

# EU GUIDELINES ON FREEDOM OF EXPRESSION ONLINE AND OFFLINE



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The Lebanese civil society reports on a shrinking space for freedom of expression in Lebanon. In 2018, the Delegation of the European Union to Lebanon organised an online photo competition on human rights with over 170 contributions – many of them portrayed freedom of expression.

# 1 - OVERVIEW AND DEFINITIONS

## A - INTRODUCTION

Freedom of opinion and expression are fundamental rights of every human being. Indispensable for individual dignity and fulfilment, they also constitute essential foundations for democracy, rule of law, peace, stability, sustainable inclusive development and participation in public affairs. States have an obligation to respect, protect and promote the rights to freedom of opinion and expression.

Freedom of opinion and expression are essential for the fulfilment and enjoyment of a wide range of other human rights, including freedom of association and assembly, freedom of thought, religion or belief, the right to education, the right to take part in cultural life, the right to vote and all other political rights related to participation in public affairs. Democracy cannot exist without them.

Freedom of opinion and expression are important in and of themselves for the promotion of individuals' self-fulfilment and autonomy. Freedom of expression, including artistic expression, is essential for the development and manifestation of individuals' identities in society.

Free, diverse and independent media are essential in any society to promote and protect freedom of opinion and expression and other human rights. By facilitating the free flow of information and ideas on matters of general interest, and by ensuring transparency and accountability, independent media constitute one of the cornerstones of a democratic society. Without freedom of expression and freedom of the media, an informed, active and engaged citizenry is impossible.

Journalists' work in uncovering abuses of power, shining a light on corruption and questioning received opinion often put them at specific risk of intimidation and violence. Such attacks and intimidation - often accompanied by a refusal by State authorities to effectively investigate and end impunity for such acts - represent an attack not only on the victim, but may also limit the ability of the public to receive information and ideas. Efforts to protect journalists should not be limited to those formally recognised as such, but should also cover support staff and others, such as "citizen journalists", bloggers, social media activists and human rights defenders, who use new media to reach a mass audience. Efforts to end impunity for crimes against journalists and other media actors must be associated with the protection and defence of human rights defenders (1).

Technological innovations in information and communications technology have created new opportunities for individuals to disseminate information to a mass audience and have had an important impact on the participation and contribution of citizens in decision-making processes. These innovations have also brought new challenges. All human rights that exist offline must also be protected online, in particular the right to freedom of opinion and expression and the right to privacy, which also includes the protection of personal data.

Guided by the relevant provisions (2) of the Treaty of the European Union (TEU) and the EU Charter of Fundamental Rights and in accordance with their international and European

human rights obligations (3), the EU is committed to respecting, protecting and promoting the freedom of opinion and expression within its borders. With these Guidelines, the EU reaffirms its determination to promote, in its external human rights policy, the freedoms of opinion and expression as rights to be exercised by everyone everywhere, based on the principles of equality, non-discrimination and universality. Through its external policy instruments, the EU intends to help address and prevent violations of these rights in a timely, consistent and coherent manner.

## B - PURPOSE OF THE GUIDELINES

In promoting and protecting freedom of opinion and expression, the EU is guided by the universality, indivisibility, inter-relatedness and interdependence of all human rights, whether civil, political, economic, social or cultural. These Guidelines should therefore be read in the light of other EU Guidelines adopted in the field of human rights.

The Guidelines explain the international human rights standards on freedom of opinion and expression and provide political and operational guidance to officials and staff of the EU Institutions and EU Member States for their work in third countries and in multilateral fora as well as in contacts with international organisations, civil society and other stakeholders.

The Guidelines also provide officials and staff with practical guidance on how to contribute to preventing potential violations of freedom of opinion and expression, how to analyse concrete cases and to react effectively when violations occur in order to protect and promote freedom of opinion and expression in the EU's external action. They also outline how and in what strictly prescribed circumstances the freedom of opinion and expression can be limited.

## C - DEFINITIONS

The right to freedom of opinion and expression is enshrined in Articles 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). Article 19 ICCPR states that "Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart 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 of his choice. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals". A useful source of guidance for interpreting Article 19 is the UN Human Rights Committee's general comment 34 (UNHRC/GC34) (4).

### The right to hold opinions without interference

Everyone has the right to hold opinions without any kind of interference. This right also includes the right to change an opinion whenever and for whatever reason a person so freely chooses. No person may be subject to the impairment of any rights on the basis of his or her actual, perceived or supposed opinions. Any form or effort to coerce someone to hold or not an opinion is prohibited.

All forms of opinion are protected, including opinions of a social, political, scientific, historic, moral and religious nature. States may not impose any exceptions or restrictions to the freedom of opinion nor criminalise the holding of an opinion.

### The right to freedom of expression

- The right to seek and receive information.

The right to freedom of expression includes freedom to seek and receive information. It is a key component of democratic governance as the promotion of participatory decision-making processes is unattainable without adequate access to information. For example the exposure of human rights violations may, in some circumstances, be assisted by the disclosure of information held by State entities. Ensuring access to information can serve to promote justice and reparation, in particular after periods of grave violations of human rights. The UN Human Rights Council has emphasized that the public and individuals are entitled to have access, to the fullest extent practicable, to information regarding the actions and decision-making processes of their Government (5).

Every individual should have the right to ascertain in an intelligible form, whether, and if so what, personal data is held and stored about them and for what purposes. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may take decisions affecting the processing of his or her personal data kept in electronic or manual files. If such files contain incorrect personal data or data that have been collected or processed contrary to the provisions of the law, every individual should have the right to have his or her records rectified and in certain circumstances erased. States should make every effort to ensure easy, prompt, effective and practical access to such information. It is recognised that it can be relevant to consider data protection in the context of freedom of expression.

The Internet and digital technologies have expanded the possibilities of individuals and media to exercise the right to freedom of expression and freely access online information. Any restriction that prevents the flow of information offline or online must be in line with permissible limitations as set out in international human rights law.

- The right to impart information and ideas of all kinds through any media and regardless of frontiers.

Freedom of opinion and expression further includes the freedom to express and impart information and ideas of all kinds that can be transmitted to others, in whatever form, and regardless of media. Information or ideas that may be regarded as critical or controversial by the authorities or by a majority of the population, including ideas or views that may “shock, offend or disturb” (6), are also covered by this. Commentary on one’s own or on public affairs, canvassing, discussion on human rights, journalism, scientific research, expression of ethnic, cultural, linguistic and religious identity (7) and artistic expression, advertising, teaching are all examples of expressions that are covered by the freedom of expression. It also includes political discourse and advertising during election campaigns.

Expression can take all forms including spoken, written and sign language as well as nonverbal expression such as images and objects of art, all of which are protected. Means of expression

can include books, newspapers, pamphlets, posters and banners as well as all forms of audiovisual, electronic and internet-based modes of expression.

- Strictly prescribed limitations to the right of freedom of expression.

International and regional human rights conventions, courts and mechanisms recognise that freedom of expression can be limited by law in certain, strictly defined ways and under specific circumstances. Restrictions on the exercise of freedom of expression may not put in jeopardy the right itself. The UN Human Rights Committee has repeatedly highlighted that the relation between the right and the restriction and between the norm and the exception must not be reversed.

Any such restrictions, must pass the following three-part, cumulative test:

- They must be provided for by law, which is clear and accessible to everyone (principle of legal certainty, predictability and transparency).
- They must pursue one of the purposes set out in article 19.3 ICCPR, i.e. to protect the rights or reputations of others; to protect national security, public order or public health or morals (principle of legitimacy).
- They must be proven necessary and as the least restrictive means required and commensurate with the purported aim (principles of necessity and proportionality).

Under article 20.2 of the ICCPR States are required to prohibit by law “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”. Such restrictions must, however, always be proportionate to the aim pursued.

Every State has the obligation to respect the right to freedom of opinion and expression, and is required to ensure that this right is given effect in domestic law. Any legislation restricting the right to freedom of opinion and expression must be applied by a body which is independent of any political, commercial or other unwarranted influence in a manner that is neither arbitrary nor discriminatory, and with adequate safeguards against abuse, including the possibility of challenge and remedy against its abusive application (8).

## 2 - OPERATIONAL GUIDELINES

### D - GENERAL CONSIDERATIONS

**The right to freedom of opinion and expression is a universal right:** Freedom of opinion and expression applies to all persons equally. It needs to be protected everywhere and for everyone, regardless of who they are and where they live. It must be respected and protected equally online as well as offline.

**States have the primary obligation to protect and ensure the right to freedom of opinion and expression:** States must ensure that their legal systems provide adequate and effective guarantees of freedom of opinion and expression to all, which are applicable to their entire territory and can be properly enforced.

**States also have an obligation to protect the right to privacy, in accordance with article 17 of the ICCPR:** No one should be subject to arbitrary or unlawful interference with their privacy. States must ensure that their legal systems provide adequate and effective guarantees of the right to privacy, which are applicable to all under their jurisdiction and can be properly enforced.

**Full use will be made of the existing EU human rights Guidelines** whenever they are relevant in dealing with possible violations of the right to freedom of opinion and expression, notably the Guidelines on the promotion and protection of rights of the child, on violence against women and girls and combating all forms of discrimination against them, on human rights defenders, on torture and on the death penalty, on the enjoyment of all human rights by Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) persons and on the right to freedom of religion or belief(9).

## E - PRIORITY AREAS OF ACTION

When addressing freedom of expression, the EU will pay special attention to the following themes, all of which are of equal importance:

### **COMBATING VIOLENCE, PERSECUTION, HARASSMENT AND INTIMIDATION OF INDIVIDUALS, INCLUDING JOURNALISTS AND OTHER MEDIA ACTORS, BECAUSE OF THEIR EXERCISE OF THE RIGHT TO FREEDOM OF EXPRESSION ONLINE AND OFFLINE, AND COMBATING IMPUNITY FOR SUCH CRIMES**

The EU is committed to promoting and protecting the freedom of opinion and expression worldwide and condemns the increasing level of intimidation and violence that journalists, media actors and other individuals face in many countries across the world because of exercising the right to freedom of opinion and expression online and offline. States must take active steps to prevent violence and to promote a safe environment for journalists and other media actors, enabling them to carry out their work independently, without undue interference and without fear of violence or persecution (10).

The EU attaches the highest priority to the safety of journalists and other media actors. The EU will take all appropriate steps to ensure the protection of journalists, both in terms of preventive measures and by urging effective investigations when violations occur.

#### **The EU will:**

- Publicly condemn the killings, attack, execution, torture, enforced disappearance or other acts of serious violence or intimidation against any individual for exercising his or her right to freedom of opinion and expression, as well as attacks on media outlets; and consider appropriate additional measures.
- Appeal to State authorities to fully abide by their international obligations to effectively, promptly and in an independent manner investigate such crimes and to ensure that both state and non-state perpetrators and instigators of such violence are brought to justice. Where appropriate, the EU will encourage international trial observation to ensure the follow up on cases of violence and promote the fight against impunity.

- Call on all States to take active steps to prevent violence against journalists and other media actors, enabling them to work in safety and security, without fear of violence and persecution.
- Strongly encourage state officials and other influential actors in society to publicly denounce acts of violence or intimidation against journalist and other media actors, particularly in cases where state organs have encouraged or condoned such attacks.
- Support the implementation of UNGA Resolution on “The safety of journalists and the issue of impunity” (11) and the UN Plan of Action on the same subject (12).
- Facilitate exchange of experience with media managers, editors, journalists and other media actors in order to raise awareness, develop their capacity to prevent attacks and enhance the safety of journalists, including through training measures.
- Facilitate exchange of good practices for the safety of journalists with government officials, including members of the judiciary, prosecution and law enforcement.

## PROMOTING LAWS AND PRACTICES THAT PROTECT FREEDOM OF OPINION AND EXPRESSION

In addition to outright violence and attacks on the physical security of journalists, media actors and other individuals, freedom of expression is often curtailed by laws or practices that impose censorship, encourage self-censorship or provide legal penalties, including criminal, financial and administrative sanctions on the exercise of freedom of opinion and expression, in violation of international human rights law.

States should protect by law the right of journalists not to disclose their sources in order to ensure that journalists can report on matters in the public interest without their sources fearing retribution. All governments must allow journalists to work in a free and enabling environment in safety and security, without the fear of censorship or restraint.

### The EU will:

- Work against arbitrary attacks, indiscriminate abuse of criminal and civil proceedings, defamation campaigns and excessive restrictions on journalists, media actors, NGOs and social media personalities launched with the aim of preventing these associations and individuals from freely exercising their right to freedom of expression.
- Condemn any restriction on freedom of expression and censorship, both online and offline, in violation of international human rights law.
- Urge repealing or amending of laws or practices that penalise individuals or organisations for exercising their right to express opinions or disseminate information, both bilaterally and in multi-lateral and regional human rights fora.
- Advocate against restrictive legislation shrinking the space for civil society and human rights defenders promoting and protecting freedom of expression and their access to funding.
- Ask for the release and observe the trials of journalists or other individuals who have been detained or imprisoned for the expression of their views online and offline, or for the dissemination of information as protected under international human rights law.



- Support the adoption of legislation that provides adequate protection for whistleblowers and support reforms to give legal protection to journalists' right of nondisclosure of sources.
- Encourage exchanges of good practices on the promotion and protection of freedom of opinion and expression with all relevant stakeholders including: law enforcement officers, the judiciary, civil society, politicians, human rights defenders, lawyers, security forces, academics and religious or cultural agencies.
- Continue to provide journalists and other media actors, human rights defenders, political activists and other individuals with the technical tools and support they need in order to exercise their right to freedom of expression online as well as offline.
- Ensure that the media, both mass and social, recognize and respect the rights of the child, as enshrined in the Convention on the Rights of the Child.

## **PUBLIC AUTHORITIES OF THE DANGERS OF UNWARRANTED INTERFERENCE WITH IMPARTIAL/CRITICAL REPORTING**

An open society based on the rule of law can only operate effectively if there is an independent and pluralistic media environment offline and online. A free, diverse and independent press and other media provide public platforms that are essential to any society to ensure freedom of opinion and expression and the enjoyment of other human rights.

### **The EU will:**

- Support action by third countries to ensure legal, policy and regulatory frameworks based on international standards that protect and promote freedom of expression and information.
- Support actions by third countries to enact necessary procedures to facilitate individuals to receive information, including by freedom of information laws.
- Promote the independence of and the protection against political or commercial interference of all public bodies that regulate media, broadcasting or telecommunications.
- Support actions by third countries to improve transparency of media ownership, the adoption of measures against media concentration and fair and transparent licencing allocation as the associated risks have grown more acute in the digital age.
- Encourage actions by third countries to improve transparency and fair use of public money in the media sector.
- Support actions by third countries aiming at the strengthening of journalistic and editorial independence, including through legal and financing mechanisms reinforcing financial self-sustainability of both public and private media.
- Encourage the promotion, in third countries, of measures, in particular voluntary, selfregulatory initiatives and mechanisms such as media ethic codes, which enhance press accountability.

- Encourage free and pluralistic reporting on elections as well as equitable political party access to public service media during election campaigns.
- Encourage independent organisations to actively monitor the situation of media freedom and pluralism in different countries.

## PROMOTING AND RESPECTING HUMAN RIGHTS IN CYBERSPACE AND OTHER INFORMATION AND COMMUNICATION TECHNOLOGIES

Information and communication technologies (ICT) are now part of everyday life and provide new opportunities for the fulfilment of human rights and for social and economic development. Non-discriminatory access to information and freedom of expression for all individuals, both online and offline must be ensured and protected.

### The EU will:

- Advocate for the application of all human rights, including the right to freedom of opinion and expression, both offline and online.
- Support the efforts of third countries to increase and improve their citizens' access to and safe use of the Internet and digital communications.
- Promote unhindered, uncensored and non-discriminatory access to ICTs and online services for all, in accordance with international law.
- Work against any attempts to block, jam, filter, censor or close down communication networks or any kind of other interference that is in violation of international law.
- Provide technical support to individuals on the ground to help counter such attempts, when necessary.
- Continue work towards maintaining and strengthening the multi-stakeholder model for the governance of the Internet (13).

## PROMOTING BEST PRACTICES BY COMPANIES

ICT companies play a key role in ensuring and enabling freedom of expression, access to information and privacy on the Internet and through telecommunications. While operators can offer services as they desire, in accordance with the applicable legal framework, their choices inevitably affect the rights of their users, especially when an operator is dominant in its sector. The UN Guiding Principles on Business and Human Rights state that companies have a responsibility to consider the human rights impact of their policies and to minimize negative impact on the right to freedom of opinion and expression, and other human rights.

### The EU will:

- Promote action at the international level to develop best practices and respect for human rights with regard to the export of technologies that could be used for surveillance or censorship by authoritarian regimes.
- Promote awareness of and compliance with the EU guidance note for ICT companies on business and human rights (14), developed by the European Commission on the basis of the UN Guiding Principles on Business and Human Rights.

- Raise awareness among judges, law enforcement officials, staff of human rights commissions and policymakers around the world of the need to promote international standards, including standards protecting intermediaries from the obligation of blocking Internet content without prior due process.

## PROMOTING LEGAL AMENDMENTS AND PRACTISES AIMED AT STRENGTHENING DATA PROTECTION AND PRIVACY ONLINE/OFFLINE

The global and open nature of the Internet is providing citizens with new opportunities for exchanging information and opinions. The obligations of States under international human rights law, in particular the right to freedom of expression, the right to privacy and the protection of personal data, extend to the online sphere in the same way as they apply offline.

The right to freedom of expression, the right to privacy and the protection of personal data may suffer violations as a result of unlawful or arbitrary surveillance, interception of communications or collection of personal data, in particular when carried out on a mass scale. States must ensure that any measures taken to protect certain information gathered and processed in the interest of national or public security are in accordance with their obligations under international human rights law.

### The EU will:

- Promote measures for the protection of the right to privacy and data protection including by calling on and supporting third countries to bring their relevant national legislation regarding transparency and proportionality of government access to personal data in conformity with international human rights law, where applicable.
- Promote and facilitate the exchange of good practices to ensure that the legislation and procedures of States regarding the surveillance of communications and the interception and collection of personal data are based on the rule of law, subject to independent, effective and domestic oversight mechanisms and uphold obligations under international human rights law, including the principles of proportionality and necessity.
- Promote dialogue, both bilaterally as well as in multilateral fora, regarding the issue of the right to privacy and data protection in the digital age, with a view to improving cooperation and transparency among countries regarding issues of data security and relevant international human rights standards.

## F - TOOLS

The EU will make use of all appropriate political and external financial instruments in order to further the promotion and protection of freedom of opinion and expression.

### POLITICAL DIALOGUES AND HIGH LEVEL VISITS

In appropriate high-level political contacts the EU will raise systemic issues and individual cases relating to the protection of freedom of expression and call on partner countries to initiate legislative changes to ensure the promotion and protection of the right to freedom of opinion and expression, online as well as offline.

In political dialogues with partner countries, the EU will raise serious or systemic violations and restrictions on the right to freedom of opinion and expression online and offline as appropriate. The EU will encourage partner countries to ratify and implement relevant international and regional human rights instruments. The EU will encourage partner countries to issue invitations for country visits to UN Human Rights Special Procedures, particularly the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression for country visits, and to accept and implement UN recommendations, including from treaty monitoring bodies and the Universal Periodic Review, as well as from the Council of Europe and the OSCE, where relevant.

The EU will ensure that EU institutions and Member States' representatives visiting third countries are fully briefed on the situation of freedom of opinion and expression, both online and offline. Such visits will, when appropriate, raise the priorities and themes covered by these Guidelines with local counterparts and include meetings with journalists, human rights defenders and media actors.

### **MONITORING, ASSESSING AND REPORTING ON FREEDOM OF EXPRESSION**

Missions in third countries (EU Delegations, CSDP missions and Member States embassies) and headquarters will monitor the respect for freedom of opinion and expression online as well as offline and will report on situations of concern, including individual cases and systemic issues. The EU's Human Rights Country Strategies should include a section on freedom of opinion and expression.

Reports from EU Missions will be taken up in the relevant Council Working Parties and, when appropriate, in the Political and Security Committee (PSC) in order to identify an appropriate response.

EU missions will encourage and facilitate close and regular coordination and consultation with and between international and local civil society, human rights defenders, local and foreign correspondents and UN and regional bodies which monitor the situation of freedom of opinion and expression on the ground, online as well as offline. Where relevant, individual cases will be reported on and followed up. Where appropriate, monitoring of individual cases could include trial observations and prison visits.

The EU and Member States Heads of Missions or other appropriate EU officials will consider the publication of articles and the granting of interviews to local media outlets, in order to defend and promote freedom of opinion and expression in different countries.

### **PUBLIC STATEMENTS AND DEMARCHES**

The EU will, when appropriate, undertake demarches or issue public statements both preventively and in response to serious violations or restrictions on the right to the freedom of opinion and expression. Such violations would include executions, extrajudicial killings, enforced disappearances, arbitrary arrest or trials, or attacks against journalists and other media actors, human rights defenders or other individuals for exercising their right to freedom of opinion and expression.

The EU will also consider issuing statements in reaction to legislative or other relevant developments with a detrimental impact on freedom of opinion and expression and promote best practices.

## FINANCIAL INSTRUMENTS

All appropriate EU external financial instruments should be used to further protect and promote freedom of opinion and expression online as well as offline, including by supporting the emergence of a free, diverse and independent media. In particular, the EU will make use of the European Instrument for Democracy and Human Rights (EIDHR), and its small grants mechanism for individuals facing immediate threat. Other EU geographic and thematic funding instruments will also be used to promote freedom of opinion and expression in cooperation with partner countries.

The EEAS and the Commission services will build on existing actions such as the “No Disconnect Strategy”, aiming to uphold the EU’s commitment to ensure that the Internet and other information and communication technologies remain a driver of political freedom, democratic development and economic growth.

The EEAS and the European Commission services, in coordination with Member States, will share information on projects financed in third countries in the field of freedom of expression, to allow better coordination and efficient use of resources.

Abusive restrictions on freedom of expression and violence against journalists and other media actors should be taken into account by the EU when deciding on possible suspension of cooperation, notably as regards financial assistance.

The EEAS and European Commission services will include press media support components in their electoral assistance, where appropriate.

## PUBLIC DIPLOMACY IN MULTILATERAL FORA

The EU will ensure that freedom of expression remains a prominent issue on the UN agenda, working actively in all relevant multilateral fora to ensure strong cross-regional support for the promotion and protection of freedom of opinion and expression online and offline, supporting the mandate of the UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression and cooperating closely with the special rapporteurs having related mandates from the AU, OAS, OSCE and OIC.

The EU will build on the content of relevant UN Resolutions such as the General Assembly Resolution on the “Safety of Journalists and the issue of impunity”, UN Human Rights Council Resolution on “The Safety of Journalists”, the Resolution on the “Promotion, Protection, and Enjoyment of Human Rights on the Internet (15)” and the UN General Assembly resolution on “The right to privacy in the digital age” (16); as well as relevant concluding observations of UN treaty monitoring bodies and recommendations of special rapporteurs to third countries. It will support and facilitate the dissemination of *the UN Plan of Action for the Safety of Journalists and the Issue of Impunity* and draw from experiences of its implementation (including in particular in pilot countries).

EU Member States will draw attention, as appropriate, to freedom of expression in the Universal Periodic Reviews conducted by the UN Human Rights Council. The implementation of recommendations accepted by the state under review will be monitored and supported as appropriate.

The EU will step up its engagement with other international and regional organisations and mechanisms, including the UN (especially the Office of the United Nations High

Commissioner for Human Rights (OHCHR) and the United Nations Educational, Scientific and Cultural Organisation (UNESCO), OSCE, the Council of Europe and other donors or entities supporting freedom of opinion and expression.

The EEAS and the European Commission services, in coordination with Member States, should actively engage in debates at the Internet Governance Forum (IGF) and the World Summit on the Information Society (WSIS) Forum with a view to promoting a human rights perspective and a multi-stakeholder model and to foster awareness on freedom of opinion and expression issues in cooperation with civil society.

The EU will actively support international awareness-raising days, such as World Press Freedom Day (3 May) the International Day to End Impunity for Crimes against Journalists (2 November), the World Day Against Cyber Censorship (12 March) and the Data Protection Day (28 January).

The EU will recall the importance of free, pluralistic and sustainable media encouraging the adherence to the recommendations of the Council of Europe and UNESCO regarding media freedom and pluralism and Internet freedom.

## **MEDIA FREEDOM AND PLURALISM IN THE EU ENLARGEMENT POLICY**

The EU considers freedom of expression to be a priority for candidate countries and potential candidates. The Copenhagen criteria cover freedom of expression and media plurality in their entirety and all countries seeking to accede to the Union must demonstrate a credible commitment to promoting freedom of expression by addressing all relevant aspects (legal, regulatory, judicial, market related, etc.) where obstacles to freedom of expression persist.

The EEAS and Commission services in coordination with Member States will monitor and offer guidance on persisting media freedom issues, offline as well as online, through preaccession political dialogue and annual progress reports. The issues should be raised at an early stage during accession talks (Chapter 23) in order to provide sufficient time for tangible progress. Particular attention should be paid to fighting impunity in cases of violence against journalists, creating a transparent market basis for the media sector and developing the judiciary as a guarantor for individual rights. The EU will assist these countries to address such issues by means of a comprehensive technical and financial support (IPA II). Particular help will be provided to ensure the strengthening of journalists' professional organisations and NGOs committed to media freedom.

## **PROMOTING COUNCIL OF EUROPE AND OSCE ACQUIS**

The EU will promote Council of Europe's standards and OSCE commitments on freedom of opinion and expression with third countries that are members of those organisations, including by encouraging cooperation with the Steering Committee on Media and Information Society (CMDSI) which oversees the Council of Europe's work in the field of media, information society and data protection, as well as by encouraging the implementation of the European Court of Human Rights (ECtHR) rulings (under article 10 ECHR) and application of its case law by national judiciaries. The EU will also maintain close contacts and build synergies with the Commissioner for Human Rights of the Council of Europe regarding mutual activities to promote freedom of expression and enhance the safety of journalists. The EU will promote freedom of opinion and expression, online and

offline, in the context of the OSCE, building on existing OSCE commitments in this field as well as OSCE confidence building measures in the area of cyber security and drawing on standards set in other international and regional fora.

Member States, the EEAS and the European Commission services will explore ways to further strengthen the capabilities of and the cooperation with the Council of Europe and the OSCE representative on the Freedom of the Media.

## TRADE MEASURES

Member States must ensure the appropriate application of Council Common Position 2008/944/ CFSP, which defines common rules governing the control of exports of listed military technology and equipment, and which provides that respect for human rights in the country of final destination should be considered before licences to export to that country are granted.

The EU will ensure a structured and consistent approach to export controls of certain sensitive information and ICT items. In addition, the EU will promote action at the international level to prevent the sale of surveillance or censorship technology to authoritarian regimes, including by presenting proposals in the context of key multilateral export control regimes such as the Wassenaar Arrangement.

## TRAINING AND TECHNICAL EXCHANGES

The EEAS, in cooperation with the Commission and Member States, will develop training materials for staff in the field and at headquarters. These training materials will also be made available to Member States and EU institutions. The training will be practical in its orientation, with a focus on enabling EU missions to use EU tools for analysis and effective reporting so as to highlight the EU's thematic priorities and respond to violations.

The EU will promote awareness raising and media and internet literacy and its importance for the safe and responsible use of the Internet, especially for children and young people, in the context of programmes of education and training on human rights, according to the UN Declaration on Human Rights Education and Training.

The EU will promote the implementation of the guidance for ICT/telecommunications companies on business and human rights (17), developed by the Commission on the basis of the UN Guiding Principles on Business and Human Rights.

The EEAS, the European Commission services and Member States will explore ways to provide technical assistance and exchange of good practices with third countries, including on legislative reform for better protection of the freedom of expression online and offline and the safety of the journalists and media actors. Human Rights Dialogues and Consultations with third countries will also be used for this purpose.

## CAPACITY BUILDING

The EEAS and the European Commission, in coordination with Member States, will support the efforts of third countries to develop unhindered and safe access and use of the Internet in the context of ensuring openness and respect for human rights. Support will be provided for capacity building of human rights defenders, journalists and other media actors as well as individuals fighting for the respect for freedom of expression and secure communications online and offline, including through EIDHR funding.

### 3 - IMPLEMENTATION AND EVALUATION

The Council Working Party on Human Rights (COHOM) and its task force on freedom of expression will support the implementation of these Guidelines involving, where appropriate, geographic Council working groups. It will develop additional guidance for action for EU missions, in particular regarding systemic issues and individual cases. It will adopt "lines to take" documents on key questions and topical issues when necessary.

COHOM will evaluate the implementation of these Guidelines after a period of three years, if appropriate, and in consultation with civil society, relevant academic experts and representatives of the media. Consultation with civil society should involve human rights defenders, NGOs including domestic and international human rights, professional associations, private sector, international and regional human rights bodies and women's organisations.

Regular exchanges of views will be held with the relevant committees, sub-committees and working groups of the European Parliament on the implementation, evaluation and review of these Guidelines.

## ANNEX I

### EXAMPLES OF ACTIONS THAT MAY VIOLATE OR UNDERMINE THE ENJOYMENT OF THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION

#### **Attacks on a person because of his or her exercise of the freedom of expression:**

The execution, killing, enforced disappearance, torture or arbitrary arrest of journalists or other individuals because of his or her exercise of the freedom of expression constitutes a violation of article 19 UDHR and ICCPR. Such acts can be undertaken by state agents or private groups.

**Legislative restrictions:** Any restriction on freedom of expression must be provided by law, may only be imposed for the grounds set out in international human rights law, and must conform to the strict tests of necessity and proportionality.

Inconsistent and abusive application of legislation can be used to censor criticism and debate concerning public issues and to foster a climate of fear and self-censorship among media actors and the public at large. Arbitrary regulations and accreditation requirements for journalists, denial of journalistic access, punitive legal barriers to the establishment or operation of media outlets and regulations that allow for the total or partial, ex ante or post-facto censorship and banning of certain media are examples of legislative restrictions on the right to freedom of expression. Restrictions also take the form of laws imposing prohibitive taxes or levies, as well as other forms of economic sanctions and market restrictions.

On the Internet, censorship usually takes the form of laws allowing for the total or partial banning of certain webpages. In certain extreme circumstances, States resort to the complete disconnection of the Internet network, thus isolating a whole country or region from the rest of the world. It is important to guarantee that the access to and free flow of information will not be subject to unjustified restrictions regardless of the medium.



**Defamation laws:** Journalists and other media actors, writers, artists, political activists and other human rights defenders across the world continue to be imprisoned for defamation. Defamation laws may also lead to strong self-censorship to avoid the fear of being subject to severe criminal or civil sanctions. The EU believes that defamation laws should not be misused to censor criticism and debate concerning public issues.

**Abusive invocation of public morals, national security or protection of “national values”:** International human rights law does not permit placing restrictions on the exercise of freedom of expression, solely in order to protect notions such as religions, cultures, schools of thought, ideologies or political doctrines. Some states invoke public morals in an abusive manner and as a means of curtailing the right to freedom of expression. For example, women or women’s groups that publicly criticize discriminatory religious tenets have been the targets of severe harassment and intimidation, both by state as well as non-state actors.

**National security:** the protection of national security can be misused to the detriment of freedom of expression. States must take care to ensure that anti-terrorism laws, treason laws or similar provisions relating to national security (state secrets laws, sedition laws, etc.) are crafted and applied in a manner that is in conformity with their obligations under international human rights law.

**Blasphemy laws:** Laws that criminalise blasphemy restrict expression concerning religious or other beliefs; they are often applied so as to persecute, mistreat or intimidate persons belonging to religious or other minorities and they can have a serious inhibiting effect on freedom of expression and on freedom of religion or belief. The EU recommends for the decriminalisation of such offences and forcefully advocates against the use of the death penalty, physical punishment, or deprivation of liberty as penalties for blasphemy. The EU will continue to work with and support organisations advocating abolition of blasphemy laws.

**“Hate speech”:** there is no universally accepted definition of the term “hate speech” in international law. The term is usually used to refer to expression that is abusive, insulting, intimidating or harassing or which incites violence, hatred or discrimination against individuals or groups identified by a specific set of characteristics. Under international law, States are only required to prohibit the most severe forms of hate speech, such as the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (Article 20.2 ICCPR and Article 4 CERD). Hate speech legislation should not be abused by governments to discourage citizens from engaging in legitimate democratic debate on matters of general interest.

In the European context, ECHR case law makes a distinction between, on the one hand, genuine and serious incitement to extremism and, on the other hand, the right of individuals (including journalists and politicians) to express their views freely and to “offend, shock or disturb”. In line with ECHR case law, the EU Framework decision on combating certain forms and expressions of racism and xenophobia by means of criminal law (18) stipulates that the Member States shall make punishable the intentional public incitement to violence or hatred as well as the public condoning, denial or gross trivialisation of certain international crimes when carried out in a manner likely to incite to violence or hatred.

**Restrictions relating to media freedom and pluralism:** Lack of media freedom and pluralism may hinder freedom to receive and impart information, which in turn undermines both public trust in the media and the exercise of democracy itself. Moreover, a lack of media

freedom and pluralism diminishes the media's ability to act as a public watchdog holding power to account. Also, it should be observed that freedom of expression is closely linked to the financing structure enabling a real independence for both, public and private media. Fair and independent media markets are essential for exercising the right to free expression. Regulatory activity should not be used to shape the media landscape to the taste of specific interest groups or the incumbents in power, excluding other groups or positions from the public debate.

**The lack of independence of regulatory bodies:** The independence of regulatory bodies from governmental influence is a vital condition for free and independent media to flourish. Nomination and appointment procedures for all members of regulatory bodies should follow rules designed to protect their independence and impartiality. National regulatory bodies should be free from direct political interference and should have a positive obligation to protect human rights, including freedom of expression.

**Internet restrictions by operators:** Specific content, applications or services should never be blocked, slowed down, degraded or discriminated against, except in very limited circumstances (e.g. implement a court order or a legislative provision, for instance conforming to the law enforcement provisions on child abuse (19), crucial network security issues, prevent unsolicited communication, minimise exceptional congestion). Interference may also arise out of abusive, opportunistic or discriminatory (variable geometry) application of various laws, interference with privately operated Internet based platforms or applications, etc.

The jamming of wireless signals is another means of censorship which deprives individuals of their right of freedom of expression.

**Restrictions on the right of access to information:** The UN Special Rapporteur on Freedom of Expression recommends that parliaments enact legislation on access to public information, in accordance with internationally recognised principles, underlining that in all democratic societies, transparency of public activities plays a crucial role for the confidence and trust of the population.

**Restricting freedom of expression in order to protect intellectual property rights:** Blocking access to websites on the grounds of copyright protection could constitute a disproportionate restriction of freedom of opinion and expression. Any restrictions must comply with the three part cumulative test set out in paragraph 20 of these Guidelines.

**Restrictions on the right of privacy and data protection:** Illegal surveillance of communications, their interception, as well as the illegal collection of personal data violates the right to privacy and the freedom to hold opinions without interference and can lead to restrictions on freedom of expression.

Undue interference with individuals' privacy can both directly and indirectly limit the free development and exchange of ideas. Restrictions on anonymity in communication, for example, could discourage victims of all forms of violence from reporting the abuses against them, for fear of double victimization. In this regard, Article 17 of ICCPR refers directly to the protection from interference with "correspondence", a term that should be interpreted to encompass all forms of communication, both online and offline.

Unlawful or arbitrary government or private company access to personal data can have a negative impact on freedom of expression as individuals may be less likely to use electronic communication technologies.

## ANNEX II (20)

Nonexhaustive list of international norms, standards, principles and resources related to free dom of opinion and expression that the EU may invoke or use in contacts with third countries.

### UNIVERSAL DECLARATION OF HUMAN RIGHTS

**Article 19:** *“Everyone has the right to the freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.*

### INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

**Article 19:** *“Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart 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 of his choice. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals”.*

**Article 18:** *“Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions”.*

**Article 17:** *“No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks”.*

**Article 20.2:** *“States are required to prohibit by law “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”.*

## INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION

**Article 4:** “States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, *inter alia*: (a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof; (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law; (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination”.

## CONVENTION ON THE RIGHTS OF THE CHILD (21)

**Article 13:** “The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart 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 of the child’s choice. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; or (b) For the protection of national security or of public order (*ordre public*), or of public health or morals”.

## CONVENTION ON PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE

## UN DECLARATION ON HUMAN RIGHTS EDUCATION AND TRAINING

## UN DECLARATION ON THE RIGHTS OF PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES

## UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (ARTICLE 16)

## UN SPECIAL RAPPORTEUR ON THE PROMOTION AND THE PROTECTION OF THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION

- The office of the UN Special Rapporteur on Freedom of Opinion and Expression was established by resolution of the UN Commission on Human Rights in 1993 (22).

## RABAT PLAN OF ACTION ON THE PROHIBITION OF ADVOCACY OF NATIONAL, RACIAL OR RELIGIOUS HATRED THAT CONSTITUTES INCITEMENT TO DISCRIMINATION, HOSTILITY OR VIOLENCE – 2012

### UNESCO: SELECTED DECLARATIONS, DECISIONS AND STRATEGIC DOCUMENTS

- Constitution of UNESCO (Article I.2.a – 1945).
- Windhoek Declaration on Promoting an independent and pluralistic African press (Namibia 1991).
- UNESCO Resolution 29 on Condemnation of Violence against Journalists (1997).
- Belgrade Declaration on Support to Media in Violent Conflict and in Countries in Transition.
- Maputo Declaration on Fostering Freedom of Expression, Access to Information and Empowerment of People (2008).
- Brisbane Declaration on Freedom of Information: The Right to Know (2010).
- Washington Declaration on 21st Century Media: New Frontiers, New Barriers (2011).
- Carthage Declaration on Press Freedom and the Safety of Journalists (2012).
- UNESCO Work Plan on the Safety of Journalists and the Issue of Impunity (2013).
- UN Plan of Action on the Safety of Journalists and the Issue of Impunity (2012).
- Implementation Strategy 2013–2014 – UN Plan of Action on the safety of Journalists and the Issue of Impunity.
- San Jose Declaration on Safe to Speak: Securing Freedom of Expression in All Media (2013).
- Final Statement of the First WSIS + 10 Review Events (2013).

### TOOLS

- Media Development Indicators (MDIs) (2006).
- Journalists' Safety Indicators: (2013).
- Gender-Sensitive Indicators for Media (GSIM) (2012).
- Freedom of Expression Toolkit (2013).

### Freedom of expression and related rights in regional instruments

#### COUNCIL OF EUROPE (23)

- European Convention on the Protection of Human Rights and Fundamental Freedoms.

**(Article 8 – Right to respect for private and family life)** *“Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”.*

**(Article 9 – Freedom of thought, conscience and religion)** *“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance”. “Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others”.*

**(Article 10 – Freedom of expression)** *“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. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”.*

**(Article 17 – Prohibition of abuse of rights)** *“Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention”.*

- Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108).

**Article 1:** Object and purpose. The purpose of this convention is to secure in the territory of each Party for every individual, whatever his nationality or residence, respect for his rights and fundamental freedoms, and in particular his right to privacy, with regard to automatic processing of personal data relating to him (“data protection”).

- Framework Convention for the Protection of ational Minorities and Explanatory Report (Article 9).
- European Charter for Regional or Minority Languages (Article 11 on the Media).

- The Council of Europe is currently working on **standards relating to the protection of journalists**, including as regards member states positive obligations. This is a priority during the current Austrian Chairmanship of the Committee of Ministers of the Council of Europe, also having regard to the recent Resolution 3 entitled “Safety of Journalists”, adopted by the Council of Europe Ministers responsible for Media and Information Society, held in Belgrade on the 7th and 8th of November 2013 (24).
- UNESCO (senior officials) has asked the Council of Europe to consider the subject of safety of journalists as an indicator of state fragility. Given that violence against journalists thrives in the absence of freedom of expression, safety of journalists can indeed be a high value indicator of the respect of freedom of expression and freedom of the media in a particular community (25).
- Council of Europe’s work on Internet freedom, fully compatible with the International Covenant on Civil and Political Rights and the European Convention on human rights via its Internet Governance Strategy 2012–2015, promoting the 47 members’ commitment to do no harm to the Internet, and various standards on filtering and blocking, net neutrality, and human rights aspects of the operation of various Internet actors.
- The ECHR case-law has established certain parameters to describe “hate speech” by applying Article 17 (prohibition of abuse of rights) of the Convention where the comments in question amount to hate speech and negate the fundamental values of the Convention, or (b) by applying the limitations provided for in the second paragraph of Article 10 and Article 11 of the Convention (this approach is adopted where the speech in question, although it is hate speech, is not apt to destroy the fundamental values of the Convention) (26).
- **Recommendation CM/Rec (2011)7** (27) of the Committee of Ministers to Member States, contains a new broad notion of Media encompassing all actors involved in the production and dissemination, to potentially large numbers of people, of content, including information, analysis, comment and opinion. The Committee of Ministers also acknowledged that, for certain purposes, some privileges which are normally recognised for journalists may extend to other actors who may not fully qualify as media (for example individual bloggers) taking account of the extent to which such actors can be considered part of the media ecosystem and contribute to the functions and role of media in a democratic society. Reference could also be made to the Resolution 1 entitled “Internet Freedom”, adopted at the Council of Europe Ministerial Conference, held in Belgrade, Serbia, on 7 and 8 November 2013.

## ORGANISATION FOR THE SECURITY AND COOPERATION IN EUROPE (OSCE)

The OSCE acquis includes several provisions on freedom of expression, among them:

- **Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (1990)**: (9. *The participating States reaffirm that: everyone has the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive, and impart information and ideas without*

*interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards. In particular, no limitation will be imposed on access to, and use of, means of reproducing documents of any kind, while respecting, however, rights relating to intellectual property.*

- **Budapest Document: Towards a Genuine Partnership in a New Era (Summit of Heads of State, 1994):** 36. *The participating States reaffirm that freedom of expression is a fundamental human right and a basic component of a democratic society. In this respect, independent and pluralistic media are essential to a free and open society and accountable systems of government. They take as their guiding principle that they will safeguard this right.*
- **OSCE Permanent Council Decision o. 633, annexed to Decision 12/04 of the Twelfth Meeting of the Ministerial Council (Sofia, 2004):** Reaffirming the importance of fully respecting the right to the freedoms of opinion and expression, which include the freedom to seek, receive and impart information, which are vital to democracy and in fact are strengthened by the Internet.
- OSCE Guidelines on the use of minority languages in the broadcast media (2003).
- The Office of the OSCE Representative on Freedom of the Media remains the world's only inter-governmental institution mandated to protect and promote media freedom in 57 OSCE participating States. It was created in 1997. In March 2010, Dunja Mijatovic from Bosnia and Herzegovina was appointed Representative (28).

## AFRICAN UNION:

- African Charter on Human and Peoples' Rights:

**Article 9:** *“Every individual shall have the right to receive information. Every individual shall have the right to express and disseminate his opinions within the law.”*

The Special Rapporteur on Freedom of Expression and Access to information in Africa is Ms. Faith Pansy Tlakula.

## ORGANISATION OF AMERICAN STATES (OAS)

American Convention on Human Rights:

**Article 13:** *“Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: a. respect for the rights or reputations of others; or b. the protection of national security, public order, or public health or morals. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or*



equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

OAS Special Rapporteur on Freedom of Expression, was created by the Inter-American Commission on Human Rights in October 1997. The OAS special rapporteur is Catalina Botero.

## ASEAN

- Human rights Declaration (29):

**Article 23:** *“Every person has the right to freedom of opinion and expression, including freedom to hold opinions without interference and to seek, receive and impart information, whether orally, in writing or through any other medium of that person’s choice”.*

## EUROPEAN UNION:

- Treaty on the Functioning of the European Union:

### **Article 16:**

1. *Everyone has the right to the protection of personal data concerning them.*
2. *The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall lay down the rules relating to the protection of individuals with regard to the processing of personal data by Union institutions, bodies, offices and agencies, and by the Member States when carrying out activities which fall within the scope of Union law, and the rules relating to the free movement of such data. Compliance with these rules shall be subject to the control of independent authorities.*

*The rules adopted on the basis of this Article shall be without prejudice to the specific rules laid down in Article 39 of the Treaty on European Union.*

- Charter on Fundamental Rights of the European Union

**Article 7:** *Respect for private and family life: “Everyone has the right to respect for his or her private and family life, home and communications”.*

**Article 8:** *Protection of personal data: “Everyone has the right to the protection of personal data concerning him or her. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified”. “Compliance with these rules shall be subject to control by an independent authority”.*

**Article 10:** Freedom of thought, conscience and religion: *“Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right”.*

**Article 11:** Freedom of expression and information: *“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. The freedom and pluralism of the media shall be respected”.*

**Article 22:** Cultural, religious and linguistic diversity: *“The Union shall respect cultural, religious and linguistic diversity.”*

### EU INSTRUMENTS ON HATE SPEECH:

- Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law.

**Article 1:** Offences concerning racism and xenophobia Each Member State shall take the measures necessary to ensure that the following intentional conduct is punishable:

**A-** publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin;

**B-** the commission of an act referred to in point (a) by public dissemination or distribution of tracts, pictures or other material;


**C-** publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes as defined in Articles 6, 7 and 8 of the Statute of the International Criminal Court, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group;

**D-** publicly condoning, denying or grossly trivialising the crimes defined in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945, directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin when the conduct is carried out in a manner likely to incite to violence or hatred against such a group or a member of such a group.

**Article 7:** “*This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles, including freedom of expression and association, as enshrined in Article 6 of the Treaty of European Union*”.

- Report from the Commission to the European Parliament and the Council on the implementation of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law – COM (2014) 27 final.

## EU INSTRUMENTS ON DATA PROTECTION (30):

- Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data.
  - Council Framework Decision 2008/977/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters.
  - Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (amended by Directive 2009/136/EC).
  - Regulation (EC) 45/2001 on the protection of individuals with regard to the processing of personal data by the Community Institutions and bodies and on the free movement of such data.
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## END NOTES

1. See EU Guidelines on Human Right Defenders (2004, updated 2008).
2. Articles 2, 6, 21, 49 of TEU and articles 7, 8, 10, 11, 22 of the EU Charter of Fundamental Rights. All EU Member States are State Parties to ICCPR and ECHR.
3. See annex II for a non-exhaustive list of international and European norms and standards on freedom of opinion and expression.
4. A general comment is a non-binding interpretation of the content of human rights provisions by UN treaty bodies. General comment 34 provides guidelines for states parties on the interpretation of specific aspects of Art 19 of the ICCPR and can be found at <http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>.
5. A/HRC/RES/12/12.
6. *Handyside v. the United Kingdom*, ECtHR Judgment, 7 December 1976, § 49.
7. Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990, paragraph (32).
8. 2011 UNSR Frank La Rue report on Freedom of Expression - A/HRC/17/27 [http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf).
9. [http://eeas.europa.eu/human\\_rights/guidelines/index\\_en.htm](http://eeas.europa.eu/human_rights/guidelines/index_en.htm)
10. UNGA Resolution A/RES/68/163 “The safety of journalists and the issue of impunity”.
11. A/RES/68/163.
12. In response to the UN Plan of Action, an Implementation Strategy 2013/2014 was drafted at the UN Inter-agency meeting (Vienna, November 2012).
13. As set out in the June 2013 Council conclusions on the EU Cyber Security Strategy.
14. [http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/csr-ict-hr-business\\_en.pdf](http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/csr-ict-hr-business_en.pdf).
15. A/HRC/RES/20/8 adopted by the Human Rights Council on 16 July 2012.
16. A/C.3/68/L.45 adopted by the UN General Assembly November 2013.
17. [http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/csr-ict-hr-business\\_en.pdf](http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/csr-ict-hr-business_en.pdf).
18. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:328:0055:0058:EN:PDF>.
19. See the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.
20. These Guidelines are based on international and regional standards on freedom of expression. There are a number of countries which neither signed nor ratified the International Covenant on Civil and Political Rights and other main human rights treaties, and standards developed under these treaties are not formally binding on them. Jurisprudence from international and regional human rights bodies, as well as non-binding texts/documents and other standards, illustrate the manner in which international and constitutional guarantees of freedom of expression have been interpreted. As such, they represent authoritative evidence of generally accepted understandings of the scope and nature of all international guarantees of freedom of expression. They also provide strong guidance regarding interpretation of the guarantees of freedom of expression for all

states. Moreover, the Universal Declaration of Human Rights is widely regarded as having acquired legal force as customary international law.

- 21· Of relevance are also articles 15 (on the right to the freedom of association and assembly), 16 (enhanced protection of the right to hold opinions) and 17 (on access of the child to information and material from the media).
- 22· <http://www.ohchr.org/EN/ISSUES/FREEDOMOPINION/Pages/OpinionIndex.aspx>
- 23· Council of Europe instruments conventions, recommendations, declarations including documents of the Parliamentary Assembly of the Council of Europe that are highly relevant can be found: <https://wcd.coe.int/ViewDoc.jsp?id=1835645>
- 24· [http://www.coe.int/t/dghl/standardsetting/media/Belgrade2013/Belgrade%20Ministerial%20Conference%20Texts%20Adopted\\_en.pdf](http://www.coe.int/t/dghl/standardsetting/media/Belgrade2013/Belgrade%20Ministerial%20Conference%20Texts%20Adopted_en.pdf)
- 25· There are specific Council of Europe standards on this:
  - <https://wcd.coe.int/ViewDoc.jsp?id=419411>
  - <https://wcd.coe.int/ViewDoc.jsp?id=1207243&Site=CM&BackColorInternet=9999CC&BackColorIntranet=FFBB55&BackColorLogged=FFAC75>
  - [http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec\(1997\)020&expmem\\_EN.asp](http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec(1997)020&expmem_EN.asp)
- 26· *Handyside v. the United Kingdom*, 7 December 1976, *Erbakan v. Turkey*, judgment of 6 July 2006, *Vona v. Hungary* 9 July 2013, *Aksu v. Turkey* 15 March 2012 (Grand Chamber), *Féret v. Belgium* 16 July 2009, *Leroy v. France* 2 October 2008, *Jersild v. Denmark* 23 September 1994, *Hizb Ut-Tahrir and Others v. Germany* 19 June 2012 (decision on the admissibility), *Garaudy v. France*, judgment of 24 June 2003.
- 27· <https://wcd.coe.int/ViewDoc.jsp?id=1835645>
- 28· <http://www.osce.org/fom/31230>
- 29· <http://www.asean.org/news/asean-statement-communicues/item/asean-human-rights-declaration>
- 30· On 25 January 2012, the Commission proposed a comprehensive reform of the EU's data protection rules to strengthen individual rights (in particular online privacy rights), tackle the challenges of globalisation and new technologies and boost Europe's digital economy. The proposals comprise (1) COM(2012) 11 final - Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data on the free movement of such data (General Data Protection Regulation), COM (2012) 11 final and (2) COM(2012) 10 final – Proposal of a Directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data, COM (2012) 10 final. The two proposals are currently in discussion in the Council and the European Parliament (ordinary legislative procedure).

