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 - Offentliche Konsultation (auf deutsch) / Important - consultations publiques (en français)

DE

DE_-_Konsultationen.docx

FR

FR_-_consultation.docx

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 (NB — your contribution will not be published, but the Commission may use it internally for statistical and analytical purposes).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

Ciara Bottomley, PUblic Concern at Work

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.

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.

In the UK we are seeing a number of legal mechanisms being used to threaten, intimidate and punish whistleblowers.
Counter terrorism measures
The use of the counter-terrorism legislation and the Regulation of Investigatory Powers Act 2000 (RIPA) by police to intercept journalists' and whistleblowers' phone records was exposed following the 'Plebgate' and Chris Huhne scandals whereby police used counterterrorism measures to access journalists' phone records and identify confidential sources.
Osita Mba blew the whistle on a £10 million sweetheart deal between Goldman Sachs and his former employer HM Revenue and Customs, exempting the bank from paying its taxes. Osita informed the auditor general of the National Audit Office and two parliamentary committees of the wrongdoing. In the meantime, his identity was revealed to HMRC who banned Osita from entering the workplace, initiated an investigation and disciplinary proceedings against him, and threatened him with the possibility of prosecution. More than a year later, it came to light that HMRC had used the powers under RIPA to search Osita's belongings, emails, and both his and his wife's phone records. MPs severely criticised HMRC for using these powers against Osita, and praised him for bringing his concerns to light. Osita left HMRC and filed a PIDA claim.
For more information:
https://www.theguardian.com/commentisfree/2013/apr/30/hmrc-investigation-whistleblower-osita-mba
Also the new Investigatory Powers Bill introduces new powers of surveillance. Though the bill contains safeguards to stop misuse or abuse of the powers which may undermine the protection of journalistic sources, civil society is concerned they are not as robust when compared to the safeguards that apply to a journalists physical contact book, telephone records or footage (contained in the Police and Criminal Evidence Act).
Misconduct in Public Office
Misconduct in Public Office (MIPO) is a criminal offence that applies to public officials who wilfully neglect to perform their duty or wilfully misconduct themselves. The offence carries a maximum sentence of life imprisonment. Recently the number of prosecutions has risen exponentially, from two in 2005 to 135 in 2014. Unfortunately, we have also seen the offence being used against public officials to penalise unauthorised disclosures of

what could be considered public interest information.
Following the closure of the News of the World, News Corporation set up a Management and Standards Committee which revealed identities of a number of confidential sources to the police. The purpose of the investigation was to look at the culture of journalists paying sources for information.
Operation Elveden was then launched by the UK Crown Prosecution Service once the sources names were handed over. This case study combines pressures put on journalists' sources by the State and private companies. During the course of the investigation over 90 arrests were made resulting in 34 convictions, the majority of whom were public officers found to have taken money from journalists in exchange for information. Ranging from government misspending to salacious gossip, the public interest in each disclosure varied considerably. While morally questionable, receiving money in return for information in many of these cases may have been secondary to the officer's primary intention to act as a whistleblower. As a result of the investigation, over 30 journalists were also arrested on suspicion of conspiracy to commit misconduct in public office for their role in providing payment for this information. Whether morally bankrupt or ultimately serving the public interest, the selling of information to the press was widespread prior to the Leveson Inquiry into phone hacking. The Elveden cases show just how ambiguous the offence is, with many individuals unaware of their status as a public official and journalists as their proxy in committing the offence.
http://www.bbc.co.uk/news/uk-35666520
Trade secrets
In April 2016 the European Parliament passed the Trade Secrets Directive by a large majority. The new Directive seeks to harmonise trade secrets laws across the EU Member States. Under the law, individuals who reveal a trade secret may be subject to civil penalties.
In 2014 the LuxLeaks papers revealed how Luxembourg has been sanctioning corporate tax avoidance by some of the world's biggest companies. It soon emerged that two former employees of PricewaterhouseCoopers had leaked the information. Antoine Deltour and Raphaël Halet were convicted and sentenced to 12 and 9 months suspended sentences respectively. At the trial, the prosecutor cited the new Trade Secrets Directive as a legal basis for pursing such matters in future - raising suspicions that the new Directive may well be used as a tactic to intimidate whistleblowers.
https://www.theguardian.com/world/2016/jun/29/luxleaks-pwc-antoine-deltour-avoids-jail-but-is-convicted-of-theft

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

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•        Enact robust national whistleblowing laws that permit disclosures to
employers, regulators and wider disclosures to the media and give rights to
individuals who suffer as a result of blowing the whistle.
•        Enact a public interest defence for individuals who in the process of
disclosing public interest information break the law into laws that seeks to
limit the disclosure of information (e.g. trade secrets and national security
laws).
•        Enact an international whistleblowing Directive to set minimum
standards for the protection of whistleblowers in member states.
•        See The Protection of Whistle-blowers, CMRec(2014)7 a Council of
Europe report.
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26. Please indicate any best practice for protecting the confidentiality of journalistic sources/whistleblowers.

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The Tshwane Principles detail the need for a public interest defence for
security personnel.
https://www.opensocietyfoundations.org/sites/default/files/global-principles-n
ational-security-10232013.pdf
(See Part VII: Limits on Measures to Sanction or Restrain the Disclosure of
Information to the Public).
UK Editor’s Code of Practice https://www.ipso.co.uk/editors-code-of-practice/
NUJ Code of Conduct: https://www.nuj.org.uk/about/nuj-code/
Council of Europe Protection of Whistleblowers Recommendation CM/Rec(2014)7
https://www.coe.int/t/dghl/standardsetting/cdcj/CDCJ%20Recommendations/CMRec(2
014)7E.pdf
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27. Have you experienced, or are you aware of, censorship (including self-censorship) in the EU?

- (●) Yes
- ( ) No

If yes, please give specific examples.

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As a charity that operates an advice line for whistleblowers, in the past year
we advised 23 people on confidentiality or gagging clauses that appeared in
their settlement agreements. Despite gagging clauses deemed null and void by
the UK Public Interest Disclosure Act, there have been many instances where
individuals working for the public sector have been used in an attempt to
silence whistleblowers. See the report of the UK National Audit Office for
more details
https://www.nao.org.uk/wp-content/uploads/2013/10/Confidentiality-clauses-supp
lement.pdf
A high profile example is the case of whistleblower Gary Walker who signed a
'super gag' with the National Health Service following his attempts to raise
concerns about the impact of hospital targets on patient safety. He breached
his confidentiality agreement live on BBC Radio 4.
For more information:
https://www.theguardian.com/uk/2013/feb/14/nhs-whistleblower-quit-gagged
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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								
Friends								
School								
Public authorities								
Media, including online providers								
Dedicated learning systems using e.g. radio, TV, mobile phones and the internet (please specify)								
Civil society								
Other (please specify)								

Other - please specify

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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