

# 2016 Annual Colloquium on fundamental rights Public consultation\* on "MEDIA PLURALISM AND DEMOCRACY"

Fields marked with \* are mandatory.

## Introduction

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Media freedom and pluralism are essential safeguards of well-functioning democracies. Freedom of expression and media freedom and pluralism are enshrined in the EU Charter of Fundamental Rights and they are at the core of the basic democratic values on which the European Union is founded.

The second Annual Colloquium on Fundamental Rights will take place on 17-18 November 2016. It will provide the stage for an open exchange on the many different aspects of media pluralism in a digital world, and the role of modern media in European democratic societies.

The colloquium should enable policymakers at EU and national level and relevant stakeholders — including NGOs, journalists, media representatives, companies, academics and international organisations — to identify concrete avenues for action to foster freedom of speech, media freedom and media pluralism as preconditions for democratic societies.

The Commission's objective with this public consultation is to gather broad feedback on current challenges and opportunities in order to feed into the colloquium's discussions. The questions asked are thus meant to encourage an open debate on media pluralism and democracy within the European Union — without, however, either prejudging any action by the European Union or affecting the remit of its competence.

**Wichtig - Öffentliche Konsultation (auf deutsch) / Important -  
consultations publiques (en français)**

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## IMPORTANT NOTICE ON THE PUBLICATION OF CONTRIBUTIONS

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\*Contributions received from this survey will be published on the European Commission's website. Do you agree to the publication of your contribution?

- Yes, my contribution may be published under my name (or the name of my organisation);
- Yes, my contribution may be published but should be kept anonymous (with no mention of the person/organisation);
- No, I do not want my contribution to be published. (NB — your contribution will not be published, but the Commission may use it internally for statistical and analytical purposes).

*For further information, please consult the privacy statement [click below]*

[Privacy statement\\_2016ac\\_public\\_consultation.pdf](#)

### A. Identifying information

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1. In what capacity are you completing this questionnaire?

- Individual/private person
- Civil society organisation
- Business
- Academic/research institution
- Other (please specify)

2. If you are answering this consultation as a private citizen, please give your name.

3. If you are answering this consultation on behalf of an organisation, please specify your name and the name of the organisation you represent.

Adina Portaru, ADF International

Is your organisation included in the Transparency Register?

- Yes
- No

If yes, please indicate your Register ID-number

Allia166030252

If your organisation is not registered, we invite you to register [here](#). Please note that it is not compulsory to register to reply to this consultation. Responses from organisations that are not registered will be published as part of the individual contributions.

*Citizens have a right to expect that European institutions' interaction with citizens associations, NGOs, businesses, trade unions, think tanks, etc. is transparent, complies with the law and respects ethical principles, while avoiding undue pressure, and any illegitimate or privileged access to information or to decision-makers. The Transparency Register exists to provide citizens with direct and single access to information about who is engaged in activities aiming at influencing the EU decision-making process, which interests are being pursued and what level of resources are invested in these activities. Please help us to improve transparency by registering.*

4. If you are an individual/private person:

a) What is the country of your nationality?

- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovak Republic
- Slovenia
- Spain
- Sweden
- United Kingdom
- Other (please specify)

Other (please specify)

b) What is your age group?

- Under 18
- 18-30
- 31-40
- 41-50
- 51-60
- 61-70
- Over 71

## B. Media freedom and pluralism

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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?

6. Could you provide specific examples of problems deriving from the lack of independence of media regulatory authorities in EU Member States?

7. What competences would media regulatory authorities need in order to ensure a sufficient level of media freedom and pluralism?

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

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

10. Have you experienced or are you aware of obstacles to media freedom or pluralism deriving from the lack of independence of public service media in EU Member States?

- Yes
- No

If yes, please give specific examples.

11. Are you aware of any problems with regard to media freedom and pluralism stemming from the lack of transparency of media ownership or the lack of rules on media ownership in EU Member States?

- Yes
- No

If yes, please give specific examples.

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

13. What is the impact of media concentration on media pluralism and free speech in your Member State? Please give specific examples and best practices on how to deal with potential challenges brought by media concentration.

14. Are you aware of any problems related to government or privately financed one-sided media reporting in the EU?

- Yes
- No

If yes, please give specific examples.

15. Please indicate any best practice to address challenges related to government or privately financed one-sided media reporting while respecting freedom of speech and media pluralism.

## C. Journalists and new media players

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

17. Have you ever experienced, or are you aware of, any limitation imposed on journalistic activities by state measures?

- Yes
- No

If yes, please give specific examples and further information, including justifications given by authorities and the position taken by journalists.

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

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

- Yes
- No

If yes, please give specific examples and further information.

20. Have you experienced, or are you aware of, problems linked to hate speech and threats directed towards individuals exercising journalistic activities?

21. Are you aware of cases where fear of hate speech or threats, as described above, has led to a reluctance to report on certain issues or has had a generally chilling effect on the exercise of freedom of speech?

- Yes
- No

If yes, please give specific examples and further information.

22. Have you experienced, or are you aware of, problems concerning journalists' safety and security in the EU?

- Yes
- No

If yes, please give specific examples.

23. Please indicate any best practice for protecting journalists from threats against their safety and security.

24. Have you ever experienced or are you aware of pressures put by State measures on journalistic sources (including where these sources are whistleblowers)?

- Yes  
 No

If yes, please give specific examples.

25. How would pressures on journalistic sources be best addressed?

26. Please indicate any best practice for protecting the confidentiality of journalistic sources/whistleblowers.

27. Have you experienced, or are you aware of, censorship (including self-censorship) in the EU?

- Yes  
 No

If yes, please give specific examples.

See Paul Coleman, 'Censored: How European 'Hate Speech' Laws are Threatening Freedom of Speech' (Kairos Publications: Vienna), 2016, pp 47-83.

28. Have you experienced, or are you aware of, any obstacles to investigative journalism, which may include legal provisions in force or a lack of resources?

29. Do you consider that the level and intensity of investigative journalism, the number of journalists engaged in such activity, the resources available, the space in print and the time available in audiovisual media for the publication of results of investigations has changed over time?

- Yes  
 No



If yes, please give specific examples.

30. Please indicate any best practice facilitating investigative journalism

## D. Hate speech online

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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?

The ability to speak freely is the most efficient way to combat hatred, racism and oppression. As British UN Representative Lady Gaitskell stated half a century ago, freedom of speech is 'the foundation-stone on which many of the other human rights are built; without freedom of speech, many cases of racial discrimination remained completely undiscovered' (Third Committee, A/C.3/SR.1315, 22 October 1965, para 1).

In contrast to the great risk that criminalizing speech causes more tension and aggravation than it actually alleviates, there is a lack of evidence that 'offensive', 'insulting' or 'hateful' speech alone causes acts of violence or of discrimination. Although such a link could be made, it is not enough to preemptively ban speech in a pluralist, inclusive and democratic society.

Inherent in the concept of a democratic society is the idea that the public square must be populated by people holding diverse viewpoints, beliefs and moral convictions. Ideas and opinions should be freely expressed, as it is inevitable that individuals or groups will be offended by ideas and opinions they profoundly disagree with. This was recently confirmed by the first Vice-President of the European Commission in charge of fundamental rights, Frans Timmermans, who stated, in the context of the ongoing dialogue with churches, religions, philosophical and non-confessional organizations, that 'living together means being able to manage differences, even when we fundamentally disagree.'

The perception of the 'trivialisation' of discrimination can vary according to subjective sensitivities. It should in no way constitute a licence for suppressing the fundamental right to freedom of expression. Limitations on speech should be exceptional and must be narrowly construed, well-defined, proportionate, legitimate, pursuing a clear aim and must ensure that less restrictive means do not exist.

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.

## E. Role of free and pluralistic media in a democratic society

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33. How do developments in media freedom and pluralism impact democracy? Please explain.

Freedom of expression and a plurality of viewpoints, either online or offline, foster democracy. In the words of the European Court of Human Rights:

'Freedom of expression is one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man (...) it is applicable not only to 'information' or 'ideas' that are favorably 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' (Handyside v. UK, App no 5493/72 (ECHR, 7 December 1976), para 49).

Limits on speech should remain an exception that is narrowly construed, well-defined, proportionate, legitimate, pursuing a clear aim, and must ensure that less restrictive means do not exist. In other words, limitations should be mindful of safeguarding the free exchange of ideas and opinions. 'Hate' speech laws (either online or offline) do not meet these standards because they are open to vagueness, arbitrariness, and often illegitimately restrict free speech.

It is with concern that we note growing attempts made to pass more expansive 'hate' speech laws that significantly limit or effectively chill freedom of expression, by calling for legal action on alleged hatred, perceived links, purported motivation, and potential intent to label speech as violent or discriminatory. A recent publication admits that 'even if it eschews clear definitions, "hate" speech (be it conveyed through text, images or sound) can be identified by approximation through the degrading or dehumanizing functions that it serves' (Iginio Gagliardone et al., 'Countering Online Hate Speech' (2015), 10).

In Europe there are countless examples of such subjective and loosely drafted 'hate' speech laws.

For example, on 1 April 2013 a new amendment to Hungary's Constitution was introduced, stating that 'the right to freedom of speech may not be exercised with the aim of violating the dignity of the Hungarian nation or any national, ethnic, racial or religious community. Persons belonging to such communities shall be entitled to enforce their claims in court against the expression of an opinion which violates the community.' The overzealous drafting and application of 'hate' speech domestically is also illustrated by the Danish Criminal Code, which enshrines that insulting the flag of the United Nations carries a two year prison sentence (Danish Criminal Code, para 110 (e)). Such loosely defined restrictions on speech abound throughout Europe.

Given their subjective and vague nature, 'hate' speech laws are what state authorities arbitrarily decide and such laws are therefore extremely dangerous. They confer an extraordinary amount of power on the state to police the speech of its citizens. And once the premise is accepted that the state can give or take away the right to speak freely, there is no logical stopping point. This goes against the founding values of democracy and the very essence of 'fundamental rights doctrine'.

34. Who do you think is the most suited to help increase media literacy? Please rank and explain why.

	The most important - 1	2	3	4	5	6	7	The least important - 8
Family	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Friends	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
School	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Public authorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Media, including online providers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Dedicated learning systems using e.g. radio, TV, mobile phones and the internet (please specify)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Civil society	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other (please specify)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other - please specify

35. Please give specific good examples or best practices for increasing media literacy.

36. What would be concrete ways for free and pluralistic media to enhance good governance and transparency and thus foster citizens' democratic engagement (e.g. self-organisation for political purposes, participation in unions, NGOs, political parties, participation in elections)?

37. What are best practices of free and pluralistic media contributing to foster an informed political debate on issues that are important for democratic societies (e.g. in terms of the nature of the content or in terms of format or platforms proposed)?

38. Which measures would you consider useful to improve access to political information across borders? Please indicate any best practice.

39. Do you consider that social media/platforms, as increasingly used by candidates, political parties and citizens in electoral campaigns play a positive role in encouraging democratic engagement?

- Yes
- No

If yes, please give specific aspects and best practices that you would recommend.

If no, please give specific aspects and examples of negative impacts, and possible alternatives to address them.

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?

- Yes
- No

If yes, please give specific examples and best practices that you would recommend to address these risks or problems.

## Contact

JUST-COLLOQUIUM@ec.europa.eu

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