

EU consultation on new Guidelines on Freedom of expression

EHF contribution

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A. Reason for Action

1. The right to freedom of expression is a fundamental right of every human being. It is a universal right and is important not only for individual dignity but also to the fulfillment of other fundamental rights, democracy, development, rule of law, peace and stability.

Freedom of expression is indeed essential in enabling citizens to participate in public life and decision-making process: citizens cannot exercise their right to vote effectively or take part in public decision-making if they do not have free access to pluralist information and ideas and cannot express their views freely.

2. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. It also implies respect for freedom and pluralism of the media.
3. Violations or abuses of freedom of expression committed both by state and non-state actors, are widespread and affect people in all parts of the world, including Europe. There is a fine balance between upholding the right to freedom of expression and protecting other human rights. Violations of the right to freedom of expression are often justified by the need to protect these other rights (e.g. freedom of religion or belief).
4. The internet has opened up new possibilities people to seek and impart information and ideas but it has brought new challenges that countries and the EU have to address.

B. Purpose of the Guidelines

4. In promoting and protecting freedom of expression, the EU should be guided by the universality, indivisibility, inter-relatedness and interdependence of all human rights, whether civil, political, economic, social or cultural.

6. With these Guidelines, the EU should reaffirm its determination to promote, in its external human rights policy, freedom of expression as a right to be exercised by everyone everywhere, based on the principles of equality, non-discrimination and universality. Through



its external policy instruments, the EU should intend to help prevent and address violations of this right in an effective manner.

7. In doing so, the EU should focus on the right to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers and on the freedom and pluralism of the media.

These Guidelines should underline the international human rights standards on freedom of expression and give clear political lines to officials of EU institutions and EU Member States to address issues in which freedom of expression is concerned in their contacts with third countries.

C. Definition of Freedom of Expression

1. Freedom of opinion

Everyone has the right to express their views and opinions freely. This includes the right for all to express their political, religious or other conscientiously held beliefs, their ethnic origin, sex, colour, language, national or social origin, economic status, birth, sexual orientation or other status.

These views/opinions are of different nature which should not be subject of hierarchy of values, i.e. religious or philosophical beliefs are not more intrinsically valuable than political beliefs.

Freedom of expression is an essential right for democracy and public participation and it should therefore be promoted to the maximum extent. However, extreme forms of expression like hate speech should be limited as to protect other human rights.

Freedom of expression is interrelated with freedom of religion or belief. In cases where expression of opinions on religions or beliefs does not constitute hate speech (as defined at Article 20 paragraph 2 of the ICCPR), the EU should protect the expression of such opinions and resist any attempt of their criminalization.

When faced with restrictions to freedom of expression in the name of religion or belief, the EU should:

- Recall that protecting a religion or belief may not be used to justify restrictions of other human rights like freedom of expression
- Recall that restrictions to freedom of expression shall only be such as are prescribed by law and are necessary to safeguard the rights or reputation of others, or for the protection of national security or of public order or of public health or morals (Article 19.3 ICCPR) ;
- Recall that sharing information about religions or beliefs is protected under international law, provided that persuasion on these matters is neither coercive nor impairs nor impairs the freedom of others
- Recommend the decriminalization of blasphemy offenses.
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2. The right to impart information and ideas

This right can only be restricted to protect the rights and reputations of others, to prevent the disclosure of information received in confidence, to maintain the authority and impartiality of the judiciary or to protect national security, public order, public health or morals.

The EU should therefore denounce and oppose abusive restrictions to this right which can take a variety of forms:

- Intimidation, harassment, attack and arrest of individual journalists
- Misuse of privacy laws to deny discussion of matters of public concern and impede investigative reporting
- Exclusion of media in places of conflict or during democratic processes (e.g. elections)
- Press laws which allow for government interference in the media

The EU should also pay attention to the effective independence of regulatory bodies which have authority over the media.

New technologies, such as the Internet and digital broadcasting offer new possibilities to promote freedom of expression and information. The EU should make sure that the restrictions set up by public authorities are carefully designed so as to impede the spread of harmful and illegal content and to ensure protection from abuses only.

3. The right to seek, receive information

Everyone has the right to seek and receive pluralist information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media.

This right can only be restricted to protect the rights and reputations of others, to prevent the disclosure of information received in confidence, to maintain the authority and impartiality of the judiciary or to protect national security, public order, public health or morals.

Access to information held by public bodies also falls within the scope of this right. In this domain, public authorities should be guided by the principle of transparency and open government.

In its contacts with third countries, the EU should oppose the creation or maintaining of media monopolies and encourage the development of free, independent and pluralistic media, across all platforms.

The EU should specifically pay attention to the right of the child to seek and receive information and ideas of all kinds as defined by Article 13 of the International Convention on the Rights of the Child.

On education and in cases where the child opposes his/her parents' views on religion or beliefs, the EU should take into account the emerging autonomy of the child and not only the right of parents to teach their children in the tenets of their religion or belief.

