

## *Public consultation on the Independent Report from the High Level Group on Media Freedom and Pluralism*

### **Recommendation 1:**

The EU should be considered competent to act to protect media freedom and pluralism at State level in order to guarantee the substance of the rights granted by the Treaties to EU citizens, in particular the rights of free movement and to representative democracy. The link between media freedom and pluralism and EU democracy, in particular, justifies a more extensive competence of the EU with respect to these fundamental rights than to others enshrined in the Charter of Fundamental Rights.

Do you have any observations?

---

*The EU should set a minimum standard for countries to comply with, but also allow them, as usual, to implement stronger level of protection if they wish to do so.*

*The EU can be considered competent based on Article 11 of the Charter of Fundamental Rights of the European Union, in particular to its provision that 'the freedom and pluralism of the media shall be respected', and on Article 3 of the Treaty on European Union "all offer its citizens an area of freedom, security and justice without internal frontier". Moreover, in order to efficiently implement Article 21 of the TEU, the EU is only credible on the global stage when press and media freedoms are safeguarded and respected within the Union itself.*

---

### **Recommendation 2:**

To reinforce European values of freedom and pluralism, the EU should designate, in the work programme and funding of the European fundamental rights agency, a monitoring role of

national-level freedom and pluralism of the media. The agency would then issue regular

reports about any risks to the freedom and pluralism of the media in any part of the EU. The European Parliament could then discuss the contents of these reports and adopt resolutions or make suggestions for measures to be taken.

Do you have any observations?

---

*In addition to a EU Regulation on Media Freedom and Pluralism, we welcome this recommendation. It should be clarified however, that the FRA will publish such reports. Monitoring should be carried out in cooperation with NGOs such as Reporters without borders, and the participation of EU citizens in order to assess the situation in each Member State. An online platform for the publication of data or reports could also be launched in conjunction with the creation of a "European Capability for Situational Awareness" (ECSA) platform.*

---

### **Recommendation 3:**

As an alternative to the mechanism suggested in the previous recommendation, the EU could establish an independent monitoring centre, ideally as part of academia, which would be partially funded by the EU but would be fully independent in its activities.  
Do you have any observations?

---

*If this recommendation was chosen over the monitoring of the FRA, transparency with regards to its activities and funding sources must be ensured.*

---

#### **Recommendation 4:**

All EU countries should have independent media councils with a politically and culturally balanced and socially diverse membership. Nominations to them should be transparent, with

built-in checks and balances. Such bodies would have competences to investigate complaints,

much like a media ombudsman, but would also check that media organisations have published a code of conduct and have revealed ownership details, declarations of conflicts of interest, etc. Media councils should have real enforcement powers, such as the imposition of fines, orders for printed or broadcast apologies, or removal of journalistic status. The national

media councils should follow a set of European-wide standards and be monitored by the

Commission to ensure that they comply with European values.  
Do you have any observations?

---

*All information concerning ownership details, code of conduct, conflict of interest, etc. should be available at no cost for the public in order to be transparent. The FRA or an alternative mechanism could be responsible to monitor the activities of these national independent media councils.*

*Any monitoring roles should not only be carried out by the European Commission but also by the democratically elected EU Parliament.*

*As a general observation with regard to this consultation, one should be careful with the definition of the term “media” since it can also refer to a blog or other online platforms. The revelation of ownership details should not be misused to stifle freedom of speech or to invade privacy.*

---

#### **Recommendation 5:**

For improving the functioning of the Single Market, further harmonisation of EU legislation would be of great benefit.

Currently, the existence of divergences between national rules can lead to distortions in the framework of cross-border media activities, especially in the online world. It would be particularly important to adopt minimum harmonisation rules covering cross-border media activities on areas such as libel laws or data protection. Do you have any observations?

---

*An overall EU law on Media Freedom and Pluralism would be welcome but should not only focus on libel laws or data protection. These rights fall into the scope of the European Union as Article 11 of the EU Charter of Fundamental Rights. Moreover, it is to hope that the EU will adopt a strong regulation on Data Protection so a reference to this Regulation can be included in a future Media Freedom and Pluralism law.*

*As recommended by the HLG in its report in January 2013, “Net Neutrality and the end-to-end principle should be enshrined within EU law.”*

*With regard to network neutrality, a harmonised approach to EU-wide legislation is overdue as this would ensure arbitrary or contractual interferences in EU citizens communications. Net neutrality is furthermore a crucial tool for the completion of the digital single market.*

---

#### **Recommendation 6:**

A network of national audio-visual regulatory authorities should be created, on the model of the one created by the electronic communication framework. It would help in sharing common good practices and set quality standards. All regulators should be independent, with appointments being made in a transparent manner, with all appropriate checks and balances. In this area a separate public consultation will seek feedback from a broad range of stakeholders.

#### **Recommendation 7:**

National competition authorities need to make (or the Commission) pro-active regular assessments of individual countries’ media environments and markets, highlighting potential

threats to pluralism. At the EU level, there should be pro-active market assessment under

competition policy in the form of a sectoral inquiry.

Do you have any observations?

---

*Transparency and independence should be key features for audio-visual authorities. A competitive media market is essential for Media Pluralism, if an assessment shows distortion in its completion, further regulatory solutions should be found in order to ensure or restore media freedom and pluralism and thus to fully guarantee citizens' right to access information and freedom of expression.*

---

#### **Recommendation 8:**

European and national competition authorities should take into account the specific value of media pluralism in the enforcement of competition rules. They should also take into account the increasing merging of different channels of communication and media access in the definition of the relevant markets. In addition, the High Level Group calls upon the European and national competition authorities to monitor with particular attention, under competition policy, new developments in the online access to information. The dominant position held by some network access providers or internet information providers should not be allowed to

restrict media freedom and pluralism. An open and non-discriminatory access to information

by all citizens must be protected in the online sphere, if necessary by making use of competition law and/or enforcing a principle of network and net neutrality.

Do you have any observations?

---

*We agree with the HLG recommendation to enshrine Net Neutrality in EU law. There is a growing body of evidence that Internet access providers restrict and limit access to the Internet in Europe. A regulation of Net neutrality would avoid that certain industry players become gatekeepers of media organisations' and EU citizens' communications and their right to freedom of expression and to impart and receive information.*

---

#### **Recommendation 9:**

Media freedom and pluralism should play a prominent role in the assessment of accession

countries. A free and pluralist media environment must be a pre-condition for EU

membership.

Do you have any observations?

---

*Democracy is a pre-condition for EU membership. As the HLG report highlighted on several occasions, Media Freedom and Pluralism are crucial in order to guarantee democracy, so in a way, these rights have always been implicit pre-condition for EU membership. Making this condition explicit could be positive as new countries applying for EU membership would have to expressly guarantee those rights.*

---

**Recommendation 10:**

The EU should raise the issue of journalistic freedom in all international fora where human rights and democracy are discussed, including as part of trade/partnership agreements and in the context of provision of aid.

Do you have any observations?

---

*We welcome this recommendation. The EU must ensure consistency and uphold the Union's positions in such forums.*

---

**Recommendation 11:**

Any new regulatory frameworks must be brought into line with the new reality of a fluid media environment, covering all types of journalistic activities, regardless of the transmission medium.

Do you have any observations?

---

*A new approach is needed in order to take into account all the changes in the media landscape and to make regulatory frameworks future-proof. Guidance on the definition of “journalistic activities” would be beneficial due to the blurring of boundaries between consumers and creators of media products in the digital environment.*

---

**Recommendation 12:**

In order to give complete transparency as to how individualised a service is, services that provide heavily personalised search results or newsfeeds should provide the possibility for the user to turn off such personalisation, temporarily for an individual query, or permanently, until further notice.

Do you have any observations?

---

*Any personalisation or individualisation of services usually require the collection and cross-linking of personal data. This is a fundamental threat to privacy. Therefore, profiling and other measures that aim at the personalisation of services should always be turned off by default – in contrary to what is suggested in this recommendation. The benefit of an opt-in regime is that it protects users by default. However, users can give explicit and informed consent in order to use individualised services.*

---

*Hopefully, the current Data Protection Regulation legislative process will introduce such provisions.*

---

**Recommendation 13:**

Channels or mechanisms through which media are delivered to the end user should be entirely neutral in their handling of this content. In the case of digital networks, Net

Neutrality and the end-to-end principle should be enshrined within EU law. (Previous consultation on that)

**Recommendation 14:**

There should be streamlining and coordination of support and funding for quality journalism, as already exists in several EU countries. Europe-wide awards should be made available for

talented journalists and those having made significant breakthroughs. An additional study should be commissioned on possible new forms of funding for quality and investigative journalism, including making use of new technologies such as crowdfunding.

Do you have any observations?

---

*Regarding recommendation 13, as said previously, Net neutrality should be enshrined in EU law.*

*With regard to recommendation 14 on independent investigative journalists and freelancers, we welcome the idea supporting new technologies to find new forms of funding, such as micro-payments and crowd-funding.*

*Moreover, it is important not to forget that support for quality journalism can only be achieved with appropriate protections for whistleblowers. The Commission should propose an instrument to provide legal protections for whistleblowers.*

---

**Recommendation 15:**

Any public funding should only be available for media organisations which publish a code of conduct easily accessible to the public (including on their site).

Do you have any observations?

---

*In addition, media organisations should be transparent on their funding source and publish a detail annual report on funding.*

---

**Recommendation 16:**

Any public funding to media organisations should be given on the basis of non-

discriminatory, objective and transparent criteria which are made known in advance to all media.

Do you have any observations?

---

*If a funding does not respect these conditions, it should be investigated by regulatory bodies and appropriate measures should then be taken (for example, to reveal funding details and, if necessary, seize the amount given).*

---

**Recommendation 17:**

In order to build up cadres of professional journalists competent to operate in a rapidly changing media landscape, or to offer them the possibility to do investigative journalism,

journalistic fellowships should be offered to both entry-level and mid-career candidates who

could take leave from their media organisations. Universities and research centres should set up positions for journalists in residence under such fellowships to be funded by the EU. The selection of the journalists would be done by the academic and scientific institutions themselves. The fellowships would be particularly valuable for investigative journalism, or for training journalists to mediate between complex subjects such as science, technology, finance or medicine and the wider public.

Do you have any observations?

---

/

---

**Recommendation 18:**

Journalist and media organisations should adapt their codes of conduct and journalistic standards to the challenges posed by a rapidly changing media environment. In particular, they should clearly address questions of source verification and fact checking, as well as transparently regulating their relationship with external sources of news.

Do you have any observations?

---

/

---

**Recommendation 19:**

Media literacy should be taught in schools starting at high-school level. The role media plays

in a functioning democracy should be critically assessed as part of national curricula, integrated either with civics or social studies.

Do you have any observations?

---

*In addition to media literacy, it could be beneficial to teach online security at schools and to raise awareness regarding mobile phone tracability and the possible interception of their communications.*

*Moreover, the use of encryption tools should be taught in journalism schools, such as Tor and PGP, to help journalists protect their devices and communications - and thereby to improve the protection of sources and whistleblowers.*

---

### **Recommendation 20:**

To evaluate the manner in which media consumption patterns are changing, as well as their social impact, comprehensive longitudinal studies are needed at the EU level. More broadly, the EU should provide sustainable funding for academic research and studies on the changing media environment, in order to provide a solid academic basis for policy initiatives in this field.

Do you have any observations?

---

/

---

### **Recommendation 21:**

All EU countries should have enshrined in their legislation the principle of protection of journalistic sources, restrictions to this principle only being acceptable on the basis of a court order, compatible with the constitution of that country.

Do you have any observations?

---

/

---

### **Recommendation 22:**

Access to public sources and events should depend on objective, non-discriminatory and

transparent criteria. This ought to be notably the case with regard to press conferences, with electronic means used to broaden out these events to a wider audience where practically possible.



Do you have any observations?

---

/

---

**Recommendation 23:**

Member States should ensure that appropriate instruments are put in place for identifying

those responsible for harming others, even in the online space. Any internet user-data

collection necessary for this purpose should be kept confidential and made available only by a court order.

Do you have any observations?

---

*This recommendation is very vague and could be counterproductive. We suggest a redrafting of this recommendation or a deletion to avoid a stifling of the freedom of expression.*

*Firstly, it is unclear what the HLG means with “appropriate instruments”. The possibility to communicate and publish anonymously, for innovative citizen media and established journalists alike, should not be undermined.*

*Secondly, it is not clear what the HLG means by “harming others”. The HLG should avoid contributing to the rising criminalisation of expression and fostering of self-censorship.*

*Thirdly, it is unclear if the HLG recommends that internet user-data should be collected and if so, where these data should be collected and for how long they should be retained.*

*“Keeping data confidential” is not clear.*

*Finally, the HLG could consider to reduce these recommendations to a strengthening of the enforcement already existing rules, such as provided by the AVMSD, the Charter and the Convention.*

---

**Recommendation 24:**

Compulsory damages following court cases should include an apology and retraction of accusations printed with equal positioning and size of the original defamation, or presented in

the same time slot in the case of radio or TV programmes. In addition to this and to a legally-

imposed right of reply, it should become accepted as responsible practice among news media to also publish retractions and corrections of wrong and unverified information on the simple request of citizens providing justifications to the contrary. Any such retractions and corrections should be published with the same relevance as the original coverage when the

correction of the potential harm done by such false information so justifies. Any public funding should be conditional on the inclusion of such provisions in the code of conduct of the media organisation.

Do you have any observations?

---

/

---

**Recommendation 25:**

To ensure that all media organisations follow clearly identifiable codes of conduct and editorial lines, and apply the principles of editorial independence, it should be mandatory for them to make them publicly available, including by publication on their website.

Do you have any observations?

---

*We welcome this recommendation, transparency is important. Codes of conduct should be publicly available and annual reports on the compliance with the codes could be encouraged.*

---

**Recommendation 26:**

There should be a provision of state funding for media which are essential for pluralism (including geographical, linguistic, cultural and political pluralism), but are not commercially viable.

The state should intervene whenever there is a market failure leading to the under-provision

of pluralism, which may be considered as a key public good.

Do you have any observations?

---

/

---

**Recommendation 27:**

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.

Do you have any observations?

---

*A new approach is needed to the regulation of ownership. Currently, there is a widespread lack of transparency regarding the identity of owners, with almost no room for intervention.*

*EU should create a regulation supporting transparency, independence and accountability of media ownership in order to avoid dominant position which might weaken pluralism.<sup>1</sup>*

---

**Recommendation 28:**

The provision of funding for cross-border European media networks (including such items as translation costs, travel and coordination costs) should be an essential component of European media policy. Support for journalists specialised in cross-border topics should be included in such funding.

Do you have any observations?

---

/

---

**Recommendation 29:**

Attention is called to national journalism schools and university professors for the possibility of applying to the Jean Monnet programme to support curricula and teaching on coverage of

European issues. The Commission should be especially pro-active in informing journalism

schools of this possibility and consider this area one of the priorities in the selection procedure under such a programme.

Do you have any observations?

---

/

---

**Recommendation 30:**

EU political actors have a special responsibility and capacity in triggering European news coverage. The Presidents of the EU institutions should regularly organise interviews with a

---

<sup>1</sup>See Open Society Media Program study “Mapping Digital Media in the EU” P.1, available online at [http://www.opensocietyfoundations.org/sites/default/files/Mapping\\_Digital\\_Media\\_EU\\_20121217\\_0.pdf](http://www.opensocietyfoundations.org/sites/default/files/Mapping_Digital_Media_EU_20121217_0.pdf) and “Transparency of Media ownership in Europe” P.1 & 2, available online at [http://www.opensocietyfoundations.org/sites/default/files/Transparency\\_Media\\_Ownership\\_Europe\\_20121217\\_0.pdf](http://www.opensocietyfoundations.org/sites/default/files/Transparency_Media_Ownership_Europe_20121217_0.pdf)

panel composed of national media from across the EU. This format would have the advantage of not only increasing national coverage of EU affairs but also making that coverage more pluralist, since the interviews to be broadcast or printed in the different Member States would include questions from journalists from other Member States.

Do you have any observations?

---

*There is a need to give more information to European citizens on the activities of the European institutions. Increasing press coverage of these activities would be positive for participatory processes, transparency and democracy.*

---