

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

Fields marked with * are mandatory.

Introduction

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.

IMPORTANT NOTICE ON THE PUBLICATION OF CONTRIBUTIONS

*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 (NB — your contribution will not be published, but the Commission may use it internally for statistical and analytical purposes).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

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.

Die Medienanstalten – Arbeitsgemeinschaft der Landesmedienanstalten in der Bundesrepublik Deutschland (Die Medienanstalten)

Is your organisation included in the Transparency Register?

- Yes
- No

If yes, please indicate your Register ID-number

84697226195-47

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

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 the broadcasting field, the role of the legislator should be to set up a main legal framework with safeguards that enable and ensure diversity of views, plurality of opinions and freedom of information. It is up to the legislator to decide on the requirements that allow for an appropriate balance between the different fundamental rights involved.

Law should also provide that state influence on media remains minimal. For example, political parties should not be allowed to hold a relevant interest in media companies and should declare any financial involvement in this respect.

Also, the independence of the Media Regulator from both government and audiovisual stakeholders and the requirements that ensure such independence should be laid down by law.

As to co- and self-regulation in the audiovisual field, the responsibility of industry should be further engaged in view of the more and more converging media environment.

DLM supports the approach to increasingly encourage Co-Regulation as a complementary instrument to state regulation. Co-Regulation implies that the legislators provides for a number of general requirements - e.g. Art. 4 (7) of the EU-Commission's recent proposal for a revision of the AVMS-D - and for a legal backstop in cases of breach or non-compliance with the objectives and standards of the codes. It should remain the responsibility of legislative and judicative powers to define and clarify the substantive terms and main requirements where fundamental rights are involved. For example, the legislator should define the relevant criteria according to which a content may qualify as " hate speech", and not industry in a code of conduct.

In Germany, self-regulation bodies in the audiovisual media industry include the FSK: Freiwillige Selbstkontrolle Film , the FSF: Freiwillige Selbstkontrolle Fernsehen and the FSM: Freiwillige Selbstkontrolle Multimedia . The self-regulatory bodies have to comply with quality standards and with general requirements of media law. The Media Authorities can intervene in specific cases of non-compliance.

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

DLM is a member of the European Regulators Group for Audiovisual Media Services (ERGA), an expert group who advises the Commission on matters related to audiovisual media services. To answer this question we would like to refer to the ERGA's Statement of 8 April 2016 on alarming developments for the independent and effective functioning of media regulators in Europe:
<https://ec.europa.eu/digital-single-market/en/news/erga-statement-alarming-developments-independent-and-effective-functioning-media-regulators>
and ERGA's Statement on the necessity of independent media following political decisions taken in Poland:
<https://ec.europa.eu/digital-single-market/avmsd-audiovisual-regulators>

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

Again, reference is made to ERGA and its Report on the independence of National Regulatory Authorities of 11 January 2016 as well as to the summary of its recommendations:
<https://ec.europa.eu/digital-single-market/en/news/erga-report-independence-national-regulatory-authorities>

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

Legal safeguards should ensure the core obligation of public service media to make a positive contribution to the pluralistic formation and expression of public opinion. The concept of "plurality" should apply both to organization (composition of the supervising board, journalistic standards etc) and to the comprehensive diverse content offer.

In defining the role of public service media account should be taken of the European model to ensure a stimulating co-existence of public and commercial media both contributing to diversity and media pluralism. Public financing of public media should be structured in a way that it allows commercial media to perform and to sufficiently refinance their investment in content through advertising or other business models. Public Financing of public service media should imperatively be at arm's length to government.

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

Independence from government (Staatsferne), plurality in the composition of the supervisory board/committee, self-binding high quality standards to ensure journalistic independence and broad content diversity should be ensured. Political parties should not be allowed to hold a relevant interest in media companies.

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.

[Explanation: The answer "No" has been given solely with regard to the German situation.]

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.

[Explanation: The answer "No" has been given solely with regard to the German market.]

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

Plurality of opinion in the broadcasting sector is of great importance for civil society. The law must guarantee openness and transparency as methods for encouraging an active and pluralistic public sphere. The competent authorities must be independent and able by law to achieve transparency and people should be informed by the authorities about the company or person behind the media. In general the law should restrict ownership concentration as well as provide ways and means to help the media to fulfil its role in democratic processes.

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.

Measured by the viewers' television use, oligopolistic market conditions can still be observed. In nation-wide television the four broadcasting groups ARD, ZDF (both public service), Mediengruppe RTL Deutschland and ProSiebenSat.1 Media AG (both commercial) have established themselves. Measured by the average viewing shares, their programming offerings accounted for about 90 % of television usage. The big channels continue to be market leaders. In spite of this market situation a strong and independent public service broadcasting system serves as a counter-balance in a democratic media system and contributes significantly to guaranteeing a minimum standard of pluralism and diversity.

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.

[Explanation: The answer "No" has been given solely with regard to the German market.]

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.

According to Article 25 (1) German Interstate Broadcasting Treaty the editorial content of commercial broadcasting shall convey plurality of opinion. The major political, ideological and social forces and groups shall be granted adequate opportunity for expression in the general channels; minority views shall be taken into account. According to para. 2 "a single service must not exert an exceedingly imbalanced influence on public opinion". The Article contains also some further rules on how to secure a certain plurality within other channels.

Broadcasters must in particular prevent that plurality is undermined by the circumstance that an important economic or political group or the state can take a dominant position over (or within) a broadcasting corporation that allows them to exert pressure on broadcasters. Media-specific concentration control aims at preventively countering the creation of predominant power over public opinion because adverse developments could be reversed, if at all, only to a certain degree and with great difficulties.

In order to secure a diversity of opinions and to keep the access to information open, it must be the aim of regulatory concepts of media concentration law to prevent the creation of a dominant power over public opinion by any provider in the opinion market. In case that such dominance has already been created it must be neutralised by adequate measures and requirements, such as the obligation to divest of participations in opinion-relevant offerings.

Furthermore under German law the State cannot be active as a broadcaster.

C. Journalists and new media players

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.

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

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?

One way of tackling all kinds of hate speech online would be a clear statement of the most important providers of communication platforms (facebook, google etc) that they do not tolerate any kind of hatred, racism and xenophobia on their services and that they consequently exclude users who repeatedly violate the rules of respectful interaction. In addition, they should provide effective reporting mechanisms on their services in order to motivate users to fight against any kind of derogatory and insulting remarks.

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.

The promotion of a tolerant and respectful behaviour is crucial when it comes to the teaching of media literacy. Children's and youngster's attention must be called to the fact that the rules for a peaceful coexistence in the offline world are also to be applied in the online world. Furthermore they should become aware of the reasons why it is so much easier to discriminate others in the online sphere than in the offline world. The approaches of klicksafe (<http://www.klicksafe.de/themen/kommunizieren/cyber-mobbing/>) as well as the information provided by handysektor (<https://www.handysektor.de/mobbing-mut/uebersicht.html>) can be mentioned as best practices here.

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

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

Media Freedom is the basis for a free and independent formation of opinion. The more intensive it is secured and the less the State is taking influence over the freedom of the media, the higher are freedom and independence. In other words, any limitation to media freedom preventing the development of free and pluralistic media systems is hindering and endangering democracy. It has to be noted that the effects of segmented publics (meaning the phenomenon of filterbubbles) should not be underestimated in this regard. In the same vein, the loss of plurality in local and regional media has detrimental effects on democratic opinion-making.

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 checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
School	<input checked="" 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 checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Media, including online providers	<input type="radio"/>	<input type="radio"/>	<input checked="" 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 checked="" 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 checked="" 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 checked="" type="radio"/>

Other - please specify

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

Depending on purpose and targeted audience, media literacy is (also) a task of society as a whole, although schools should have the main responsibility. In this regard, the German Media Authorities are participating in several media literacy projects, like Internet ABC (www.internet-abc.de), Flimmo (www.flimmo.de/) and juuuport (www.juuuport.de). Besides, work on media literacy in citizen's media is of predominant importance as it is offered to all age groups and social classes.

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)?

Often negative news coverage prevails in the media, be it already at the stage of selecting the topics or when assessing certain events. It might be helpful to reach a balanced selection of topics and to also highlight positive aspects. Usually, at the moment news coverage on citizen's engagement is not widespread.

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)?

Citizen's media are contributing significantly to public debates as they are encouraging citizens to report on socially relevant, unsalaried projects. In this vein, they are initiating a positive opinion-making process.

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

Correspondents' networks should be fostered in order to enable competent information on foreign countries. Cross-border services are necessary to enhance understanding for complex correlations, in particular if they touch topics that are alien to citizens' habitual environment.

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.

On the one side, this is favourable as new audiences can be reached and awareness amongst these groups might be raised.
On the other side, certain risks arise whenever statutory institutions are acting through the provision of media, in particular regarding free and independent news coverage.

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.

A problem might be the strong influence that intermediaries have on the independent opinion-making process. In order to attenuate these risks, a comprehensive legal framework in this regard is needed.

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