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DRAFT REPORT

on media pluralism and media freedom in the European Union
(2017/2209(INI))

Committee on Civil Liberties, Justice and Home Affairs

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

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The European Parliament,

- having regard to Articles 2, 3, 6, 7, 9, 10, 11 and 49 of the Treaty on European Union (TEU) and Articles 9, 10 and 16 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to the Charter of Fundamental Rights of the European Union,
- having regard to the European Convention on Human Rights, the case law of the European Court of Human Rights and the European Social Charter,
- having regard to the European Charter on Freedom of the Press,
- having regard to the Council of Europe Convention on preventing and combating violence against women and domestic violence,
- having regard to the declarations, recommendations and resolutions of the Committee of Ministers and Parliamentary Assembly of the Council of Europe and the Opinions and the Rule of Law Checklist of the Venice Commission,
- having regard to the Council of Europe study entitled ‘Journalists under pressure – Unwarranted interference, fear and self-censorship in Europe’,
- having regard to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the UN Convention against Corruption and the UNESCO Convention on the Protection and the Promotion of the Diversity of Cultural Expressions,
- having regard to the General Comment No. 34 of the UN Human Rights Committee,
- having regard to the UN Guiding Principles on Business and Human Rights,
- having regard to the relevant resolutions of the UN General Assembly, the UN Human Rights Council and the reports of the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression,
- having regard to the UN Plan of Action on the Safety of Journalists and the Issue of Impunity,
- having regard to the work carried out by the Organisation for Security and Cooperation in Europe (OSCE) on media freedom, in particular by its Representative on Freedom of the Media,
- having regard to the work carried out by the Council of Europe Platform to promote the protection of journalism and safety of journalists,

- having regard to the joint declaration on freedom of expression and ‘Fake News’, disinformation and propaganda, issued on 3 March 2017 by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the OSCE Representative on Freedom of the Media, the Organisation of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information,
- having regard to the outcomes of the World Press Freedom Index, published by Reporters Without Borders, and to those of the Media Pluralism Monitor of the European University Institute’s Centre for Media Pluralism and Media Freedom,
- having regard to the Policy Brief entitled ‘Defining Defamation: Principles on Freedom of Expression and Protection of Reputation’ published by ARTICLE 19,
- having regard to its resolution of 21 May 2013 on the EU Charter: standard settings for media freedom across the EU¹,
- having regard to its resolutions of 12 March 2014 on the US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens’ fundamental rights and on transatlantic cooperation in Justice and Home Affairs² and of 29 October 2015 on the follow-up to the European Parliament resolution of 12 March 2014 on the electronic mass surveillance of EU citizens³,
- having regard to its resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights⁴,
- having regard to its resolutions of 14 February 2017 on the role of whistleblowers in the protection of EU’s financial interests⁵ and of 24 October 2017 on legitimate measures to protect whistle-blowers acting in the public interest when disclosing the confidential information of companies and public bodies⁶,
- having regard to the EU Human Rights Guidelines on Freedom of Expression Online and Offline and the Commission Guidelines for EU support to media freedom and media integrity in enlargement countries, 2014-2020,
- having regard to the Commission’s 2016 Annual Colloquium on Fundamental Rights entitled ‘media pluralism and democracy’ and the relevant contributions published by the European Union Agency for Fundamental Rights,
- having regard to European Data Protection Supervisor (EDPS) opinion 5/2016 on the review of the e-Privacy Directive (2002/58/EC),

¹ Texts adopted, P7_TA(2013)0203.

² Texts adopted, P7_TA(2014)0230.

³ Texts adopted, P8_TA(2015)0388.

⁴ Texts adopted, P8_TA(2016)0409.

⁵ Texts adopted, P8_TA(2017)0022.

⁶ Texts adopted, P8_TA(2017)0402.

- having regard to Rule 52 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Culture and Education and of the Committee on Legal Affairs (A8-0000/2017),
- A. whereas the rights to freedom of expression and freedom of opinion are fundamental human rights and indispensable conditions for the full development of the person, for the realisation of the principles of transparency and accountability and for the fulfilment of other human rights and fundamental freedoms;
 - B. whereas media freedom, pluralism and independence are crucial components of the right to freedom of expression; whereas the media play an essential role in democratic society, by acting as public watchdogs, while contributing to citizens' empowerment and their participation in democratic life; whereas the scope of such a role should be enlarged to encompass online and citizen journalism, as well as the work of bloggers, social media activists and human rights defenders, in order to reflect today's profoundly changed media reality;
 - C. whereas public authorities have the duty not only to refrain from implementing restrictions on freedom of expression, but also the positive obligation to adopt a legal and regulatory framework which fosters the development of free, independent and pluralistic media;
 - D. whereas, according to the Council of Europe, the abuses and crimes committed against journalists by both state and non-state actors, have a grave and chilling effect on freedom of expression; whereas the risk and frequency of unwarranted interference heightens the sense of fear among journalists, citizen journalists, bloggers and other information actors, leading to a potential high degree of self-censorship, while undermining citizens' rights to information and participation;
 - E. whereas citizens are confronted with a radical evolution of the media system, the emergence of new online media and new powerful actors, such as search engines and social media platforms; whereas this development represents both a challenge and opportunity for the promotion of freedom of expression by involving citizens in the public debate, and for converting a growing number of information users into information producers; whereas, however, the concentration of power of media conglomerates, platform operators and internet intermediaries risks negative consequences for the pluralism of public debate and access to information;
 - F. whereas the effect of the economic crisis, coupled with the simultaneous growth of social media platforms and other high-tech giants and highly selective advertising revenues, have dramatically increased precariousness in the working conditions and social insecurity of media actors, leading to a dramatic drop in professional and social standards in journalism;
 - G. whereas, in the context of the enlargement policy, the Commission has the duty to demand full compliance with the Copenhagen criteria, including freedom of expression and the media; whereas, once Members of the EU, States are continuously bound by human rights obligations by virtue of the EU Treaties and the EU Charter of

Fundamental Rights;

- H. whereas unlawful and arbitrary surveillance, particularly when carried out on a mass scale, is incompatible with human rights and fundamental freedoms, *inter alia* freedom of expression – including freedom of the press and protection of confidentiality of journalistic sources –, the right to privacy and data protection; whereas security and counterterrorism laws and activities, as well as measures aimed at countering and preventing violent extremism, should always be the subject of fundamental rights obligations;
- I. whereas, recalling the Council of Europe, whistleblowing is a fundamental aspect of freedom of expression and plays a central role in deterring and preventing wrongdoing, and in strengthening democratic accountability and transparency; whereas the adequate protection of whistleblowers at EU, national and international level is a precondition for ensuring the effectiveness of such a role;
1. Calls on the Member States to take adequate measures to safeguard and promote a pluralist, independent and free media landscape in the service of democratic society, including the independence and sustainability of public service media and community media, which are crucial elements of a favourable environment for freedom of expression;
 2. Calls on the EU institutions to guarantee full implementation of the EU Charter of Fundamental Rights in all their decisions, actions and policies, as a means to thoroughly uphold media pluralism and media freedom; asks the Commission, in this regard, to introduce human rights impact assessments for the evaluation of its legislative proposals and to present a proposal for the establishment of an EU mechanism on democracy, the rule of law and fundamental rights in line with the relevant Parliament resolution;
 3. Expresses its deep concern at the abuses, crimes and deadly attacks still being committed against journalists and media workers in the Member States; urges the Member States to do their utmost to prevent such violence, to ensure accountability and avoid impunity and to guarantee that victims and their families have access to the appropriate legal remedies; calls on the Member States, moreover, to fully implement Council of Europe Recommendation CM/Rec(2016)4 on the protection of journalism and safety of journalists and other media actors;
 4. Calls on the Member States to create and maintain, in law and in practice, a safe and secure environment for journalists and other media actors, enabling them to perform their work in full independence and without undue interference – such as the threat of violence, harassment, financial, economic and political pressure, pressure to disclose confidential sources and materials, and targeted surveillance; highlights the importance of taking a gender-sensitive approach when considering measures to address the safety of journalists;
 5. Underlines the importance of ensuring adequate working conditions for journalists and media workers, in full compliance with the requirements of the EU Charter of Fundamental Rights and the European Social Charter, as a means to avoid undue internal and external pressure, dependency, vulnerability and instability, and hence the risk of self-censorship; highlights that independent journalism cannot be guaranteed and

fostered by the market alone; asks the Commission and the Member States, therefore, to promote and elaborate new socially sustainable economic models aimed at financing and supporting quality and independent journalism;

6. Expresses its concern, once again, at the negative and chilling effects of criminal defamation laws vis-à-vis the right to freedom of expression, freedom of the press and public debate – tools which put pressure on journalists and are essentially designed to protect public figures from criticism; reiterates its call to abolish, without delay, any criminal defamation laws and replace them with appropriate civil provisions, while avoiding excessively punitive measures and penalties;
7. Considers that the participation in democratic processes is founded, first and foremost, on effective and non-discriminatory access to information and knowledge; calls for the EU and its Member States to develop adequate policies to attain universal access to the internet and to recognise internet access – including net neutrality – as a fundamental right;
8. Highlights the important role exerted by independent and pluralistic media in political debate and on the right to pluralistic information both during electoral terms and in the intervening periods; stresses the need to guarantee full expression for all political actors, regardless of their degree of institutional representativeness;
9. Calls on the Member States and the Commission to refrain from adopting unnecessary measures aimed at arbitrarily restricting access to the internet and the exercise of basic human rights or at controlling public communications, such as the adoption of repressive rules on the establishment and operation of media outlets and/or websites, the arbitrary imposition of states of emergency, technical control over digital technologies – i.e. blocking, filtering, jamming and closing down digital spaces – or the de facto privatisation of control measures by pressuring intermediaries to take action to restrict or delete internet content; calls for the EU and the Member States, furthermore, to prevent such measures from being adopted by private operators;
10. Stresses that any measures restricting internet content should only be adopted in well-defined circumstances and under strict judicial oversight, in line with international standards, the case law of the European Court of Human Rights, and Article 52 of the EU Charter of Fundamental Rights;
11. Deplores the broad scope of the Code of Conduct on Countering Illegal Hate Speech Online, promoted by the Commission, and the large margin of manoeuvre left to private companies to determine what constitutes ‘illegality’, which could potentially lead to censorship and arbitrary restrictions on freedom of expression;
12. Reaffirms that anonymity and encryption are essential tools for the exercise of democratic rights and freedoms, for promoting trust in the digital infrastructure and communications, and for protecting the confidentiality of sources in journalism; calls on the Commission and the Member States to refrain from adopting unnecessary and disproportionate measures to undermine encryption and from allowing or facilitating backdoors;
13. Recognises that the new digital environment has exacerbated the problem of the spread

of disinformation, or the so-called ‘fake’ or ‘false’ news; recalls, however, that this is not a new phenomenon, nor is it restricted to the online sphere; stresses the importance of effective systems of self-regulation which are based on the principles of accuracy and transparency and which provide for proper obligations and instruments regarding source verification and fact checking;

14. Reiterates its call on the Commission and the Member States to adopt and implement adequate, advanced and comprehensive whistleblower protection systems by fully endorsing the Council of Europe’s recommendations and by providing appropriate follow-up to the recent Parliament Resolutions of 14 February 2017 and 24 October 2017;
15. Calls on the Member States to adopt and implement legislative frameworks in order to avoid horizontal concentration of ownership in the media sector, to guarantee transparency of media ownership and management, and to ensure independent oversight and effective compliance mechanisms in order to prevent conflicts of interest and ensure editorial and journalistic independence and safeguard the media’s role as public watchdog;
16. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States and to the Secretary General of the Council of Europe.

EXPLANATORY STATEMENT

Through the adoption of Lisbon Treaty, the European Union has identified itself as a community of values in which human rights represent its cornerstone. Freedom of expression and information is internationally recognized as one of the core elements of the human rights and fundamental freedoms' architecture. It has been enshrined – among others – in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the European Convention of Human Rights. The case-law of the European Court of Human Rights, as well as the work carried out by several international organization (UN, OSCE, Council of Europe), has developed and clarified its field of application. Article 11 of the Charter of Fundamental Rights of the European Union has formally broadened its scope by including freedom and pluralism of the media in the domain of protection. Taken together, all these instruments consolidate a precise responsibility of the Member States and the EU itself to fully protect this fundamental human right and, at the same time, to put in place positive measures to proactively promote its progress.

Besides its intrinsic status as human right, freedom of expression and pluralist and independent media perform also a fundamental social role, acting as public watchdog, sheltering citizens from States' as well as private interests' abuses and empowering them to actively participate in the democratic life.

The conditions of effective media freedom, pluralism and independence from political pressure and economic interests have been aggravated since the adoption of the European Parliament resolution of 21 May 2013 “on the EU Charter: standard settings for media freedom across the EU”, as stressed by the findings of the 2017 World Press Freedom Index published by Reporters Without Borders (RSF)¹ and the conclusions of the 2017 Policy Report of the European University Institute².

Threats to freedom of expression and media pluralism are manifold and encompass a wide range of measures put in place both by States' actors and private parties.

Violence, threats and pressures against journalists

Even in the EU Member States, journalists continue to be the target of deadly attacks. The assassination of the Maltese journalist Daphne Caruana Galizia represents only the last episode in this sense. However, pressures against journalists take different and multi-faceted forms. As highlighted by the European Agency of Fundamental Rights, these include threats of violence; incidents in the context of public assemblies; alleged interference by political actors; pressures to disclose confidential sources and materials; interference through security and intelligence services; as well as financial and economic pressures³. These factors, coupled with political

¹ Reporters Without Borders (RSF), 2017 World Press Freedom Index, *Journalism weakened by democracy's erosion*, <https://rsf.org/en/journalism-weakened-democracys-erosion>

² Centre for Media Pluralism and Media Freedom (CMPF), European University Institute, “*Monitoring Media Pluralism in Europe: Application of the Media Pluralism Monitor 2016 in the European Union, Montenegro and Turkey*”, <http://cmpf.eui.eu/media-pluralism-monitor/mpm-2016-results/>

³ European Agency for Fundamental Rights (FRA), *Violence, threats and pressures against journalists and other media actors in the EU*, Contribution to the second Annual Colloquium on Fundamental Rights - November 2016, <http://fra.europa.eu/en/publication/2016/violence-threats-and-pressures-against-journalists-and-other-media-actors-european>

interferences as well as a high degree of concentration in the media sector, are also expanding the phenomenon of self-censorship, as illustrated by the Council of Europe's study "*Journalists under pressure: Unwarranted interference, fear and self-censorship in Europe*"¹. The worsening of the working and economic conditions in the media sector deriving from the economic crisis, together with the emergence of new international actors such as high tech giant or social media platforms able to dominate the online advertising market and with budget cuts operated in some Member States against public service broadcaster, are enhancing precariousness while magnifying self-censorship.

The digital sphere

Digital technologies have undoubtedly provided with new and deeply transformative instruments of participatory democracy, enlarging it in a revolutionary way and enabling citizens to turn from information-users into information-producers. The risk of disinformation implicit in the viral spreading of the internet content, in the difficulties of challenging and correcting it in time, as well as in the censorship power that might be exerted by social media platforms and tech giants, represents the flip-side of that. However, from the perspective of international law, the issue of "fake news" must be approached with extreme caution, keeping in mind that mainstream legacy media have been – and are – equally prone to spread false news, and that prohibition of "fake" or "false" news has often served as an instrument to control the media and restrict editorial freedom. We are cognizant that deceitful information can cause serious harm (damaging individuals' reputation, violating their privacy), but restrictions on "fake news" are not the solution. Final "truth" and "objectivity" are ambiguous and dangerous concepts. The demand to publish only absolute true reports is not only unrealistic but also illiberal. Moreover, we should bear in mind that the digital age has made the verification of facts easier than it ever was in traditional media: manipulation of digital material can be investigated, if the will is there, and internet has at its disposal the instruments and offers the infrastructure for checking sources and facts. Allowing public officials to decide what counts as truth is tantamount to accepting that the forces in power have a right to silence critical voices. As for "hate speech" or "terrorism", the notion of "fake news" is too vague to prevent subjective and arbitrary interpretations. Nor would it be reassuring to have private entities like Facebook making these assessments instead of public authorities.

National measures and the Copenhagen dilemma

National security and fight against terrorism are becoming a common thread for the Member States leading to the adoption of legislative acts and other measures bound to have a deep impact on human rights and fundamental freedoms, as proved by the Snowden case and the relevant case-law of the Court of Justice. Recently enacted national laws in various Member States enhancing surveillance powers conferred to security and police forces and secret services, the monitoring of communications and the retention of personal data, risk – without proper due legal guarantees and remedies – to undermine the very essence of the right to freedom of expression as well as other fundamental rights such as, for instance, the right to privacy and data protection.

Similar measures limiting the enjoyment of the freedom of expression and information or the basic functions of free and independent media, as for instance the very existence of criminal

¹ Marilyn Clark and Anna Grech, *Journalists under pressure - Unwarranted interference, fear and self-censorship in Europe*, Council of Europe Publishing, 2017

defamation laws, have the same potential to corrupt the democratic debate.

Candidate countries must prove to respect, according to article 49 TEU, the EU values listed in article 2 TEU: an obligation enshrined in the Copenhagen criteria. However, no real EU instrument is in place to guarantee the effective observance of human rights and rule of law by Member States, except for the so-called “nuclear option” provided for in article 7 TEU. The political interferences occurred in recent decades in, among others, Italy, Poland, Spain and Hungary prove the need to have a proper EU institutional mechanism of monitoring and redress.

Whistle-blowers

Whistleblowing has been widely recognised as a fundamental aspect of freedom of expression and an essential tool for guaranteeing transparency and accountability of the democratic institutions. The need of an effective whistle-blowers protection has been repeatedly invoked by several international organisations, such as the Council of Europe or the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and by the European Parliament itself. However, a common EU framework is still to be adopted, and various Member States lack an adequate system in this regard.