

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.

**Wichtig - Öffentliche Konsultation (auf deutsch) / Important -
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DE

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 (NB — your contribution will not be published, but the Commission may use it internally for statistical and analytical purposes).

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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.

Association of European Radios (AER) - Trade body representing commercial radios

Is your organisation included in the Transparency Register?

- Yes
- No

If yes, please indicate your Register ID-number

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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?

AER would first like to recall an essential point when considering radio, and especially commercially funded radio: it has local, regional or, at the most, national audiences. Radio is a mixture of audio content which is well-edited and well-produced. Content is Free-To-Air / Free-To-Access, transmitted via wired or wireless means - such as, first and foremost, broadcast, but also cable, satellite or online - and typically consists of talk, stories, entertainment, news, music and surprises.

Radio's regulation should reflect this. The regulation of media, being both cultural and economic at the same time, still lies mainly within the hands of each Member State. Given its influential role towards public opinion, radio is a very tightly regulated medium at national level, under all aspects (formats, quotas in content, advertising, right of reply, basic identification, masthead requirements, etc.). Its regulation, and hence the many mandatory elements a radio has to fulfill in order to be authorised to broadcast content, is tailored to its audience: it needs to be decided at the same level.

Regarding self-regulation, if well-designed, it can provide a fast and efficient tool to address issues citizens can be confronted to. A best-practice example is self-regulation in the advertising sector: most EU Member States have developed very good advertising self-regulation codes and authorities in which radios participate. This is supported by the European Advertising Standards' Alliance, who, amongst other tasks, coordinates the exchange of information and know how amongst Self-Regulation Organisations across Europe. One of the key aspects is that it is developed at national level to address each EU Member States' cultural, social, historical and economic peculiarities. Please see here: <http://www.easa-alliance.org/>

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

Some EU Member States have seen their media regulatory authorities heads resigning due to pressures deriving from the government regarding cases linked to radio's independence, such as Hungary and Latvia. Both cases are different, but they illustrate a lack of independence from media regulatory authorities - with resignation seen as a last resort. In the first case, this has led to less coverage for a radio expressing positions different from the government's, in the second, it has led to considerable fights to maintain the conditions previously agreed on with the State regarding the conditions set in the licence to broadcast.

From a completely different perspective, and although this might not derive directly from a lack of independence of the media regulatory authorities, one should recall that commercial radio offers an alternative perspective from public broadcasters. The largest audience market shares are often still obtained by public broadcasters in most EU countries. So, commercial radio is an essential force in ensuring pluralism. However, they evolve in the same context as public broadcasters, without any help from their governments, while competing for the same targets: listening hours and, frequently, advertising or commercial revenues. This unbalanced situation impacts and threatens commercial radio stations. Regulation and ex-ante evaluation of new public broadcasting sector services, although required by the European Commission's 2009 Broadcasting Communication, is still not present in all European countries (e.g. France or Italy).

This lack of ex-ante control can be illustrated in France with the "preemption" practice: this is a practice whereby the Government transmits a request to the regulator to attribute a frequency to the public broadcaster, and the regulator then assigns the frequency.

This practice is difficult for commercial radios as

- There is no requirement in the law for a public consultation or even a reduced consultation of stakeholders when a new frequency is freed
- If a consultation is done, the result is almost systematically in favour of the public broadcaster
- There is no framework regarding the manner the consultation should be done
- There does not seem to be any kind of competition when applying for a frequency for the public broadcaster

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

Media regulatory authorities should be able to run assessments of the competitive state of their markets before delivering licences to broadcast or media licences. It is essential that competition is preserved to ensure that a plurality of voices can be heard.

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

Public broadcasters are publicly-funded, and should therefore be able to provide access to information that is not primarily commercially attractive. In other words, their remit should ensure that they are different from commercial radio's formats, so that public radios provide - to a large extent - access to niche repertoires, less popular content, longer programmes, more investigative news programme, etc.

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

It is essential that the following principles are applied:

1. Clear and meaningful definition of the public service remit by a legal act
2. Market impact assessment prior to an extension of the remit
3. Transparency: separation of public and commercial activities as well as cost allocation to profit centres
4. Independent control mechanism for
 - ex-ante evaluation of activities as well as for
 - the supervision of entrustment and for
 - the evaluation of the financial behaviour
5. Sanctions for breach of competition rules

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.

Please see answer to question 13

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.

- Commercial radio is a good example of successful media pluralism. Each country has its own media and radio landscape, depending on various local factors (which can be of historical, cultural, or political nature), but all countries in Europe have a range of stations with different owners offering a wide spectrum of content to the audience. Commercially funded radios evolve in highly competitive environments, not only with public broadcasters or community radios, but, first and foremost, with privately owned and commercially funded radios. Their programmes encompass, broadly speaking, all possible formats, from debates to music-only
- Radio connects people. It is the most intimate medium, and has been so for the past 50 years at least, being ubiquitous, mobile, simple-to-use and free-to-air. These features enable our audience to cultivate a personal relationship with our programmes, our editors, our DJs, our hosts, and our brands
- Radio is trusted. As shown in the last Standard Eurobarometer Survey of Autumn 2011 (EB76). The overwhelming majority of commercially funded radios are non-politically affiliated, and have the freedoms to deliver editorial information, to express opinions and to provide a platform for the public expression of the opinions of their listeners

Radio, and in particular commercial radio, has local, regional or, at the most, national audiences. This is due for one part to technical reasons: to a very large extent, radio's audience still comes from terrestrial broadcasting of its programmes - these are free-to-air and it is evaluated that there is an average of 4 to 5 radio receivers by households across the EU (and online listening is still a small amount of total listening figures). Broadcasters on radio provide useful and crucial information: in the event of natural disasters, emergencies and extraordinary situations, broadcast radio is the first - and possibly the only remaining - tool to inform, advise or direct the public. Terrestrial broadcasting is national at the most, as operators are required to obtain a licence to use part of the spectrum; this licence in turn depends on criteria reflecting the national landscape, culture, history. The fact that commercial radio's audience is mostly local or regional, is even more due to its content: commercial radio's audience seeks for the news on the local traffic jams, the local weather, the local politicians delivered by their local radio DJs in their local dialect. The reason why radios are developing activities online is to maintain contact with their audience. However, this does not change the nature of commercial radio: an essentially local actor.

Radio's regulation should reflect this. The regulation of media, being both cultural and economic at the same time, still lies mainly within the hands of each Member State. Given its influential role towards public opinion, the broadcasting sector is already the most regulated media sector - radio is a very tightly regulated medium at national level, under all aspects (formats, quotas in content, advertising, right of reply, basic identification, masthead requirements, etc.). Its regulation, and hence the many mandatory elements a radio has to fulfill in order to be authorised to broadcast content, is tailored to its audience: it needs to be decided at the same level.

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.

Please see answer to question 6

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.

Regulation and ex-ante evaluation of new public broadcasting sector services, required by the European Commission's 2009 Broadcasting Communication could help ensuring media pluralism.

Besides, the 2013 High Level Group on Media Freedom and Pluralism Recommendation 27 would be very helpful: "Any public ownership of the media should be subject to strict rules prohibiting governmental interference, guaranteeing internal pluralism and placed under the supervision of an independent body representing all stakeholders".

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.

Whilst there is no concrete case yet, AER would like to recall that Article 80 of the General Data Protection Regulation provides the minimum level of protection for media freedom and for journalistic data processing that Member States would have to respect or even strengthen at national level. Protecting editorial press freedom indeed requires that data processing for journalistic purposes are exempted from the application of certain provisions of the Regulation. The final text preserves the essence of what is currently foreseen under the 95/46 EC Directive. Nevertheless, Member States need to remain particularly vigilant and ensure that appropriate exemptions are adopted at national level accordingly.

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?

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

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

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.

Although radio is local, regional or, at the most, national, the EU has developed a funding programme on EU-related news which is very useful and enables good exchange of information amongst programme participants from all across the EU - delivering direct information to EU citizens thanks to their access to radio, and 80% of the EU population listens to at least 2 or 3 hours per day. This funding programme is now held under the EuranetPlus initiative. This initiative is commended by AER and funding for this initiative should be increased.

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

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