

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 -
consultations publiques (en français)**

DE

[DE - Konsultationen.docx](#)

FR

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 (NB — your contribution will not be published, but the Commission may use it internally for statistical and analytical purposes).

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.

Dr. Janina Berg, Good governance, Anti-corruption and Rule of law Consultant

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

Ascent-EU

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

5. In the context of media freedom and pluralism, what should be the role of the State, if any, in the regulation of media? What should be the role of self-regulation?

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

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

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

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

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

- Yes
- No

If yes, please give specific examples.

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

- Yes
- No

If yes, please give specific examples.

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

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

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

- Yes
- No

If yes, please give specific examples.

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

C. Journalists and new media players

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.

The right to freedom of expression and information is often considered an adversary to national security. Laws and jurisprudence all over the world recognise that legitimate national security concerns can under exceptional circumstances limit fundamental rights of citizens, particularly if greater harm to society, for instance, by terrorism is at stake. National security agencies have and should have a greater claim not to disclose information than other, regular public bodies and institutions. Yet, when it comes to crime and wrongdoing they have no greater claim to hide information than any other institutions, especially if the value of the disclosure is of greater importance to the public than the harm to the public resulting from the disclosure. If governments in Europe desire to keep information secret on national security grounds, the classification of information is only justified pursuant to Art. 10 of the European Convention of Human Rights, if it is in accordance with the law and necessary in a democratic society.

Globally, international organisations, including the UN, OAS, ACHPR and OSCE, have agreed on common guidelines specifically addressing the tension to assist states in seeking to balance the interests of the state while at the same time safeguarding citizens' right to know (see the 2013 'Global Principles on National Security and the Right to Information' / the 'Tshwane Principles', Part V. Principles 31-36). More recently, the UN cautioned that restrictions to national security disclosures should be clearly defined, necessary and proportionate to prevent national security concerns to be raised as "a cover for protection of government or officials from embarrassment or exposure of wrongdoing, concealment of information about human rights violations, any other violation of law, or the functioning of public institutions" (see UN General Assembly, Promotion and protection of the right to freedom of opinion and expression (2015), A/70/361, pp. 18-19) and the UN Resource Guide (2015)).

Similarly, the Council of Europe stresses in its explanatory note to Principle 5 of its Recommendations on the Protection of Whistleblowers (CM/Rec(2014)7) that states may not leave whistleblowers completely without protection or a potential defence. Jurisprudence of the European Court of Human Rights on the disclosure of classified information can be found in *Guja v. Moldova*, no. 14277/04 and *Bucur and Toma v. Romania*, no. 40238/02.

Only a few countries within the EU have so far implemented provisions to better protect those who are courageous enough to speak up in the public interests and raise concerns of wrongdoing, despite the risks of serious retaliation ranging of harassment, demotions and dismissals to criminal

prosecution and harsh administrative fines. The UK's Public Interest Disclosure Act (PIDA) and the more recent stand-alone whistleblower law in Ireland (Public Disclosure Act of 2014) have both taken the aforementioned international standards into account by clearly defining the scope of protection for national security disclosures.

Yet, a vast majority of sixteen EU member states still provide only partial protection scattered across different laws and provisions or no protection at all to journalists and whistleblowers who speak up against wrongdoing. Since investigative journalism and whistleblowing presents one of the most effective ways of preventing or uncovering wrongdoing, as demonstrated by the recent scandals, such as the illegal mass surveillance, and in order to address the major legal loopholes that exist across EU member states, the EU is best placed to use its political power and legislate on the issue to contribute to the reconciliation of security concerns, media freedom and free speech in a way acceptable in a democratic society.

Under Art. 18 of the proposed draft EU directive on whistleblowing - a study that was commissioned and published by The Greens/EFA in the European Parliament in May 2016 - we suggest that citizens, journalists and their sources/whistleblowers revealing classified national security information to the media are eligible for protection against criminal prosecution and other forms of reprisals, just like all other whistleblowers who uncover crime and wrongdoing in the public's interest (see here: <http://www.greens-efa.eu/de/whistle-blowers-directive-15498.html>). However, given the special nature of the information that may entail severe security risks, we propose a special procedure triggering protection only if the disclosure was made first to a competent, autonomous oversight body that is vested with the necessary level of security clearance and that is institutionally and operationally independent from the security sector. Protection shall be granted to individuals disclosing information the public only after they have notified the competent authority.

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?

Typically, individuals exercising journalistic activities face attempts by official authorities to reveal the identities of their confidential sources, direct attacks on the informants/whistleblowers and the slashing of editorial budgets that can hamper the investigation and publication and, in the worst case, the operations of the media outlet as a whole. The most recent headlines indicate that the journalists supporting the disclosure of public interest information are exposed to similar threats as their sources, most often manifesting themselves in intimidation, threats by the government and in concrete law enforcement responses.

The Guardian's publication of NSA information on the US's illegal mass surveillance reportedly evoked the British government to explicitly threaten the newspaper with an injunction that could have stopped the reporting of the wrongdoing. At a later stage, one of the journalists contributing to the disclosure was held in detention under the UK's terrorism legislation. Under the surveillance of technicians of the government's intelligence service, the Guardian journalists were ultimately bound to destroy the hardware of computers that contained the classified information leaked by the NSA whistleblower Edward Snowden despite having been informed about external sources (for more information, see here:

<https://www.theguardian.com/world/2013/aug/20/nsa-snowden-files-drives-destroyed-london>)

Similarly, Edouard Perrin, the journalist of the commonly called Luxleaks scandal revealing large-scale and secret tax deals - to the disadvantage of other EU member states' tax systems and taxpayers - between the government of Luxemburg and multinational cooperations, faced persecution and a trial just like his informants and whistleblowers Antoine Deltour and Raphael Halet (see here: <http://www.bbc.com/news/world-europe-36255751>)

The mere risk of facing serious and sometimes lengthy legal repercussions, even if they ended in an acquittal in the Luxleaks case, has the potential to be a serious deterrent for investigative journalism in the future, if journalist are stigmatised as criminals. In turn, what investigative journalism needs to support those who act in the public's interest is time, patience, resources and cross-border connectivity to lay bare more cases such as Kazakhstan's large-scale corruption, Russia's money-laundering routes, or the systematic tax evasion schemes of Switzerland and other, more tropical tax havens.

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.

One of the main problems caused by the lack of comprehensive protection for whistleblowers is that individuals are reluctant to come forward with information on crime and wrongdoing. As a consequence, many cases never come to light, remain undetected and unreported, while states do not collect data on the reasons underlying the reluctance. Yet, the little publicly available data on the reluctance to report corruption speak for itself:

Almost three-quarters of the respondents to a public survey on corruption said they did not report corruption, despite the fact that they knew about it, to a major extent because almost half of all Europeans do not know where to report to and because they believe that reporting is pointless as there is no protection for those reporting crime or wrongdoing. Every fifth respondent feared getting in trouble with the police or other authorities, if they reported corruption (see Special Eurobarometer 397 on corruption (2014).

And even if they come to light, the recent sentences handed out in the Luxleaks trial that found both whistleblowers Antoine Deltour and Raphael Halet guilty has the potential to increase fears of reporting abuses and make whistleblowers be more frightened of coming forward.

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.

If pressure by the State is understood as issuing arrest warrants and pressing criminal charges against , all of the latest news that made headlines are examples for whistleblowers being at risk of being threatened, exposed and suffering from severe repercussions if they come forward with public interest information, including the NSA whistleblower Edward Snowden (<https://edwardsnowden.com/de/threats-overview>), the Swissleaks whistleblower Hervé Falciani (<https://www.icij.org/project/swiss-leaks/whistleblower-thief-hero-introducing-source-data-shook-hsbc>) and, more recently, the Luxleaks whistleblowers Antoine Deltour and Raphael Halet (<https://support-antoine.org/en/>). The number of unreported cases (dark figure) where the pressures put by State measure are successfully applied may be significantly higher, especially in cases that do not make headlines.

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

EU member states provide only an insufficient patchwork of provisions, if not an entire lack thereof, posing a serious obstacle to the effective protection of journalistic sources and whistleblowers on the ground and allowing for pressures on journalistic sources, and whistleblowers. To close those legal loopholes, the EU should use its political weight to stir and encourage reform on the national level by proposing a comprehensive EU legislative framework on whistleblower protection with a broad definition of whistleblowers, creating a protective shield for all those who speak up in the public's interest. We welcome the EU's recent commitment to assess further actions in the area of whistleblower protection in the European Commission Communication on tax avoidance (COM(2016)451 final). A draft EU directive on whistleblower protection as presented by a consortium of researchers and commissioned by The Greens/EFA is currently open for consultation with EU capitals and all interested stakeholders until 1 September 2016:
<https://www.discuto.io/en/consultation/12357>

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

In our proposed draft EU Directive on whistleblower protection, confidentiality is guaranteed as stipulated in Article 16 (see here: <http://www.greens-efa.eu/whistle-blowers-directive-15498.html>). Accordingly, confidentiality shall be ensured throughout the disclosure procedure, unless the journalistic source or whistleblower consents to the disclosure to another person. Exception may also apply in other, limited circumstances, for example, to prevent a crime or serious risk to public safety, etc.

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.

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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