil society and marginalised groups, are taken into account (see the CAHAI Feasibility Study, CAHAI(2020)23, § 106). The involvement of representatives of groups targeted by hate speech in the design, development and implementation process, will facilitate the elaboration and implementation of policies and measures that address the harms caused by the dissemination of online hate speech in a more effective way.

153. To ensure a meaningful assessment of the effectiveness of the measures in place, internet intermediaries should furthermore subject themselves to regular, independent, impartial, comprehensive and effective external audits (see § 26 of the Recommendation and Council of Europe Commissioner for Human Rights 2019, *Unboxing Artificial Intelligence: 10 steps to protect Human Rights*).

154. The law can prescribe that the independent audits are carried out by auditors or an independent regulatory authority. Otherwise, they could be carried out by a third party, for example an independent self-regulatory body set up by the industry, independent auditors or a civil society organisation entrusted with such a task.

155. Internet intermediaries should ensure appropriate follow up to these impact assessments and external audits, by acting upon the findings and by monitoring and evaluating the effectiveness of identified responses (See Recommendation CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries, § 2.1.4).

### On paragraph 38:

156. It is essential for journalists and the media to enjoy editorial freedom, independence and autonomy, resting on strong protection for freedom of expression (See for more details *Jersild v. Denmark*, cited above, § 31; No. R (97)20 on “hate speech”; No. R (97)21 on the media and the promotion of a culture of tolerance; CERD/C/GC/35 Combating racist hate speech, § 40; and, ETS No. 157 Framework convention for the protection of national minorities, Article 9).

157. Special attention should be paid, and effective protection measures dedicated, to the situation of journalists, particularly those targeted by hate speech, such as female journalists and minority journalists (see CM/Rec(2016)4 on the protection of journalism and safety of journalists and other media actors).

### On paragraphs 39 and 40:

158. Media organisations and journalists are encouraged to promote a culture of tolerance and understanding and to facilitate intergroup dialogue in their efforts to address hate speech. To that end, they are invited to adhere to self-regulatory standards, to include the aforementioned goals in those standards and codes of conduct, and develop and implement corresponding training programmes for journalists (see No. R (97)21 on the media and the promotion of a culture of tolerance; Article 6 of the ETS No. 157 Framework Convention for the Protection of National Minorities; and, The Tallinn Guidelines on National Minorities and the Media in the Digital Age, 2019, OSCE High Commissioner on National Minorities).

159. Media organisations should take concrete, specific and targeted steps towards ensuring that their workforces are diverse and inclusive, including in editorial decision-making. In their effort to seek, receive, impart and disseminate information, they should seek a multiplicity of sources and voices from within different communities (See United Nations Strategy and Plan of Action on Hate Speech, 2020, §§ 53.1-53.2; and, No. R (97)21 on the media and the promotion of a culture of tolerance, § 2).

160. Public service media must be, by virtue of their mandate, a vital source of unbiased information and diverse political opinions, which means they must secure the right level of independence from political or economic interference. They are especially suited to promote pluralism and awareness of diverse opinions as well as counter- and alternative speech, in part by providing different groups in society with the opportunity to receive and impart information, to express themselves and to exchange ideas. In this way, they can make a significant contribution to the promotion of social cohesion, cultural diversity and pluralist communication, which is accessible to everyone.

### On paragraph 41:

161. Media organisations and media professionals, including journalists, should not only comply with the legislation addressing hate speech, but pay particular attention to ensuring full respect of human rights in all their activities, as outlined in the Committee of Ministers Recommendations CM/Rec(2016)3 on Human rights and business, No. R (97)20 on “hate speech”, and, No. R (97)21 on the media and the promotion of a culture of tolerance. This extends to the online environment, where for example online media, online news portals or other outlets managed by media organisations are responsible not only for their editorial content but can be held liable with regard to third-party comments in the form of hate speech (see *Delfi AS v. Estonia*, cited above, § 159).

162. The media and journalists are strongly encouraged to bring hate speech incidents to the attention of the public and to raise awareness on the harm caused by discrimination, hatred, negative stereotyping and stigmatisation. To provide accurate and reliable information and facilitate a better understanding of diverse perspectives, the media and journalists should be attentive to give voice to diverse groups and communities in society (see CM/Rec(2018)1 on media pluralism and transparency of media ownership).

163. The media and journalists should be alert to the dangers of proliferating prejudice and of furthering negative stereotypes about individuals and groups. They should avoid unnecessary references to personal characteristics and status that may promote prejudice and intolerance, especially when reporting on issues of crime and law and public order.

164. Media organisations are further strongly encouraged to engage in transparent and participatory independent fact-checking initiatives, including those that involve co-operation with civil society organisations, experts, and other stakeholders in order to guarantee accurate, reliable and pluralist information. Reporting

on matters of public interest, including criminal or public health issues, requires particular care in checking the accuracy of information and avoiding the dissemination of information which may result in the increase of prejudice and stigmatisation.

165. During elections, the media should consider exposing in their coverage misinformation, disinformation and propaganda, in particular if such information targets persons and groups on the grounds of their identity, including minority or other status and/or damages intergroup relations.

**On paragraph 42:**

166. In the development of their policies, regulatory authorities for the broadcasting sector and media self-regulatory bodies, should implement concrete provisions to effectively combat hate speech, while also actively promoting tolerance, pluralism and diversity of opinions in the media.

167. Member States should also guarantee that the audio-visual regulatory authorities are independent through a set of rules covering all aspects of their work, and through measures enabling them to perform their functions effectively and efficiently (for more details see Rec(2000)23 on the independence and functions of regulatory authorities for the broadcasting sector and CM/Rec(2016)4 on the protection of journalism and safety of journalists and other media actors).

## **Civil society organisations**

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**On paragraph 43:**

168. Civil society organisations through their different activities can play a crucial role in preventing and combating hate speech offline and online. They are encouraged to develop specific policies to prevent and combat hate speech and, where appropriate and feasible, provide training for their staff, members, and volunteers.

169. Civil society organisations are furthermore encouraged to co-operate and coordinate between themselves, including by involving organisations working with individuals and groups targeted by hate speech. They should also engage with other relevant public and private stakeholders to ensure a comprehensive approach to preventing and combating hate speech.

170. When civil society organisations become the targets of hate speech because of their advocacy work and support to minority and other groups, other stakeholders should express solidarity. The media should provide balanced and factual information on their advocacy work and on any controversial case they might be involved in.

171. Civil society organisations can make an important contribution to preventing and combating hate speech through collecting and analysing data, monitoring hate speech, addressing underreporting, training professionals and staff of other stakeholders involved in preventing and combating hate speech, and producing and disseminating counter- and alternative narratives. Member States and other stakeholders should, as recommended in §§ 6c, 17, 26 and 35 of the Recommendation, involve civil society organisations in activities concerning the treatment of online hate speech and in the design, development and implementation of communication and educational campaigns to enhance general awareness of hate speech and the harms it causes.

## **4. AWARENESS-RAISING, EDUCATION, TRAINING, AND USE OF COUNTER- AND ALTERNATIVE SPEECH**

172. Chapter 4 outlines the non-legal measures that member States should develop and implement to address all layers of hate speech (see § 3 of the Recommendation) in co-operation with other stakeholders, including the key actors listed in chapter 3.

**On paragraphs 44 and 45:**

173. §§ 44 and 45 of the Recommendation reiterate the principles outlined in Article 7 ICERD and Article 6.1 of the ETS No. 157 Framework Convention for the Protection of National Minorities on the importance of combating prejudices which lead to racial discrimination. These principles also highlight the need for promoting understanding, tolerance and friendship among nations and racial or ethnic groups, intercultural dialogue and the need to take effective measures to promote mutual respect, understanding and co-operation to adopt immediate and effective measures, particularly in the fields of teaching, education, culture



and information. The Court for its part, has emphasised the need for strong policies to combat racial discrimination as a basis for reducing hate speech, stating that “authorities must use all available means to combat racism, thereby reinforcing democracy’s vision of a society in which diversity is not perceived as a threat but as a source of enrichment” (See *Aksu v. Turkey*, cited above, § 44). The same is true regarding hate speech that is based on other grounds than racism.

174. As outlined in § 1 of the Recommendation, member States should take comprehensive and effective action to prevent and combat hate speech and to promote tolerant and inclusive speech. Those measures should be taken to prevent and combat all different layers of hate speech (see § 3 the Recommendation). In accordance with the principle of proportionality, civil and administrative law should only be applied in cases that reach the minimum level of severity that is needed for Article 8 of the Convention to come into play, and criminal law should be used only as a last resort and for the most serious expressions of hate (see §§ 24 et seq. and §§ 43 et seq. of the Explanatory Memorandum).

175. The recommendations in Chapter 4 help to understand and address the root causes of hate speech, to prevent and combat it through awareness raising and education, and to foster peaceful, inclusive and just societies (see commitments 2, 7 and 8 of the United Nations Strategy and Plan of Action on Hate Speech). The motivations and drivers of hate speech can encompass disinformation, negative stereotyping and stigmatisation, political objectives, inequality based on protected characteristics and status, impunity, historical or current grievances, economic inequality within the country, absence of a free and secure civic space, and online disinhibition. All such factors may be symptoms of deeper structural issues that should be addressed by the member States. The recording, monitoring and analysis of hate speech and related trends (see chapter 6) is essential for detecting and understanding its root causes and for designing effective measures to prevent and combat it.

176. Disinformation refers to verifiably false, inaccurate, or misleading information deliberately created and disseminated to cause harm or make economic or political gain by deceiving the public (see MSI-REF Draft Recommendation on principles for Media and Communication Governance, Appendix, paragraph 4).

177. On the basis of their experience and knowledge gained, member States should insert in their comprehensive policies, legislation, strategies and action plans against hate speech (see § 5 of the Recommendation) measures on awareness-raising, education, training, the promotion of counter- and alternative speech, and on facilitating intercultural dialogue. The Declaration by the Committee of Ministers on the legacy of the No Hate Speech Movement youth campaign (Decl(29/05/2019), its addendum CM(2019)42-add and § 4 of ECRI GPR No. 15 on combating hate speech for example underline the importance of: raising awareness on the extent and risk of hate speech; taking a stand and fighting against hate speech online and offline; expressing solidarity with specific targets of hate speech; drawing attention to under-estimated or under-reported manifestations of hate speech; creating counter- and alternative narratives to hate speech; ensuring media and information literacy through formal and non-formal education; and intersectoral and inter-institutional co-operation. It should be noted that some of these measures will be more relevant in some national contexts than others, as the effectiveness of these measures will vary depending on the dynamics and nature of hate speech in different social contexts.

#### **On paragraph 46:**

178. Awareness raising measures serve several purposes with regard to hate speech: they should make people and decision makers aware of the extent of hate speech and the harm it causes, propose ways and available means to counter it and to obtain redress (see chapter 5), address disinformation and promote human rights principles and values, intercultural dialogue, and appreciation of diversity and equality.

179. Member States and other stakeholders should ensure that campaigns tailor their messaging and approach to the needs of their target audiences. Where possible, individuals and groups targeted by hate speech should be involved in the design and implementation of such campaigns. See in this regard, Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity; The Declaration of the Committee of Ministers on the Rise of Anti-Gypsyism and Racist Violence against Roma in Europe adopted 1 February 2012; Parliamentary Assembly Resolution 1743 (2010) Islam, Islamism and Islamophobia in Europe; Parliamentary Assembly Resolution 1563 (2007) Combating anti-Semitism in Europe; and, Parliamentary Assembly Resolution 2036 (2015) Tackling intolerance and discrimination in Europe with a special focus on Christians.

### On paragraphs 47, 48 and 49:

180. The competences to be developed through education for human rights and democratic citizenship are outlined in CM/Rec(2010)7 on the Council of Europe Charter on Education for Democratic Citizenship and Human Rights Education. They include the development of knowledge, personal and social skills, critical thinking and understanding that reduce conflict, increase appreciation and understanding of the differences between faith and ethnic groups, building mutual respect for human dignity and shared values, and encourage dialogue and promote non-violence in the resolution of problems and disputes. It is understood that such competences are essential to equip persons to recognise hate speech, the risk it poses to a democratic society, and to be able to take initiatives to address it.

181. Educational responses to address hate speech, in particular the negative stereotypes and prejudice on which they are based, should also include the transmission of knowledge of the culture, history, language and religion of the minority and other groups and of the majority in a member State, as outlined in the ETS No. 157 Framework Convention for the Protection of National Minorities, Article 12.

182. According to CM/Rec(2014)6 on a Guide to human rights for Internet users, member States should ensure that users can access their rights and freedoms on the Internet and minimise their exposure to risks in online communication environments. Further guidance on the development of internet and media literacy is provided in CM/Rec(2019)10 on developing and promoting digital citizenship education and CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries. The latter also outlines the importance of an age- and gender-sensitive approach and the need of co-operation between relevant stakeholders, including the private sector, public service media, civil society, education establishments, academia, and technical institutions.

183. To ensure an effective educational curriculum on combating hate speech, member States should provide for appropriate teacher training and make available textbooks and relevant online materials. Member States should furthermore entrust relevant and independent educational organisations to conduct periodic reviews of textbooks, training materials and teaching methods to filter out stereotypes and promote equality and non-discrimination.

184. Tools for implementing education for human rights and democratic citizenship have been developed by the Council of Europe's Youth Department and Education Department. They include the educational manuals Compass, Compasito, and Mirrors, the manuals on Democratic citizenship and intercultural dialogue, the Digital Citizenship Education Handbook, and the Internet Literacy Handbook. All of these publications and manuals support formal, informal and non-formal learning. Positive experience with addressing hate speech through human rights education, including through the use of counterspeech, has been gained with the use of the educational manuals Bookmarks and We CAN!, which were developed for the Council of Europe's youth campaign No Hate Speech Movement. Another useful tool is the UN Faith for Rights Framework and Toolkit, 2019, which uses a peer-to-peer learning methodology. Illustrative examples of educational civil society initiatives are provided in the study, *Against Hate. Guidebook of good practices in combating hate crimes and hate speech* by Tina Đaković and Cvijeta Senta, 2019. This publication collected good practices from a number of civil society organisations in Croatia and Finland.

185. § 48 should be read in connection with both § 47 and § 49 of the Recommendation. Education and awareness raising initiatives on hate speech should be adapted to the age and level of maturity of the child or young person they are addressing. CM/Rec(2018)7 on Guidelines to respect, protect and fulfil the rights of the child in the digital environment, further details the scope of education, awareness-raising initiatives, programmes and user tools that should be developed with the involvement of children. Those initiatives and tools should be aimed at promoting children's and young people's healthy development and well-being, as well as their awareness of their rights and of the rights of others, including in the digital environment. Further guidance can be found in Articles 28 and 29 of the UN Convention on the Rights of the Child.

186. Member States should ensure meaningful participation of children and young people in all matters that concern them by ensuring the rights, means, space, opportunity and the necessary support to enhance youth participation (see the Revised European Charter on the Participation of Young People in Local and Regional Life, adopted 10<sup>th</sup> session of the Congress of Local and Regional Authorities of Europe, 21 May 2003 and the Council of Europe manual *Have your Say!*, November 2015).

187. § 49 recommends that member States should also support formal and non-formal educational activities and cultural programmes outside educational institutions. To that end, they could support initiatives of other key stakeholders, including the cultural sector, to more broadly combat hate speech and address its roots (see § 43 of the Recommendation).

### On paragraph 50:

188. Members of law-enforcement, prosecution and medical services are often a first contact for those targeted by hate speech. These professionals should receive initial and ongoing training on the professional conduct that is expected from them in their function and on the need to be welcoming, and to refrain from expressing negative stereotypes and bias when being in contact with persons targeted by hate speech. Their professionalism contributes to the reporting of hate speech, the efficiency of the monitoring, investigation and punishment of hate speech incidents, and the accessibility of redress for those targeted by hate speech.

189. Training programmes for the staff of the aforementioned public authorities and of other relevant public bodies should provide them with a sound understanding of the definition of hate speech; the relevant criteria for assessing the 'severity' of hate speech (see §4 of the recommendation); and the range of appropriate legal and other responses available to them. Illustrative examples of practices by national authorities and civil society organisations are provided in the study *Against Hate. Guidebook of good practices in combating hate crimes and hate speech* by Tina Đaković and Cvijeta Senta, 2019, pp.54 et seq.

### On paragraph 51:

190. According to the Study *Sanctions that do justice – Justice for victims of violent crime Part III*, European Union Agency for Fundamental Rights, 2019, many victims expect that offenders will reflect on what they have done as a result of criminal proceedings, and therefore will not reoffend. Given this preference of victims for sanctions that rehabilitate, member States should promote sanctions that appeal to the ability of perpetrators to understand that they have violated provisions that protect the human dignity and human rights of others and so assume responsibility for their conduct.

191. Training programmes for perpetrators that are considered to work effectively have been implemented in various European countries. Those programmes aim to change the mind-sets, perceptions, attitudes and, consequently, behaviour of mainly young, male, extremist hate crime offenders. For examples see: Austrian probation service, *Dialog statt Hass*; the work on misogynist violence of the Austrian *Bundesarbeitsgemeinschaft opferschutzorientierter Täterarbeit*, BAG-OTA, that developed standards for training programmes that systematically takes the rights of victims into account; *Live Democracy!* from Germany (*Demokratie leben!*) and *Taking Responsibility - Breaking away from Hate and Violence*, a project by the European Crime Prevention Network based in Belgium; *LES ACTIONS* a project from S.A.V.E.Belgium; Garda Youth Diversion Projects are community based, multi-agency youth crime prevention initiatives in Ireland; and, *Reducing youth crime*, a Government project in the Netherlands that has training and education programmes provided at the end of a custodial period for young offenders.

### On paragraph 52:

192. Universities and schools that provide programmes and courses in journalism, as well as media professionals, media outlets, and media self-regulatory bodies are encouraged to include in their regular training courses, modules on the duties and responsibilities of journalists and media with regard to the exercise of the right to freedom of expression. They could include course work on how to cover instances of hate speech without amplifying prejudice and considerations on their role with regard to promoting a culture of human rights and inclusiveness, in line with Recommendation No. R (97)21 on the media and the promotion of a culture of tolerance (see also §§ 38-39 of the Recommendation and §§ 158 to 160 of this Explanatory Memorandum). Such training courses should strengthen the competences of journalists and other media professionals to recognise, report and react to hate speech, and to avoid using or disseminating hate speech or prejudice themselves.

### On paragraph 53:

193. Due to their role and influence in the society, public figures in leadership positions, such as politicians, high-level officials, religious, economic and community leaders, should not only refrain from engaging in hate speech as outlined in §§ 35 and 36 of the Recommendation, but should also help address it through the use of counter- and alternative narratives. They should also condemn the use of hate speech and, taking advantage of their positions, promote intergroup understanding, including by expressing solidarity with those targeted by hate speech, and to empower them and restore their dignity.

194. Counter- and alternative speech are expressions of counter- and alternative narratives that are designed to combat hate speech by discrediting, deconstructing and condemning the narratives on which hate speech is based by reinforcing the values that hate speech threatens, such as human rights and democracy.

Counter- and alternative narratives to hate speech also promote openness, respect for difference, freedom, and equality. While counterspeech is a short and direct reaction to hateful messages, alternative speech usually does not challenge or directly refer to hate speech but instead changes the frame of the discussion (see Council of Europe manual *We CAN!*, 2017). The use of counter- and alternative speech forms are particularly important for addressing hate speech that does not reach the severity level for being addressed via criminal, civil or administrative procedures (see §§ 3 and 4 of the Recommendation).

195. In this context, PACE Resolution 2275(2019) on the role and responsibilities of political leaders in combating hate speech and intolerance, calls on member States and their parliaments to promote information and awareness-raising activities addressed to politicians and elected representatives at all levels. These actions should focus on initiatives and measures to prevent and combat hate speech and intolerance, including at international level, such as the 1998 Charter of European Political Parties for a Non-Racist Society and the No Hate Parliamentary Alliance. They should provide public officials with training on fundamental rights, equality and non-discrimination and encourage politicians to disseminate, including on social media, positive messages in relation to minorities in their countries (See also: CERD/C/GC/35 Combating racist hate speech, § 37; the Rabat Plan of Action, § 57 on ethical codes for politicians; ECRI GPR No. 15 on combating hate speech, § 98; The Camden Principles on Freedom of Expression and Equality, para 10.1; the Report of the United Nations High Commissioner for Human Rights A/HRC/22/17/Add.4 on the expert workshops on the prohibition of incitement to national, racial or religious hatred, Appendix § 36; and, A/HRC/40/58 Freedom of religion or belief, Annex 1 § 22).

#### On paragraph 54:

196. Key actors including equality bodies and civil society organisations are often in close contact with individuals and groups targeted by hate speech, and therefore well placed to promote the use of counter- and alternative speech, where appropriate in co-operation with those targeted. Member States therefore are encouraged to support the work of such key actors, while ensuring they can maintain their independence in line with their mandate or in their role as representatives of a community.

197. The body of research on the effect of counter- and alternative speech and other different methodological approaches, including debunking disinformation, is growing. These approaches show that counterspeech can stabilise conversations at risk of being flooded by hate speech on social media (see for example the research findings compiled by the non-governmental organisation *lamhere international* and the programmes and publications of the Institute for Strategic Dialogue on counter-extremism and disinformation).

## 5. SUPPORT FOR THOSE TARGETED BY HATE SPEECH

#### On paragraph 55:

198. Hate speech has wide-reaching effects in society that not only affect the immediate target or victim, but whole communities and ultimately society as a whole. When hate speech is, for example, directed at a prominent person with a migration background, it will often not only affect that person, but all migrants with origins from the same country or continent, or even migrants in general. Such hate speech can have the effect that its immediate target or other migrants withdraw from the political discourse and thus affect democracy and the society as a whole (see for example the cases described in the ECRI Report on Norway (sixth monitoring cycle) §§ 44 and 45).

199. As outlined in § 7 of the Explanatory Memorandum, this Recommendation contains measures to protect and assist not only those directly targeted by hate speech, but also those indirectly targeted by hate speech. Victims of hate speech need psychological, medical and legal assistance, and member States should put into place effective support mechanisms that help those targeted by hate speech to cope with the harm they suffer.

200. Member States may decide to mandate independent public or private bodies (e.g., national human rights institutions or equality bodies, or civil society organisations) to establish the required support mechanisms. Such an approach may also benefit the independence of the support mechanisms. Where public authorities are entrusted with providing this support, it can be beneficial to involve civil society organisations into the delivery of support services, as they are often the first point of contact for those targeted by hate speech.

201. Victims of online hate speech need specific assistance, as online hate speech can remain accessible over long time periods, spread rapidly over multiple platforms and be stored and easily revived at a later point. Those characteristics can increase the harm for the victims and the likelihood of their re-victimisation. Support mechanisms need specific knowledge and experience on how to successfully deal with these characteristics, and on how to contact and successfully interact with internet intermediaries and law enforcement services.

202. International and national law often provides for specific support to victims of criminal offences and to victims of discrimination. The term victim refers to those persons who suffer from the most severe levels of hate speech, that violate criminal, civil or administrative law (see § 3 Error! Reference source not found.of the Recommendation). In International law, the term victim is often defined as a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, caused by acts or omissions that are in violation of the criminal law of a member State (Rec(2006)8 on assistance to crime victims; and the Victims of Crime Directive 2012/29/EU Article 2.1.a) or of internationally recognised norms relating to human rights (§§ 1 and 19 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by resolution 40/34 of the UN General Assembly of 29 November 1985). The EU equality directives similarly use the term 'victim of discrimination' for those who are protected by the anti-discrimination legislation, which is mostly part of civil and administrative law, and only in specific cases of criminal law (see EU Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, § 19 and EU Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, § 29). According to those definitions, the term victim also includes, where appropriate, the immediate family or dependants of the direct victim.

203. Where appropriate, member States should provide free legal aid and targeted assistance, medical support, and psychological counselling, in particular to those targeted by hate speech prohibited under criminal law (see also Rec(2006)8 on assistance to crime victims). This assistance aims to alleviate the negative effects of the crime and ensure that victims are assisted in all aspects of their rehabilitation, in the community, at home and in the workplace. Victim support services should be provided in relevant languages (see ECRI GPR No. 15 on combating hate speech, §§ 105- 106) and Directive 2012/29/EU establishing minimum standards on the rights, support, and protection of victims of crime). Victims of discrimination should receive similar support, which is often provided by equality bodies.

204. In relation to civil legal aid, attention should be given to the Guidelines of the Committee of Ministers of the Council of Europe on the efficiency and the effectiveness of legal aid schemes in the areas of civil and administrative law CM(2021)36-add2final which allows member States to have procedures for testing an applicant's means and the likelihood of a successful outcome.

205. Furthermore, it is important that stakeholders express solidarity with those targeted by hate speech. They should meet with them and their representatives, hear their testimonies and if deemed appropriate, issue public statements through off- and on-line media which recognise the harms hate speech has caused to individuals, communities and society as a whole, and condemn its use (See ECRI GPR 15 on combating hate speech, § 98; and, United Nations Strategy and Plan of Action on Hate Speech, Action 6 and Action 8, § 37).

#### **On paragraph 56:**

206. Member States should implement measures that make those targeted by hate speech aware of their legal rights and of the institutions that have been established to assist them. Information on redress through civil, administrative and criminal proceedings should be accessible in oral and written form and in an easily understandable form. Such information should furthermore be translated to regional and minority languages, be made accessible for persons with disabilities and be distributed through channels that reach those who are exposed to an increased risk of being targeted by hate speech, including minority and other groups, human rights defenders and persons that exercise professions such as journalists.

207. Those who are targeted by offensive or harmful types of expressions which do not have sufficient severity to legitimately be restricted under the Convention (see § 3.2 of the Recommendation) should also be provided with clear information on the support available to them, including through civil society organisations. Such non-legal support can for example include, counterspeech initiatives as outlined in § 45 of the Recommendation (see also United Nations Strategy and Plan of Action on Hate Speech, Action 8, § 35). Public information campaigns on redress mechanisms for hate speech should therefore also indicate where those targeted by such offensive or harmful speech can find support.

### On paragraph 57:

208. Those targeted by hate speech often do not dare to report it to the competent authorities. Potential barriers that may be the causes for such underreporting are described in §§ 110-113 and 185 of ECRI GPR No. 15 on combating hate speech. They include the fear that they will not be taken seriously by the authorities, doubts as to whether an effective remedy exists, fear of repercussions, and confusion concerning the complexity and the costs of legal proceedings. The study of the UK's NatCen, The experiences of victims of hate crime from 2018 and the European Union Agency for Fundamental Rights survey, A long way to go for LGBTI equality from 2020, also illustrate the problem of underreporting as well as the lack of understanding of the types of incident that could be categorised as hate crime.

209. While ensuring the rights of the persons reporting hate speech, member States should be consistent with the rights of the defendants in particular concerning vexatious or false complaints.

210. For facilitating the reporting of hate speech, the staff of law enforcement services, the judiciary, medical services and other relevant authorities should be sensitized to the needs of those targeted by hate speech. Further guidance on a victim-sensitive approach to addressing online hate speech can be found in chapter 7 of the Council of Europe publication of Models of Governance of Online Hate Speech (Alexander Brown, 2020).

211. Member States are furthermore encouraged to set up or to support free national telephone help lines for those targeted by hate speech (see Rec(2006)8 on assistance to crime victims). These should not just cover offline hate speech but also complement the reporting mechanism for online hate speech (see § 19 of the Recommendation and § 189 of ECRI GPR No. 15 on combating hate speech).

212. Rec(2006)8 on assistance to crime victims, requires member States to ensure, at all stages of the procedure, the protection of the victim's physical and psychological integrity. Specific protection measures should be taken for victims at risk of intimidation, reprisals or repeat victimisation (see also Article 9 of the EU Council Directive 2000/43 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin).

213. Court and administrative fees or the representation fees can constitute a significant barrier to the reporting of hate speech. The provision of free legal aid (see § 55 of the Recommendation and ECRI GPR No. 2 on equality bodies to combat racism and intolerance at national level, § 16) is therefore another important measure to remedy the underreporting of hate speech.

## 6. MONITORING AND ANALYSIS OF HATE SPEECH

### On paragraphs 58 and 59:

214. Member States should continuously monitor and analyse hate speech to be able to develop efficient policies, legislation, strategies and action plans for preventing and combating it. The results of this monitoring should be used to continuously improve those policies and their impact.

215. Such evidence-based policies against hate speech require a good understanding of its root causes, the circumstances that give rise to its use, the various forms in which it is expressed, the extent of its use and its impact. The recording and monitoring of hate speech are furthermore crucial to frame, develop, and deliver appropriate responses to hate speech, which are tailored to the level of severity of its different expressions. The recording and monitoring of hate speech should cover all different layers of hate speech (see § 3 of the Recommendation) and be done separately from data collection on hate crimes, since the two phenomena may require different responses.

216. Member States are encouraged to undertake base-line studies regarding the contexts in which hate speech occurs within their jurisdiction. These studies should for example, take into account the historical, political and socio-economic grievances, intergroup tensions and occurrences of hate-motivated violence that could be related to the occurrence of hate speech. These base-line studies should adopt a clear, specific and systematic methodology that covers the relevant online and offline forums and platforms on which hate speech occurs.

217. Member States should subsequently gather data and monitor hate speech in an ongoing way and cover the different contexts in which hate speech occurs. The data should be age and gender-disaggregated and cover the perpetrators, the targets, audiences and challengers of hate speech, as well as the factors for the assessment of its severity (see § 4 of the Recommendation) and the effectiveness of interventions. Good

practices regarding effective strategies to prevent and combat hate speech should be disseminated (see the United Nations Strategy and Plan of Action on Hate Speech, Action 2 and 3). Based on such data, member States should conduct quantitative and qualitative analyses of hate speech trends in order to identify and track patterns at national and local level, analyse their potential root causes, including the motivation and drivers of the perpetrators (see § 51 of the Recommendation), and develop efficient policies to prevent and combat such trends and patterns (for details see §§ 78-87 of ECRI GPR no.15 on combating hate speech; Council of Europe's Links between Freedom of Expression and other Human Rights, CDDH (2019), §§ 287 et seq. and 436, and CM/Rec(2019)1 on preventing and combating Sexism, §§ II.B.1 and II.B.6).

218. To this end, member States should conduct at appropriate intervals, reviews of existing policies and activities undertaken by relevant national, regional and local authorities on the recording and monitoring of hate speech, offline and online.

219. Member States are encouraged to include and use in their monitoring and analysis of hate speech also the data and the findings of intergovernmental organisations (for example of the Council of Europe including ECRI and the Commissioner for Human Rights, OECD, EUROSTAT, FRA and OSCE/ODHIR), of national human rights institutions, internet intermediaries, civil society organisations, academia and other stakeholders, including those working with those targeted by hate speech.

#### **On paragraph 60:**

220. Law enforcement services should be instructed to record all complaints of hate speech prohibited under criminal law, as well as the outcome of any action taken with respect to such complaints (for details see ECRI GPR No.15 on combating hate speech, §§ 78-83).

221. Member States should set up a system for the recording of disaggregated data on hate speech that allows relevant stakeholders to follow hate speech complaints through the judiciary system to the final decision. Relevant stakeholders include policy makers, national human rights institutions, statistical services and researchers.

#### **On paragraph 61:**

222. Data and analysis on hate speech and related trends, which is collected by member States, should be widely disseminated in order to enable a broad range of stakeholders to use it for developing and implementing efficient measures to prevent and combat hate speech. These stakeholders comprise all bodies and individuals with specific responsibilities in the field of preventing and combating hate speech, but also politicians, religious and community leaders, other public figures, and the media (see ECRI GPR No. 15 on combating hate speech, § 86; chapter 4 of this Recommendation; and, Guide to good and promising practices on the way of reconciling freedom of expression with other rights and freedoms, in particular in culturally diverse societies, CDDH (2019) R91 Addendum 6, §§ 288-293).

223. To this end, member States may establish a data access framework that allows stakeholders and researchers with a legitimate interest to access relevant data, including in relation to the online environment. National data protection authorities should provide guidance on how to ensure that such access is provided in compliance with the Council of Europe' Convention 108+ Convention for the protection of individuals with regard to the processing of personal data and, where applicable, the General Data Protection Regulation (EU) 2016/679 (GDPR).

## **7. NATIONAL CO-ORDINATION AND INTERNATIONAL CO-OPERATION**

#### **On paragraph 62:**

224. Co-operation and co-ordination are needed to ensure coherence in the implementation of this Recommendation as well as policies, strategies and action plans put into place to prevent and combat hate speech. Such co-ordination contributes to a common understanding amongst relevant legislative, executive and judicial actors. The authorities should furthermore engage in co-operation and dialogue with other relevant stakeholders (see § 10 of the Explanatory Memorandum). This co-operation should be used to ensure: a clear understanding of the different manifestations of hate speech and how to assess the level of severity of hate speech; support to those targeted by hate speech; implementation of non-legal measures, especially in the field of education; and, the effective identification, monitoring, and analysis of hate speech (see in this respect CM/Rec(2016)3 on Human rights and business, CM/Rec(2018)2 on the roles and responsibilities of

internet intermediaries, the Rabat Plan of Action and ECRI GPR No 15 on combating hate speech, § 193 on addressing trans frontier dissemination of hate speech).

225. The co-ordination and co-operation process should pay particular attention to the voices and needs of those targeted by hate speech, with a view to ensuring that hate speech is comprehensively and effectively addressed.

#### **On paragraph 63:**

226. Sustainable co-operation at the international level is an important dimension of the development and implementation of a comprehensive approach to combating hate speech in line with § 1 of the Recommendation. It is essential to avoid regulatory fragmentation and conflicting legislations, in particular with regard to online hate speech that transcends national borders and requires coherent interaction with internet intermediaries (see § 82 of the Explanatory Memorandum and CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries).

227. In enhancing their co-operation efforts, as appropriate, member States should also, to the greatest extent possible, make use of existing arrangements for international co-operation, such as extradition and mutual legal assistance. In this context, relevant instruments may include, inter alia: ETS No. 30 the Convention on Mutual Assistance in Criminal Matters, and its additional protocols ETS No. 099 and ETS No. 182; where applicable, ETS No. 185 the Convention on Cybercrime and its additional Protocol ETS No. 189 concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

228. Member States should not only co-operate themselves at international level, but also encourage relevant stakeholders to participate in international fora such as the UN Internet Governance Forum (IGF) and the European Dialogue on Internet Governance (EuroDIG). They should also look to participate in discussion fora organised by civil society organisations.

229. Such co-operation may encompass (i) bilateral and multilateral exchanges between member States to promote and raise the visibility of good practices to address and combat hate speech. These are also opportunities to foster peer reviews and/or develop joint research projects, and to evaluate methodologies and resources in the field; (ii) the creation of repositories of knowledge and resources; and (iii) the promotion and the implementation of relevant international and regional instruments, including those which address the criminalisation and investigation of certain expressions of hate speech (see §§ 54 et seq. of the Explanatory Memorandum).



The Recommendation starts from the premise that hate speech is a deep-rooted, complex and multi-dimensional phenomenon. It poses a direct threat to democracy and human rights. Increasingly present online and offline, it not only undermines individuals' essential rights and fundamental freedoms, but it also humiliates and marginalize targeted individuals and groups.

The recommendation provides a working definition of Hate Speech which distinguishes different levels in accordance to their gravity and calls for implementing adequately calibrated and proportionate measures. Member states are invited to adopt an effective legal and policy framework covering criminal, civil and administrative law, and to set up and implement alternative measures, including awareness-raising, education, the use of counter and alternative speech. States are also encouraged to set up support mechanisms to assist those targeted by hate speech, conduct monitoring and engage in international co-operation and national co-ordination.

Guidance is also provided to other relevant stakeholders playing a crucial role to deliver comprehensive strategies to prevent and combat hate speech, including public officials, elected bodies and political parties, internet intermediaries, media and civil society organisations.

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