

A contribution by the Secretariat of COMECE* to the Fundamental Rights Colloquium 2016

"Media pluralism and democracy"

The Commission of the Episcopates of the European Community (COMECE) brings together the Bishop delegates from the Bishops' Conferences of the EU Member States. For more than thirty years now, COMECE has been closely involved in the process of European integration and offering its reflections to the EU institutions. COMECE is a partner of the EU institutions in the Dialogue foreseen by Article 17(3) of the Treaty on the Functioning of the European Union. It sees the Church and itself as distinct from civil society and therefore fully supports and maintains a separate Dialogue process with the EU on the basis of Article 17 TFEU. COMECE's permanent General Secretariat, based in Brussels, analyses EU policies on a day-by-day basis, striving to bring the specific contribution of the Catholic Church into the European debate.

In this context, among the various tools and channels of Dialogue at its disposal, the COMECE Secretariat appreciates the possibility of submitting a contribution to the consultation on the topic "*Media pluralism and democracy*", in view of the 2016 Annual Colloquium on fundamental rights. The elements of continuity between the topic of this year's Colloquium on fundamental rights and the one held in 2015 are to be appreciated.

We would like to focus our contribution on the aspects that are of greater importance with regard to the theme chosen and of the relevant questionnaire, as well as on further elements of interest which could have been integrated in the context of a broader scope to the present consultation. As it is correctly noted in the background document, media freedom and pluralism - which accompany the more general protection for the right to freedom of expression and information and other related fundamental rights - are an essential component of any genuine, healthy and well-functioning democracy. This is relevant on various levels: inter alia, contributing to ensuring accountability of public authorities or other respective actors, fostering active citizenship and participation, allowing for well-informed decisions, in particular in the democratic process. In general, we also support the view that media cannot be analysed under the reductive lenses of commercial and market perspectives, being they closely and vitally linked with our cultures and democracies.

5. In the context of media freedom and pluralism, what should be the role of the State, if any, in the regulation of media? What should be the role of self-regulation?
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In order to assess the role of State in its relations to social actors, including media, two core principles, among others, should be applied: the principles of subsidiarity and solidarity, both in the context of the common good. In accordance to the understanding of the Catholic Church, the principle of subsidiarity implies that "*neither the state nor any larger society should substitute itself*

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for the initiative and responsibility of individuals and intermediary bodies" (*Catechism of the Catholic Church*, §1894). The principle of subsidiarity guarantees freedom of individuals, families and intermediate social bodies to perform their plans and projects, and to intervene in public sphere, including media related issues. It is indispensable that citizens participate in the decision-making process concerning media policies. This participation, which is to be public, has to be genuinely representative and not skewed in favour of particular interest groups when the media are primary a money-making venture or a power-oriented instrument of dominion (see *Compendium of the Social Doctrine of the Church*, §416). In any democracy, freedom is a core value that should be protected and promoted in the context of the common good that requires any State, its authorities and its institutions to be at its service.

As reminded by John Paul II (*Centesimus Annus*, §40), "it is the task of the state to provide for the defense and preservation of common goods such as the natural and human environments, which cannot be safeguarded simply by market forces." In this context, this would mean that the State is responsible to create the framework and order that permits all social actors, taking into account the common good, to create, own and run their own media that allows people to express themselves (forming, informing and giving opinions) in the public sphere, always in a responsible manner that respects human dignity and the rights of others. The State should also promote media freedom, beyond primary market considerations, and guarantee the media reflect the real composition of society, In case social actors are unable, not willing or not doing it sufficiently, this social need and right of the society and its individuals and actors to receive accurate and truthful information could be performed by the State even directly through public media, respecting the principles of impartiality and ideological neutrality. This State action in the area of media is of particular relevance when protecting the cultural and social *ethos* of the country, its identity and its historical roots, with full respect for minorities. This particular dimension should be taking into account by the EU when assessing media pluralism in its Member States with fair and consistent standards that should be equally applied to all of them.

The aforesaid principle of subsidiarity goes hand in hand with the principle of solidarity, that imposes the obligation "to see the 'other' ... not just as some kind of instrument, (...), but as our 'neighbor'" (*Sollicitudo Rei Socialis*, §39), and to "feel responsible for the weaker and be ready to share with them all they possess" (*Idem*). In this regard, the Social Teaching of the Catholic Church underlines that "the media must be used to build up and sustain the human community in its different sectors: economic, political, cultural, educational and religious" (*Compendium of the Social Doctrine of the Church*, §415).

As said, both principles operate in the context of common good because "...the good of human beings cannot be attained independently of the common good of the community to which they belong" (Pontifical Council for Social Communications, *Ethics in Communications* (4 June 2000), 22, Libreria Editrice Vaticana, Vatican City 2000, pp. 23-25.). The information provided by the media to the society is at the service of the social common good: it should not be a power relation but a service relation to the society because "society has a right to information based on truth, freedom, justice and solidarity" (*Compendium of the Social Doctrine of the Church*, §415). For this reason, "the human person and the human community are the end and measure of the use of the media" (Pontifical Council for Social Communications, *Ethics in Communications*, op. cit., pp. 23-25).

With regard to the question of regulation or self-regulation of the media, in general, as highlighted in the COMECE Secretariat's contribution to the consultation on "Directive 2010/13/EU on audiovisual media services (AVMSD) A media framework for the 21st century" (page 6), self-regulatory instruments can only be considered as complementary and supporting to

legislative frameworks. However, in specific areas, such self-regulatory solutions are particularly advisable: the PACE Assembly, in its Resolution 1510 (2006) on *Freedom of expression and respect for religious beliefs* of 28 June 2006, invites at paragraph 15 "...media professionals and their professional organisations to discuss media ethics with regard to religious beliefs and sensitivities. It encourages the creation of press complaints bodies, media ombudspersons or other self-regulatory bodies, where such bodies do not yet exist, which should discuss possible remedies for offences to religious persuasions." In the context of freedom of religion and promotion of religious tolerance by media "...self-regulation, where effective, appears to be the most appropriate way to address professional issues relating to the media" (Report of the UN Special Rapporteur on freedom of religion or belief, Asma Jahangir, 21 December 2009, A/HRC/13/40, paragraph 64).

8. What should be the role of public service media for ensuring media pluralism?

First of all, we would encourage the adoption of a broad definition of the concept of "media", in line with Recommendation CM/Rec(2011)7 of the Committee of Ministers of the Council of Europe, which reads as follows: "...The Committee of Ministers, under the terms of Article 15. b of the Statute of the Council of Europe recommends that member states: – adopt a new, broad notion of media which encompasses all actors involved in the production and dissemination, to potentially large numbers of people, of content (for example information, analysis, comment, opinion, education, culture, art and entertainment in text, audio, visual, audiovisual or other form) and applications which are designed to facilitate interactive mass communication (for example social networks) or other content-based large-scale interactive experiences (for example online games), while retaining (in all these cases) editorial control or oversight of the contents". The text also recommends to "– review regulatory needs in respect of all actors delivering services or products in the media ecosystem so as to guarantee people's right to seek, receive and impart information in accordance with Article 10 of the European Convention on Human Rights, and to extend to those actors relevant safeguards against interference that might otherwise have an adverse effect on Article 10 rights, including as regards situations which risk leading to undue self-restraint or self-censorship".

Concerning the role of public service media for ensuring media pluralism, the two already formulated principles of subsidiarity and solidarity also apply. On the other hand, it is important to emphasise (perhaps even to rediscover) the high responsibilities and duties of public service media. In a number of EU Member States, certain public service media, in particular television broadcasters, tend to compete with private/commercial ones by reference to the standards, approaches, programming strategies of the latter, thereby leading to commercialisation, uniformation and, potentially, to a general decrease of the quality of the "public service" rendered to the citizens, not fulfilling the requirement of subsidiarity and leaving aside fundamental areas where the State has a direct responsibility, such as social cohesion and preservation of the culture, history and identity of the country, as well as core values such as the protection and promotion of the rights of the family. In this regard, public service media have a particular responsibility in promoting and preserving the identity, traditions and the cultural and spiritual heritage of their respective countries: the spectrum of media actors in each Member States should reflect such aspects. Article 22 of the Charter of Fundamental Rights of the EU requires from the Union respect for cultural, religious and linguistic diversity. The Catholic Church also stresses that new technologies must respect legitimate cultural differences (*Compendium of the Social Doctrine of the Church*, §415). In the COMECE Secretariat 2003 contribution to the consultation on the revision of then Directive "Television Without Frontiers", it was highlighted that "It is not sufficient for cultural diversity to be assured by the "niches" of specialised channels. These have limited audiences; they are usually watched only by the group most immediately concerned. This risks encouraging each cultural or social group to close

in on itself, even promoting intolerant behaviour. It is therefore necessary that cultural diversity is given a place on all general interest channels, particularly public service channels" and that "In religious broadcasting, it is... important and appropriate to give a privileged position to programs that present an authentically European form of religious practice".

Public service media have to benefit from independence, ideological neutrality and impartiality, and in general the highest ethical standards. In the COMECE Secretariat more recent contribution to the consultation on the theme "Directive 2010/13/EU on audiovisual media services (AVMSD) - A media framework for the 21st century" we have underlined that "A level playing field for all actors, including Church-related audiovisual media services and more generally organisations the ethos of which is based on religion, is to be ensured" while at the same time facilitating "...the respect for the specificity of such entities and of their activities". Churches, religious organisations, faith-based or ethos-based or inspired entities should be entitled to create, own and run any kind of media (TV, radio, press, online) and express their views and perspectives in the public sphere in accordance with the requirements of Article 10 of the European Convention on Human Rights, as well as to require their staff to respect their *ethos* in their activities.

9. How should public service media be organised so that they can best ensure the public service mandate?

In this regard, reference can be made to elements contained in our answer to question 8.

12. Please indicate any best practice on how to ensure an appropriate level of transparency and plurality of ownership in this area.

The Social Doctrine of the Catholic Church emphasizes that ethics in media "...relates not just to the content of communication (the message) and the process of communication (how the communicating is done) but to fundamental structural and systemic issues, often involving large questions of policy bearing upon the distribution of sophisticated technology and product (who shall be information rich and who shall be information poor?)" (Pontifical Council for Social Communications, *Ethics in Communications* (4 June 2000), 22, Libreria Editrice Vaticana, Vatican City 2000, p. 22).

Within the limits of its competences, the EU should foster transparency of media ownership: as it was rightly pointed out in Resolution 2065 (2015) on *Increasing transparency of media ownership* of the PACE Assembly of the Council of Europe at §1: "media ownership transparency is necessary to enable members of the public to form an opinion on the value of the information, ideas and opinions disseminated by the media".

We would also like to recall that Article 6.2 of the European Convention on Transfrontier Television provides that "information about the broadcaster shall be made available, upon request, by the competent authority of transmitting Party. Such information shall include, as a minimum, the name or denomination, seat and status of the broadcaster, the name of the legal representative, the composition of the capital, the nature, purpose and mode of financing of the programme service the broadcaster is providing or intends providing".

On a more general level, it is important to highlight that preserving media pluralism and its role in the democratic context of the Member States also means to both accept freedom of expression without frontiers, as stated by Article 11.2 of the EU Charter of Fundamental Rights, and recalled in the European Court of Human Rights decision in the *Ekin Association*

case, and to devise effective counter-narratives vis-à-vis third country entities and actors that attempt to mislead or manipulate the public opinion. Aggressive or violent conditioning by third country governments or actors is not admissible and must be openly condemned. In particular, we would like to recall that Article 20 of the International Covenant on Civil and Political Rights (1966) provides that “1. Any propaganda for war shall be prohibited by law. 2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”.

16. What is the impact of media convergence and changing financing patterns on quality journalism?

Sustainable public funding instruments and solutions supporting independence in media, pluralism and innovation in information should be supported. Particular attention should be paid to the way that public authorities select non State media to insert (and pay) institutional publicity and disseminate official information, in order to avoid that this practice becomes an instrument to propagate certain ideologies or interests, which contradict the common good, or to benefit certain economic or political groups. An effective and balanced application of EU State aid rules on the basis of the 2009 Communication from the Commission on the application of State aid rules to public service broadcasting, with account being taken of the specificity of the sector, can also contribute to ensuring media pluralism and diversity.

18. Please indicate any best practice that reconciles security concerns, media freedom and free speech in a way acceptable in a democratic society.

We fully support any legitimate effort to counter radicalisation, also in the media, in particular online. The fight against terrorism should be based on policies and legislation that comply with the principle of proportionality and obviously cannot be used to justify or to more easily introduce to the citizens initiatives that can actually endanger the right to freedom of expression and information and other fundamental rights and freedoms. As the COMECE Secretariat indicated in its 2015 contribution to the public consultation on "Tolerance and respect: preventing and combating anti-Semitic and anti-Muslim hatred in Europe" in view of the Annual Colloquium on Fundamental Rights (page 7) “*radicalisation of youth off and on line (in particular, in Internet social networks) should be fought against and criminal trials should be brought on with regard to those directly inciting to violence towards identified religious targets. In this regard, we would like to express appreciation for the proposed enhancement of the Radicalisation Awareness Network (RAN) in the context of the new European Agenda on Security*”.

19. Have you experienced, or are you aware of, limitations related to privacy and data protection imposed on journalistic activities?

The high value and centrality of the right to the protection of personal data (Article 8 of the Charter of Fundamental Rights of the EU) should be recalled. The right to freedom of expression and information has to be balanced with it. Already in 2007, the Committee of Ministers of the Council of Europe, correctly highlighted in its *Declaration on the protection and promotion of investigative journalism* at paragraph 5 that “*...investigative journalism needs to be distinguished from journalistic practices which involve probing into and exposing people’s private and family lives in a way that would be incompatible with Articles 8 and 10 of the European Convention on Human Rights and the related case law of the European Court of Human Rights*”.

Journalists have a duty to comply with the highest possible ethical standards and respect legal requirements in their professional activities. The PACE Assembly, stressed in its Resolution 1003 (1993) on *Ethics of journalism* of 1 July 1993 at paragraph 4 that “*news broadcasting should be based on truthfulness, ensured by the appropriate means of verification and proof, and impartiality in presentation, description and narration. Rumour must not be confused with news. News headlines and summaries must reflect as closely as possible the substance of the facts and data presented.*” Citizens are entitled to receive honest and ethically expressed opinions, which do not deny the reality of the facts or data (paragraphs 5, 6 and 36 of the same Resolution). In both cases (news and opinions), there should not be “*outside interference by either the public authorities or the private sector*” (paragraph 8 of the same Resolution). Also in *Delfi As v. Estonia* (Grand Chamber, application no. 64569/09, judgment of 16 June 2015, paragraph 132) it is recalled that “*although the press must not overstep certain bounds, particularly as regards the reputation and rights of others and the need to prevent the disclosure of confidential information, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest*”. This is particularly relevant in sensitive ethical matters such as public debates on the concept of marriage (including its traditional definition), the understanding of the role and the limits of the principle of non-discrimination (e.g. opposing certain views on family issues) in relation to other fundamental rights, the religious or theological assessment of certain moral behaviours or the topic of sexual education outside the family.

Serving the human person through the building up of a human community based on solidarity, justice and love, and spreading the truth about human life and its final fulfilment in God remain at the heart of ethics in the media (Pontifical Council for Social Communications, *Ethics in Communications*, 4 June 2000, 33, Libreria Editrice Vaticana, Vatican City 2000, p. 40). However, for the Catholic Church “*Professionals in the field of media are not the only people with ethical duties. Those who make use of the media also have obligations. Media operators who try to meet their responsibilities deserve audiences who are aware of their own responsibilities. The first duty of media users is to be discerning and selective. Parents, families and the Church have precise responsibilities they cannot renounce*” (*Compendium of the Social Doctrine of the Church*, §562).

Concerning more broadly the field of data protection, in recent years, advances have been made both at the legislative and jurisprudential level on the so-called “right to be forgotten” (see the decision of the European Court of Justice in the “Google Spain” case of 13 May 2014, C-131/12). This right must however be applied in a way that fairly and convincingly balances the interests, rights and fundamental freedoms of the data subject with those of the data controller and of the general public.

31. What would be the most efficient ways to tackle the trivialisation of discrimination and violence that arises through the spreading of hatred, racism and xenophobia, in particular online?

With regard to “hate speech”, we take note of the recent issuing of the Code of Conduct on countering illegal hate speech online. We would underline that in this sector, the most effective and opportune solutions still lie primarily in the *Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law*, in national legislation and ultimately in judicial oversight. The importance of this text in its current formulation was highlighted in the COMECE Secretariat contribution to the consultation on “*The future of EU justice policies in the light of the Union’s achievements*” (page 5).

It is essential to fight against incitement to violence or hatred, including by reference to religion. We welcome the reference made by the Code of Conduct to "illegal" hate speech, which opportunely outlines and specifies the concept. However, the notion of "hate speech" unfortunately retains its vagueness and subjectivity, which is particularly problematic in "hate crimes" cases. Concerning the principle of criminal typicality in hate crimes' cases, in the decision in the case *Achour v. France* (Grand Chamber, Application no. 67335/01, 29 March 2006) it is underlined at §41 that "*offences and the relevant penalties must be clearly defined by law. This requirement is satisfied where the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him criminally liable*". Additionally, in accordance with the decision in the case *Perinçek v. Switzerland* (Grand Chamber, application no. 27510/08, 15 October 2015) the Court stressed at § 131 that restrictions to freedom of expression require that the measure is prescribed by law, which entails, among other things, a requirement of foreseeability, in the sense that it must be "*formulated with sufficient precision to enable the person concerned to regulate his or her conduct: he or she needed to be able – if need be with appropriate advice – to foresee, to a degree that was reasonable in the circumstances, the consequences that a given action could entail*". The same judgment adds at § 134 that with regard to criminal sanctions (Article 7 of the European Convention of Human Rights) that "*the Court has consistently held that the requirement that offences be clearly defined in law is satisfied where a person can know from the wording of the relevant provision – if need be, with the assistance of the courts' interpretation of it – what acts and omissions will render him or her criminally liable*".

In the context of the COMECE Secretariat contribution to the Fundamental Rights Colloquium 2015 we had already underlined that "*...more robust legal definitions of key terms such as, inter alia, "hatred" and "discrimination" are needed at the EU level to avoid unclear or vague notions that undermine legal certainty and harm other fundamental rights and freedoms*" (page 5). Legally vague notions like "hate speech" or the inappropriate and over-used phobia-based concepts do not help to counter the phenomena in question. We need first and foremost legal certainty, when it comes to ensuring that freedom of expression, or other related freedoms such as freedom of religion, are not infringed upon. The concept of "hate speech" can all too easily be used to silence debate, give rise to self-censorship and curb diversity of opinions.

Similar considerations can be formulated with regard to the proposed extension of a broadly defined concept of "harassment" to the area beyond employment and occupation (see the draft Equal Treatment Directive). This legal development would easily lead citizens to feeling inhibited from making statements, including in the explanation of sincerely held doctrinal religious beliefs, in particular related to morality ('chilling effect'). The European Court of Human Rights stressed in the *Barfod v. Denmark* decision "*...the great importance of not discouraging members of the public, for fear of criminal or other sanctions, from voicing their opinions on issues of public concern*" (Chamber, Application no. 11508/85, judgment of 22 February 1989, Paragraph 29). No direct or indirect censorship, neither formal nor informal, should be made to those who express their moral and religious convictions in any way in private or in public, including at the workplace. The protection of the right to freedom of thought, conscience and religion requires the full protection of the right not to share an ideology, to criticise or oppose it publicly with no fear of any legal or administrative penalty, social harassment or any negative consequence.

We notice a worrying tendency to disguise rejection, dislike or hostility towards legitimate statements and attitudes based on religious principles by labelling them as so-called "hate speech narrative" against certain groups. Controversial views, criticism and fiercely opposite opinions are the salt of any society founded on human dignity, freedom, democracy, equality, the rule of law and respect for human rights.

In general, whereas countering hatred and racism is a valid and crucial goal, it is a reason for concern that such consensual and non-controversial terminology is used by some actors and institutions to try and prevent differing approaches in the Member States on sensitive ethical questions (e.g. on the so-called "LGBT rights", on abortion or on sexual education in schools, including discussion of the so-called "gender issues"). The EU should remain neutral and impartial when dealing with issues which have a highly moral dimension and are not a clear and doubtless matter with a binding criteria under international law. In the context of democratic societies, States are entitled to have different approaches according to their diverse cultural and ethical background, even at the level of constitutional traditions, and the EU should also respect the margin of States to decide on these and other controversial issues.

The idea, foreseen by the new Code of Conduct on countering illegal hate speech online, of relying inter alia on Civil Society Organisations as "trusted reporters" may lead to undue restrictions on freedom of expression and even to abuses or censorship and ultimately entails the privatisation of public responsibility. The UN Human Rights Council's Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression stated the following in his report of 16 May 2011 to the Human Rights Council (A/HRC/17/27), paragraph 43: "*The Special Rapporteur believes that censorship measures should never be delegated to a private entity (...)*." The criteria on the basis of which certain Civil Society Organisations would be chosen as part of a "representative network" of Civil Society Organisations and other "trusted partners" over others (or even over other kinds of stakeholders) are not explicitly indicated in the text. In this regard, a wide public consultation on the formulation of the Code of Conduct would have been opportune.

No reference is made in the present questionnaire to the right to freedom of thought, conscience and religion. In this sense as well, we would encourage the broadening of the scope of the discussion. As it was stated by the PACE Assembly Resolution 1535 (2007) on *Threats to the lives and freedom of expression of journalists* at paragraph 4: "*...to make democracy meaningful, freedom of expression and freedom of religion should go hand in hand*". Of course, as the passage adds: "*Violent attacks and threats, by any group invoking their religion, against expressions of opinion by words, speech or visual images, have no place in European democracies*".

Religious freedom is a sacred, inalienable and universal human fundamental right, recognised by the international and European instruments, including the UDHR, the European Convention of Human Rights, and the Charter of Fundamental Rights of the EU. It is rooted in the dignity of the person, safeguards moral freedom and fosters mutual respect. The European Court of Justice acknowledged that freedom of religion is one of the foundations of a democratic society, it is a basic human right and that its public dimension belongs to the core of that freedom (see its judgment in Joined Cases C-71/11 and C-99/11, *Bundesrepublik Deutschland v. Y and Z*).

Ideological secularism - which is not a neutral approach towards religion, but rather the opposite, an active, militant and partisan ideology - when seeking the breakdown of a right and fair cooperation between State and religious institutions, supports social intolerance against religious believers and institutions, and restricts the public dimension of religious freedom, hijacking the moral integrity of the person, and creating hostility towards any religious expression in public sphere: with regard to most religions, Christianity included, to prevent believers from expressing their faith publicly, while reducing their religion to a private phenomenon, gravely violates their fundamental right to freedom of religion.

There is a clear need to give religion a positive meaning for social life as a driving ethical force and to neutralise any attempt to misuse religious or secular discourses to promote intolerance and discrimination against anyone on the basis of on his or her religious convictions and behaviours. We would also like to emphasise that there is an important difference between a certain criticism of a religion, belief or school of thought and attacks on individuals because of their adherence to that religion or belief (see the Joint declaration made by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR (African Commission on Human and Peoples' Rights) Special Rapporteur on Freedom of Expression and Access to Information).

Accuracy in the language used is also essential: we would caution against terms like “religious violence”, and rather support expressions like “religiously motivated violence”, so as to avoid a general distorting and misleading perception that religion is the cause and root of violence, and not its misuse or misinterpretation for other goals (political, economic, etc.). Other useful expressions to describe certain situations could be: “*discrimination and violence —on the grounds of religion or belief*”, i.e., based on the religious affiliation of the victim; and (b) *discrimination and violence —in the name of religion or belief*, i.e., based on or arrogated to religious tenets of the perpetrator” (Report of the UN Special Rapporteur on freedom of religion or belief, Asma Jahangir, 21 December 2009, A/HRC/13/40, point 33). On the other hand, the PACE Resolution 2036 (2015) of 29 January 2015 on *Tackling intolerance and discrimination in Europe with a special focus on Christians* at paragraph 6.7 called upon the Council of Europe Member States to “*encourage the media to avoid negative stereotyping and communicating prejudices against Christians, in the same way as for any other group*”.

For the fundamental right to freedom of expression and information as protected at Article 11 of the Charter of Fundamental Rights of the EU - in relation to the fact that Article 11 corresponds to Article 10 of the European Convention on Human Rights - the jurisprudence of the European Court of Human Rights remains a key reference point. Legally speaking, freedom is the general rule, and restrictions to freedom should be justified. That is why restriction to freedom of expression should be considered as an exception. Recommendation CM/Rec(2014)6 of the Committee of Ministers on a Guide to human rights for Internet users (16 April 2014), stresses at paragraph 2 that “*Restrictions may apply to expressions which incite discrimination, hatred or violence. These restrictions must be lawful, narrowly tailored and executed with court oversight*”. The PACE Assembly Resolution 1510 (2006) on Freedom of expression and respect for religious beliefs, of 28 June 2006, underlines at paragraph 12 that “*...freedom of expression as protected under Article 10 of the European Convention on Human Rights should not be further restricted to meet increasing sensitivities of certain religious groups. (...)*”. Freedom of expression cannot of course be employed “*as a basis under the Convention for a right to engage in activities which are contrary to the text and spirit of the Convention and which right, if granted, would contribute to the destruction of the rights and freedoms set forth in the Convention*” (*W.P. and others against Poland*, application no. 42264/98, 2 September 2004, paragraph 2). In *Perna v. Italy* (Grand Chamber, application no. 48898/99, judgment of 6 May 2003, § 39) it is also clarified that “*As set forth in Article 10, this freedom is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly*”; whereas in *Handyside v. the United Kingdom* (judgment of 7 December 1976, §49) it was also stated that “*freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10 [of the European*

Convention on Human Rights], it 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. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no ‘democratic society’. This means, amongst other things, that every ‘formality’, ‘condition’, ‘restriction’ or ‘penalty’ imposed in this sphere must be proportionate to the legitimate aim pursued”. Furthermore, “Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation” (Prager and Oberschlick v. Austria, Grand Chamber, application no. 15974/90, judgment of 26 April 1995, § 38). Nevertheless, nobody is entitled to engage in activities that could undermine the rights and freedoms recognised by the European Convention of Human Rights, as stated in its Article 17 (on this see the European Court of Human Rights decision on the admissibility in the case *Dieudonné M’Bala M’Bala v. France*, 20 October 2015, application no 25239/13). There is no freedom to grossly offend or harm anyone, and in particular, there must be a legal rejection of any presumed “right” to gratuitously insult religious groups or members of that group for their membership, and their sacred beliefs and symbols (see the European Court of Human Rights’ decision in the case *Aydin Tatlav v. Turkey*, of 2 May 2006, §28, application no. 50692/99).

With regard to the recent *Proposal for a Directive amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities* we would also restate the opportunity to include in Article 9(1) letter c) of the Directive - in the context of the legislative process that is ensuing the proposal - a provision referring to the prohibition of offense to religious or political beliefs (Council directive 89/552/EEC, originally provided at Article 12, letter c that “*Television advertising shall not... be offensive to religious or political beliefs*”).

32. How can a better informed use of modern media, including new digital media (‘media literacy’) contribute to promote tolerance? Please indicate any best practice.

As already stressed in the COMECE Secretariat contribution to the consultation on "Directive 2010/13/EU on audiovisual media services (AVMSD) A media framework for the 21st century", the primary role of parents should be fully taken into account, including, although not exclusively, with regard to initiatives geared towards media literacy, in relation to the primacy of the rights of the mother and the father in the education and upbringing of their children in conformity with their religious, philosophical and pedagogical convictions (Article 14.3 of the EU Charter of Fundamental Rights; Article 2 Protocol I of the European Convention of Human Rights) . In this regard, the role of the State should be to support and assist parents in the exercise of these rights.

40. Do you consider that there are specific risks or problems regarding the role of platforms and social media — in relation to pluralism of the journalistic press or more generally — as regards the quality of the democratic debate and the level of engagement?

The children's rights and child protection dimension of the theme would have deserved to be among the various focuses of the present exercise. In this regard it is important to pay particular attention to the provisions of Articles 12.1, 13 and 17 e) of the UN Convention on the Rights of the Child (CRC). Cyber-harassment, and even more cyber-bullying, are a dramatic reality for a number of children and more effective counter-measures have to be introduced, including

with the contribution of the EU. Research should be further encouraged/funded on innovative methods and approaches devoted to the fight against these alarming phenomena, in consultation with the parents of the children, as primary responsible.

Effective blocking, filtering and removal tools to protect children in the online environment should not be hampered or prevented on the basis of a distorted or instrumental interpretation of the right to freedom of expression and information. It should be stressed that the question of protecting children online does not concern exclusively contents involving sexual abuse on children: it is more generally about protecting children from harmful or inappropriate contents. The Committee of Ministers of the Council of Europe adopted a Declaration on freedom of communication on the Internet (28 May 2003), in which it stresses that *“Article 3, paragraph 1: Public authorities should not, through general blocking or filtering measures, deny access by the public to information and other communication on the Internet, regardless of frontiers. This does not prevent the installation of filters for the protection of minors, in particular in places accessible to them, such as schools or libraries”*. As more generally underlined in PACE Resolution 1003 (1993) on *Ethics of journalism*, 1 July 1993 at paragraph 35 *“Having regard to the very specific influence of the media, notably television, on the attitudes of children and young people, care must be taken not to broadcast programmes, messages or images glorifying violence, exploiting sex and consumerism or using deliberately unsuitable language”*.

The American Psychological Association (APA) has also highlighted the relationship between media content and undesirable children and youth behaviour, in particular violence and sexualisation of girls (American Psychological Association, Task Force on the Sexualization of Girls (2007). *Report of the APA Task Force on the Sexualization of Girls*: <http://bit.ly/10zXuVE>. See also the APA Resolution on Violence in Mass Media: <http://bit.ly/29XQZTn>). According to the APA, *“sexualization has negative effects in a variety of domains, including cognitive functioning, physical and mental health, sexuality and attitudes and beliefs. Although most of these studies have been conducted on women in late adolescence (i.e., college age), findings are likely to generalize to younger adolescents and to girls, who may be even more strongly affected because their sense of self is still being formed”*. Among the recommended public policy measures, it would be advisable the *“development and implementation by public agencies and private organizations of media literacy programs, including interactive media, in schools that combat sexualization and objectification”*, *“to support the development of programming that may counteract damaging images of girlhood and test the effects of such programs, for example, Web “zines” (i.e., Web magazines), extracurricular activities (such as athletics), and programs that help girls feel powerful in ways other than through a sexy appearance”*, and *“to reduce the use of sexualized images of girls in all forms of media and products”*.

Concerning the proposed revision of the “Audiovisual Media Services Directive” the COMECE Secretariat welcomes the fact that with regard to the protection of minors, it would align the standards of protection for TV broadcasting and on-demand services, an idea which we had supported in the context of the relevant consultation. Finally a key question is that of accessibility for persons with disabilities. The proposed deletion of Article 7 from the “Audiovisual Media Services Directive” makes the adoption of ambitious formulations for the proposed European Accessibility Act even more necessary to ensure adequate protection.

COMECE Secretariat
Brussels, 20 July 2016