

# 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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DE

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 (NB — your contribution will not be published, but the Commission may use it internally for statistical and analytical purposes).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

Sebastiaan Moll of NDP Nieuwsmedia, the Dutch News Media Association

Is your organisation included in the Transparency Register?

- Yes
- No

If yes, please indicate your Register ID-number

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?

Media freedom and pluralism are fundamental values enshrined in the Charter of Fundamental Rights of the European Union and essential pillars of each democracy. The Netherlands performs well in safeguarding media pluralism.

In order to guarantee media freedom and pluralism, a balanced approach of both State and self-regulation is needed. State should play an active role to ensure protection of journalists and their sources from undue influence. States or the industry itself shall be transparent on media ownership and of funding sources. Legislation on media concentration can be harmful to the continuity of media companies. Dutch media concentration regulation was removed, after the government rightly recognized that media ownership does not have a direct relation to editorial freedom and the content of media. Wrongly, this argument is not included in the Media Pluralism Monitor of 2015.

On the other side, self-regulation in the publishing industry is crucial to guarantee media freedom and foster independent journalism. Avoiding any form of censorship has never been so important. Following the on-going attempts to undermine media freedom (such as in Poland and Hungary), the EU needs to do more to safeguard media self-regulation. Legislative actions tackling hate speech, graphic and violent content, and nudity should never be translated into filtering and/or censoring tools.

We conclude that from a legal point of view, rules and regulations provide a solid base for media pluralism in the Netherlands.

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

Audiovisual Media regulatory authorities' independence is crucial to prevent any political, partisan and governmental control over the media.

There are no Dutch examples of problems deriving from a lack of independence, but specific examples might include: State television acting as the operational arm of the government; regulatory agencies which retained a high degree of political control; monopoly of the media by partisan groups.

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

The combined competences of rule-making and rule-application in the media policy field, distinguishes the Audiovisual Media regulatory authorities from an executive branch of the government or the courts.

This combination ensures a sufficient level of media freedom and pluralism as it helps institutionalizing credible political commitments beyond any cyclical electoral terms.

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

The debate on the role of PSBs mainly relies on how we ensure a private media sector in the future. There must be a balance between PSBs and commercial media as in the years to come, it will be harder to finance the latter ones.

We cannot afford to lose commercial news media on a grand scale. A PSB should conduct its operations with an acute awareness of the competitive effects these activities have on the commercial market. Therefore, states should be obliged to weigh PSBs activities against the effects these have on diversity/pluralism. Making Member States responsible for an ex ante procedure is in line with the EC Communication from 2009 on this subject.

Basically, a PSB should be present and conduct its main role where there is a market failure . But a PSB should not be allowed to compete on equal terms with private commercial media. Therefore limits on PSBs services should be put in place in order to avoid harming media diversity and pluralism. In line with the EC Communication from 2009 , this is a responsibility for states.

Furthermore, effective and independent ways to scrutinize any potential market impact should be put in place.

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

Make PSBs responsible to protect, promote and contribute to media diversity. Provisions that force PSBs to assess the competitive effects of what it does on media diversity should be included in their statutes. It would be up to the owner (in most cases the State), the board, competitors and the public to oversee. In this regard, an independent complaining mechanism should be foreseen.

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.

No, not in The Netherlands.  
As a principle PSBs should have full editorial independence. We have, though, noticed the recent developments in Poland and Hungary.

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.

No, not in The Netherlands.  
As a principle news media platforms should have full editorial independence. For instance, we are aware of the controversial Media ownership situation in Italy.

States or the industry itself shall be transparent on media ownership and of funding sources. Legislation on media concentration can be harmful to the continuity of media companies. Dutch media concentration regulation was removed, after the government rightly recognized that media ownership does not have a direct relation to editorial freedom and the content of media. Wrongly, this argument is not included in the Media Pluralism Monitor of 2015.

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

A truly democratic media system requires the public availability of accurate and updated data on media ownership. States or the industry itself shall be transparent on media ownership and of funding sources: Both media regulators and the general public should have easy access to information about who is financially behind any media outlets.

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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.

Dutch media concentration regulation was removed, after the government rightly recognized that media ownership does not have a direct relation to editorial freedom and the content of media. In The Netherlands, independency of news media is safeguarded by are other means such as editorial statutes and independent editors in chief.

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.

No, not in The Netherlands.  
As a principle news media platforms should have full editorial independence.  
We have, though, noticed the recent developments in Poland and Hungary.

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.

This is not really an issue in The Netherlands because independency of news media is properly safeguarded by editorial statutes and independent editors in chief.

## 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?

In the past, heterogeneous media forms - newspapers, books, radio, television, cinema - were perceived as distinct platforms and belonging to separate industries. With the digitization of our economies, many traditional media silos broke down resulting in a closer integration of all media enabling the immediate and global exchange of every kind of content. This media convergence facilitates content production while accelerating its distribution. However, it has also revealed some drawbacks in terms of content monetization -which ultimately pose a threat to independent and quality journalism. Here some examples:

- 1) Digital content can be copied, manipulated and redistributed easily - this represents a challenge to existing copyright law;
- 2) The free circulation of media content has also posed a serious threat to the economic viability of the newspaper publishing industry, which ultimately invest in both world-class journalism and technological innovation.

The internet economy is a low cost economy where there are virtually no barriers to entry, whereas quality journalism is a high cost business. Quality content is expensive and in the face of globalization, the cultural, media and creative sectors give real value to society as a whole, and Europe's digital future depends on them.

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.

As a principle news media platforms should have full editorial independence. The Dutch lèse majesté should be removed from the Penal Code (Wetboek der Strafrecht); it is a potential threshold to democratic debate about the royals as an institution.

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.

A wide exception to process personal data for journalistic purposes is necessary. Therefore, article 85 of the GDPR needs to be implemented properly.

News media play an important role in democracy. In many cases the role of public watchdog justifies that media and journalists process personal data of individuals. Therefore, the GDPR contains an instruction to Member States to implement an exception that prevents that privacy rules hinder press freedom.

Everyone has right to the protection of privacy and to freedom of expression. In principle these rights are equivalent, but the interests may conflict. Therefore it is of great importance that the role of watchdog and the archive function of news media are taken into account in a trade-off between these rights.

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

This might happen from time to time. We condemn this strongly.

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.

NDP Nieuwsmedia is aware of the threats reporters face every day worldwide. Unfortunately, major incidents still happen in the European Union soil. The situation in countries such as Hungary, Poland and Italy are particularly worrying as shown by Index on Censorship - the international organisation that promotes and defends the right to freedom of expression.

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.

In the last couple of years, the ECHR ruled three times in cases against The Netherlands that journalistic sources were not protected properly in national laws. In this regard, the landmark case is the Sanoma / Netherlands ruling of 14 September 2010. Other cases are the De Telegraaf / Netherlands ruling of 22 November 2012 and Voskuil / Netherlands of 22 November 2007.

Other examples of pressure derive from abuse of power against journalists by the intelligence and security services. A prior judicial review is necessary in these situations. Also, it happens that journalists are jail sentenced as they do not want to reveal their sources, see ECHR 17 December 2004 (Pedersen and Baadsgaard / Denmark, Cumpana en Mazare / Romania). These scenarios are not acceptable and should be firmly condemned.

NDP Nieuwsmedia believes that the ECHR jurisprudence on the protection of journalists and whistleblowers should be put into law in all EU member States. Absence of proper protection could lead to a chilling effect as sources would share their information with journalists less likely.

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

Many EU Member States have already put several safeguards into law. As decided by the ECHR in the Sanoma / Netherlands case of 14 September 2010, it is important that this legislation provides at least the protection foreseen by the ECHR jurisprudence. Absence of proper protection could lead to a chilling effect as sources would share their information with journalists less likely.

New Dutch legislation on the protection of journalistic sources is currently discussed in the Parliament.

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

States should guarantee proper protection of journalistic sources by national law. There shall not be any mandate to the European Commission to propose legislation on this issue.

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

- Yes
- No

If yes, please give specific examples.

The Dutch lèse majesté should be removed from the Penal Code (Wetboek der Strafrecht); it is a potential threshold to democratic debate about the royals as an institution.  
As a principle Journalist should have full independence. We have, though, noticed the recent developments in Poland and Hungary.

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?

The Dutch lèse majesté should be removed from the Penal Code (Wetboek der Strafrecht); it is a potential threshold to democratic debate about the royals as an institution.

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

If there is a failure in facilitating investigative journalism, a PSB should be present and conduct its main role.

## 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?

Raise awareness campaigns would be the most effective tools. Hate speech online is the product of intolerance and ignorance, therefore education is the most effective way to tackle this plague of society.

If legislative actions are envisaged, these should never be translated into filtering and/or censoring tools.

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.

Today, more than ever, being an informed citizen about the world has become of crucial importance. Being constantly updated allows people to connect with their social environment and ultimately shape a complete opinion about society. Citizenship depends on exchange of opinions based on societal information, therefore it is essential for every citizen to have access to independent media.

News media helps understanding the role of media in society and stimulates the debate on a broad spectrum of subjects. We believe that our industry contributes every day to the promotion of tolerance, freedom and active citizenship. Stimulating the readership of news media, defending freedom of expression, and raising awareness on the importance of independent and quality journalism are just a few example of how modern media contribute to promote tolerance.

## 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.

A society is free only to the degree to which its citizens are informed and can participate in open discussions, because democracy, as a system, depends on information and communication (Barber 1989). Media freedom and pluralism deserve to be safeguarded to ensure that the health of our democracies is not put at risk. Democratic regimes with high level of media freedom and pluralism are more enduring, accountable and ultimately less corrupt.

In order to preserve media freedom and pluralism, a series of conditions need to be put in place, including: editorial independence, checks and balances on media ownership, the protection of journalists, unrestricted public access to information sources.

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 checked="" 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 type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Media, including online providers	<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"/>
Dedicated learning systems using e.g. radio, TV, mobile phones and the internet (please specify)	<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"/>
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 type="radio"/>

Other - please specify

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

Nieuws in de klas - News in education - is stimulating the use of news media in the Netherlands with providing news (on paper and digital) and lesson material for primary and secondary education. Nieuws in de klas is an activity of trade association NDP Nieuwsmedia and is fully funded by the members of NDP Nieuwsmedia which are news media publishers.

It provides services such as:

1. Nieuwsmakers - 10 lessons about analyzing news on different platforms and the creation of own online news productions.
2. Nieuwsservice - providing teachers and pupils with news on/from different platforms

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)?

Self-regulation.

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)?

News media should have full editorial independence.

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.

Social media platforms have shown a clear interest in entering the news media industry. Facebook, Google and Snapchat are just a few examples of technology companies currently investing in our sector.

However, in order to guarantee media freedom and pluralism, Internet platforms must defend the freedoms of their users and free expression - business and profits should never undermine freedom of press. In this regard, Facebook has been recently accused of political bias in its editorial process. The social media platform suppressed news stories of interest to conservative readers from the social network's influential "trending" news section.

The EU should monitor attentively the behavior of online platforms and social media to make sure that the pluralism of the journalistic press and the quality of the democratic debate will not be undermined by wrong lines of business.

## Contact

JUST-COLLOQUIUM@ec.europa.eu

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