

A: Background to Consultation

The second Annual Colloquium on Fundamental Rights, organised by the European Commission, will be held in Brussels on 17-18 November 2016. This year's theme will be *Media Pluralism and Democracy*.

First Vice-President Frans Timmermans, Commissioner Günther Oettinger and Commissioner Jourová will lead discussions with a wide range of experts on the key role of a free and pluralist media in democratic societies. Participation is by invitation only and the event will be live-streamed.

The Commission is conducting an online public consultation to gather feedback on the state of media pluralism and democracy in the EU in order to facilitate the discussion. The deadline for the consultation is 14 July 2016. The Commission requests that answers be kept concise and to the point and that links to relevant online content be included where possible.

B. Media freedom and pluralism

Q. 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?

In Ireland, the role of the State in media regulation is varied depending on the type of media.

For example, broadcast media, including broadcast advertising, is regulated by the Broadcasting Authority of Ireland ([BAI](#)), a statutory independent regulator funded by a levy on all broadcasters. The [objectives](#) of the BAI include, amongst other things, the promotion of diversity, the sustaining of independent and impartial journalism and a general obligation to ensure the provision of open and pluralistic broadcasting services.

On-demand audiovisual services fall under the auspices of the co-regulatory On-Demand Audiovisual Services Group (ODAS). On-demand audiovisual services who wish to provide their services in Ireland must sign up to the [ODAS Code of Conduct](#). The BAI provide the regulatory backstop for this code.

Advertising in general is regulated by statute, primarily the Consumer Protection Act 2007 (amended by the Competition and Consumer Protection Act 2014). Consumer protection overall is the responsibility of the Competition and Consumer Protection Commission (CCPC). However, an independent self-regulatory body known as the Advertising Standards Authority of Ireland ([ASAI](#)) also exists. The ASAI was set up and is financed by the advertising industry and provides a self-regulatory mechanism for the Irish advertising market as a whole. The ASAI are well-established and are referenced as a standard setting body in the ODAS Code of Conduct.

In relation to media mergers, all mergers that take place in Ireland or involve substantive Irish interest must be cleared on competition grounds by the CCPC before proceeding. Media mergers,

due to the strong argument of public interest, are subject to further examination. [Under](#) the CCP Act 2014, the relevant Minister (currently the Minister for Communications, Energy and Natural Resources) is obliged to conduct an examination of the proposed merger with regard to, amongst other things, media plurality. The Minister may clear the proposed merger, clear it with conditions or direct the BAI to further examine the proposed merger before the Minister takes their decision. Guidelines for media mergers are available [online](#).

In terms of the press, the Press Council of Ireland and the Press Ombudsman comprise a [system](#) of self-regulatory and independent regulation for the print and digital media in Ireland. This system operates with the support of editors and journalists and is funded by a levy on member titles. The [Defamation Act 2009](#) recognises the role of the Press Council in ensuring the protection of the freedom of expression of the press; protecting the public interest by ensuring ethical, accurate and truthful reporting by the press; maintaining certain minimal ethical and professional standards among the press; and, ensuring the privacy and dignity of the individual is protected.

As can be seen from the above, the regulation of media in Ireland takes place primarily through independent, co-regulatory and self-regulatory bodies. The role of the State, in this regard, is primarily hands-off aside from the initiation and facilitation of a number of these bodies.

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

As mentioned above, Ireland's foremost independent media regulatory authority is the BAI. There are currently no problems with the independence of the BAI.

However, Ireland is aware of problems elsewhere in the EU; for example, as described in the Commission's Impact Assessment on the proposed revision of the Audiovisual Media Services Directive (AVMSD). As a result, Ireland supports the European Commission's intention to establish an obligation on Member States to establish independent regulatory authorities and guarantee their independence in its proposal to revise the AVMSD.

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

First and foremost, a regulatory authority needs to be independent in the performance of its functions. Secondly, the authority needs to be adequately resourced.

In terms of competences, the BAI possesses a wide range of [functions](#) under the Broadcasting Act 2009 which it must conduct in accordance with its objectives in terms of diversity, plurality, etc. Amongst other things, the BAI possesses the following functions (*this list is not exhaustive*):

- To prepare or make broadcasting codes and rules.
- To facilitate the right of reply.

- To award contracts for the provision of television and sound broadcasting services.
- To make recommendations regarding the funding of public service broadcasters.
- To collect and disseminate information, conduct research and to co-operate with other similar bodies as it deems needed.

Section 31 of the 2009 Act imbues the BAI with “*all the powers necessary, incidental or conducive to their functions*”, including (*not exhaustive*) the power to make contracts or other agreements, to acquire copyrights and other similar properties, and to undertake, sponsor or commission research.

Furthermore, under Section 33 of the 2009 Act to BAI are obliged to impose a levy on broadcasters in order to fund their regulatory functions. The BAI have the discretion to set the terms of the levy and may differentiate between public, commercial and community broadcasters in its application. This ensures adequate resourcing of the BAI.

The Minister may confer on the BAI other additional functions in relation to broadcasting services as they may from time to time consider necessary. Either House of the Oireachtas (*Parliament*) may by resolution annul such an order.

Ireland considers the competences of the BAI, aligned with its objectives and supported by its funding mechanism, to provide a good basis for ensuring a sufficient level of media freedom and pluralism.

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

Public service media is, at its best, inherently pluralistic. In Ireland, there are two public service broadcasters, [RTÉ](#) and [TG4](#), which provide both television and sound broadcasting services along with a limited number of digital services.

The [objectives](#) of both PSBs are laid out in the Broadcasting Act 2009 and must be carried out in accordance with, amongst other things, the following (*this list is not exhaustive*):

- To be responsive to the interests and concerns of the whole community, be mindful of the need for understanding and peace within the whole island of Ireland, ensure that the programmes reflect the varied elements which make up the culture of the people of the whole island of Ireland, and have special regard for the elements which distinguish that culture and in particular for the Irish language.
- To uphold the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression.
- To have regard to the need for the formation of public awareness and understanding of the values and traditions of countries other than the State, including in particular those of other Member States.

- To provide a comprehensive range of programmes in the Irish and English languages that reflect the cultural diversity of the whole island of Ireland and include programmes that entertain, inform and educate, provide coverage of sporting, religious and cultural activities and cater for the expectations of the community generally as well as members of the community with special or minority interests and which, in every case, respect human dignity.
- To provide programmes of news and current affairs in the Irish and English languages, including programmes that provide coverage of proceedings in the Houses of the Oireachtas and the European Parliament.

The [objects](#) of TG4 vary slightly from RTÉ due to its role as Ireland's principal Irish language broadcaster.

It is important to note that as PSBs are free-to-air and not for profit that they provide services which commercial operators would not provide given the lack of market incentive. Furthermore, in terms of news media it is widely recognised that PSM generally set the standards for reporting which are then followed by commercial operators. This means that PSBs both broaden the diversity in the sector and raise the level of quality in the content available.

Ireland considers the above a good basis for determining the role of public service media in ensuring media pluralism.

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

As with regulatory authorities, public service media (PSM) should be independent in their objectives /functions in order to ensure their public service mandate.

In Ireland, subject to the requirements of the Broadcasting Act 2009, RTÉ and TG4 are independent in pursuance of their objectives.

PSM should also be appropriately funded in order to ensure their public service mandate. Funding for PSM in Ireland is primarily derived from the [television licence](#), a fee paid by all owners of television sets in the State. The revenue from this licence directly funds RTÉ and TG4 to differing degrees. TG4 also receives funding directly from the exchequer and both broadcasters engage in commercial activities, primarily advertising, in order to generate further revenue.

7% of revenues from the licence are paid into a broadcasting fund administered by the BAI. This [fund](#) supports the television and radio production sectors in Ireland through various schemes.

Unfortunately, following on from the 2008 financial crisis commercial advertising revenues have fallen. This fall in revenue, combined with the growth of services which retransmit programmes into Ireland with targeted advertising (opt-out advertising), has led to an overall [decline](#) in investment in original programming in Ireland, particularly by the PSBs.

This situation highlights the importance of appropriate funding of PSM in ensuring their public service mandate.

Q. 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.

We are aware of the work carried out by the Centre for Media Pluralism and Media Freedom on the Media Pluralism Monitors for 2014 and 2015.

Q. 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.

As per Q10 above.

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

As mentioned in the answer to question 1, media mergers in Ireland are subject to extensive examination and, in particular, are assessed for their potential effect, whether negative, positive or neutral, on media pluralism in the State.

Furthermore, under the CCP Act 2014 the BAI are obliged to periodically prepare a report describing the ownership of media businesses in the state, any changes that have occurred over the previous years and to analyse what effect, if any, these changes had on media plurality in the State. The most recent report is available [here](#).

The BAI also conducts other research relating to media plurality in the State. One recent example was a partnership with the Reuters Institute to include Ireland in the latter's Annual Digital News Report. The Irish section of this report is available [here](#).

These reports by the BAI feed into the media merger assessment process.

Q. 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.

As per response to Q12 above

Q. 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.

N/A

Q. 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.

N/A

C. Journalists and new media players

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

Despite the growth of new media and the acceleration of media convergence, it appears that traditional journalism is still primarily financed by "old" media. Given this state of affairs, as the market rebalances between new and old media there is less money available to fund quality journalism.

However, as new media matures and old media adapts it is likely that journalism, though perhaps itself changed by this process, will be bolstered by new funding mechanisms. An example of adaptation among newspapers is the online [paywall](#). Whether or not this particular adaptation succeeds is another matter, but the fact that such adaptation is occurring is a sign that media organisations are actively seeking out new funding mechanisms for journalism.

New media has also led to an explosion in citizen journalism, which, while not necessarily abiding by the important safeguards that traditional journalism follows, has further opened up the public sphere to the actual public. However, it is important that accuracy, objectivity and quality, as the core values of journalism, be encouraged as part of overall media literacy education.

Q. 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.**

Article 40(6)(i) of the [Irish Constitution](#) sets out the following:

“... blasphemous, seditious, or indecent matter is an offence which shall be punishable in accordance with law.”

It has long been argued by journalist and other civil society actors that this provision of the Constitution interferes with the right to freedom of expression and limits journalists in their activities.

The recent [Programme for Government](#) proposes that a referendum be held on removing this offence from the Constitution.

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

As mentioned above, Ireland considers the independent regulation of media to be a best practice in this area.

Q. 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.**

N/A or No.

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

N/A

Q. 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.**

N/A or No.

Q. 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.**

N/A or No.

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

N/A

Q. 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.

N/A or No.

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

N/A

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

N/A

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

- Yes
- No
- If yes, please give specific examples.

N/A or No.

Q. 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?

Investigative journalism is, by definition, expensive. Many would argue that as traditional media focuses on more commercially lucrative content and as companies struggle to monetise new media, that the resources available for investigative journalism is quickly shrinking.

Under article 40(6)(i) of the Irish Constitution, the personal rights of the citizen which the state is bound to protect include the right to a good name. This is reflected in the Defamation Act 2009. Many have argued that this state of affairs allows persons of means to threaten or pursue defamation cases against journalists or media that the latter do not have the financial capacity to defend against which leads to a chilling effect.

The [transcript](#) from a 2014 Joint Committee meeting in the Oireachtas lays this issue out in great detail. One key point made was that in 2008 Oxford University carried out a study that ranked Ireland second in Europe in terms of the cost of dealing with defamation claims and that Ireland was ten times more expensive than the country ranked third, which was Italy.

Q. 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.

N/A or No.

Q. 30. Please indicate any best practice facilitating investigative journalism

N/A

D. Hate speech online

Q. 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?

Determining the most efficient ways to tackle hate speech and its resulting effect, particularly online, is a very difficult task. What is considered an appropriate response will differ from country to country and from person to person. Therefore, any regulatory or legal regime should reflect the balanced needs of the citizens concerned, tempered with respect to fundamental human rights, and also be flexible enough to not be overzealous and yet responsive and robust enough to not be ineffective.

Alongside its proposal to amend the AVMSD, the Commission also announced an “alliance” with a number of large internet platforms in the form of a [code of conduct](#) to tackle hate speech online. Although Ireland has had success with similar self and co-regulatory regimes in different environments, the practical application of this code in the online environment and thus the efficiency and effectiveness of this approach remains to be seen

Q. 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.

New digital media has opened up the world in an unprecedented manner. People from all across the world can communicate with each other instantaneously and share their cultures and beliefs. In this way, the simple existence of new digital media promotes tolerance by facilitating sharing, communication and collaboration across the globe.

However, this instantaneous communication also means that the old adage that “a lie can travel halfway around the world while the truth is putting on its shoes” is now truer than ever. The ability to evaluate sources and news and the knowledge of the tools that can help one do so are part and parcel of media literacy.

Best practices in this regard include the uptake of tools such as content labelling and classification systems and parental control systems. Overall, the dissemination of “literacy” through education and the curation of wider public awareness is of great importance.

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

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

Freedom of the press is essential to democracy. Without freedom of the press, a well-informed citizenry cannot exist. Without a well-informed citizenry, democracy cannot function in any meaningful sense of the word.

Media pluralism, as a proxy for diversity of opinion and experiences in the media and thus the public consciousness, is also of vital importance. A pluralistic media is dynamic and fosters debate and collaboration, which bolsters democracy.

Q. 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 8 - least important

- **Family**
- **Friends**
- **School**
- **Public authorities**
- **Media, including online providers**
- **Dedicated learning systems using e.g. radio, TV, mobile phones and the internet (please specify)**
- **Civil society**
- **Other (please specify)**

Other - please specify

N/A

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

Refer to Q. 32.

Q. 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)?

N/A

Q. 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)?

N/A

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

N/A

Q. 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.

N/A

Q. 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.

As touched upon in the answer to Q. 32, there is a risk with instantaneous communication that false or manipulated (intentionally or not) information can spread in such a fashion that it embeds itself as a “true fact” in the public sphere before it can be countered. This obviously has implications for the quality of the democratic debate and public engagement.

However, this is not a new phenomenon that can be attributed to online platforms or social media. Such technologies have accelerated the process and have given it new dimensions but they did not give rise to it. As such, the solutions are what they have always been; education, the provision of tools to allow for better public debate, and an independent, objective and pluralistic public service media.

These solutions will need to be adapted for the digital age and this is happening but they remain, at the core of the issue, the best solutions.