EU External Freedom of Expression Policy

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Description

Second Draft of EU Human Rights Guidelines on Freedom of Opinion and Expression Online and Offline, an instrument which sets how the EU is to treat these subjects and their priorities in the foreign policy of the European Union, for example, the EU response to censorship of TV stations in the Ukraine and certain aspects of US mass surveillance. The Guidelines cover significant ground, including activating EU sanctions in response to "restrictions of freedom of expression". The Guidelines were supposed to be released by the end of 2013, a deadline established by the EU Strategic Framework and Action Plan on Human Rights and Democracy. The Guidelines fail to directly address the most serious threat to freedom of speech in Europe, the emerging public-private censorship model for financial censorship, surveillance and the arbitrary suspension or interruption of critical media infrastructure by foreign companies as seen in the WikiLeaks blockade. The Guidelines validate data collection by indicating that "public security may justify the gathering of sensitive information". The protection for whistleblowers and emerging forms of journalism is ambiguous.
- Draft TWO –
EU Human Rights Guidelines on Freedom of Opinion and Expression Online and Offline

I. Overview and definitions

A. Introduction

1. 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 right to freedom of opinion and expression.

2. 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.

3. A free, diverse and independent media is 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 constitutes 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.

4. 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 also on the right of all to receive information and ideas. Efforts to protect journalists should not be limited to those formally recognised as journalists, but should also cover support staff and others, such as "citizen journalists", bloggers and social media activists, 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.

5. Technological innovations in information and communications have created new opportunities for individuals to disseminate information to a mass audience, and have had important impact on the participation and contribution of citizens in decisions making processes. These innovations have also brought new challenges. All human rights that exist offline should also be protected online, in particular the right to freedom of opinion and expression and the right to privacy.

6. Guided by the relevant provisions of the Treaty on European Union (TEU), the EU Charter of Fundamental Rights and in accordance with their international and European human rights obligations, the European Union and its Member States are committed to protect and ensure freedom of opinion and expression both online and offline, within their own borders and everywhere in the world.

B. Purpose of the guidelines

7. 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 guidelines adopted in the field of human rights.

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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.
8. The guidelines explain the international human rights standards on freedom of opinion and expression and provide political guidance to officials 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.

9. The guidelines also provide officials 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 promote and protect freedom of opinion and expression in the EU’s external action.

C. Definitions

10. 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." One of the main sources of guidance for interpreting Article 19 is the UN Human Right Committee’s general comment 34 (UNHRC/GC34)⁴.

a) The right to hold opinions without interference

11. 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 to hold an opinion is prohibited.

12. 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.

b) The right to freedom of expression

i. The right to seek and receive information

13. The right to seek and receive information 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 often requires

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⁴ A general comment is an 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](http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf)
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.

14. The right of access to information includes: the general right of the public to have access to information of public interest, the right of the media to access information and the right of individuals to request and receive information concerning themselves that may affect their individual rights. While concerns about public security may justify the gathering and protection of certain sensitive information, States must ensure full compliance with their obligations under international human rights law.

15. 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 control his or her files. If such files contain incorrect personal data or 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.

16. Internet has expanded the possibilities of individuals and media to exercise the right to freedom of expression. Unjustified restrictions to prevent the flow of information offline or online should be prevented.

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

17. Freedom of opinion and expression further includes the right 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 are also covered by this right. Commentary on one's own or on public affairs, canvassing, discussion on human rights, journalism, cultural and artistic expression and expression of linguistic identity/diversity, advertisements, teaching and religious discourse are all examples of expressions that are covered by the freedom of expression. It also includes political discourse and advertisements during election campaigns.

18. Expression can take all forms including spoken, written and sign language and non-verbal 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 audio-visual, electronic and internet-based modes of expression.
Strictly prescribed limitations to the right of freedom of expression

19. International and regional human rights conventions, courts and bodies 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.

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

- They must be provided 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).

21. Under article 20.2 of 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.

22. 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 application⁵.

II. Operational Guidelines

A. General considerations

⁵ 2011 UNSR Frank de 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
23. **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.

24. **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.

25. **Full use will be made of the existing EU human rights guidelines** whenever 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 LGBTI persons, and on the right to freedom of religion or belief.

**B. Priority Areas of Action**

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

1. **Combating violence, persecution, harassment and intimidation of individuals, including journalists and other media workers, because of their exercise of the right to freedom of expression, and combating impunity for such crimes**

27. The EU is committed to promoting and protecting 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 their exercise of the right to freedom of opinion and expression. States must take active steps to prevent violence and to promote a safe environment for journalists and other media workers, enabling them to carry out their work independently and without undue interference and without fear of violence or persecution.

28. 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:

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a. Publicly condemn the execution, torture, enforced disappearance or other acts of grave violence or intimidation against any individual for exercising his or her right to freedom of opinion and expression; and consider appropriate additional measures.

b. Appeal to State authorities to fully abide by their international obligations to effectively 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.

c. Call on all States to take active steps to prevent violence against journalists and other media actors, allowing them to work in safety and security, without fear of persecution.

d. 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.

e. Support the UN Plan of Action on the Safety of Journalists and the Issue of Impunity.

f. Facilitate exchange of experience with media managers, editors, journalists and other media actors in order to increase awareness and capacity to prevent attacks and enhance the safety of journalists, including through training measures.

2. Promoting laws and practices that protect freedom of opinion and expression

37. 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 sanctions, on the exercise of freedom of opinion and expression, in violation of international human rights law.

38. Journalist's right of non-disclosure of sources should receive legal protection 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:
a. Work against arbitrary attacks, defamation campaigns and excessive restrictions on NGOs and social media personalities launched with the aim of preventing these associations and individuals from freely exercising their right to freedom of expression.

b. Condemn unjustified censorship both online and offline.

c. Promote the amendment of laws or practices that penalize individuals or organizations for exercising their right to express opinions or disseminate information, both bilaterally and in multilateral and regional human rights fora.

d. Ask for the release and observe the trials of journalists or other individuals who have been detained or imprisoned for the peaceful expression of their views or for the legally protected dissemination of information.

e. Support the adoption of legislation providing sufficient and adequate protections for whistle-blowers, and support reforms to give legal protection to journalist's right of non-disclosure of sources.

f. 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, academia, religious and cultural agencies.

g. Continue to help provide journalists and other media actors, human rights defenders, political dissidents and other individuals with the technical tools and physical support they need in order to exercise their right to freedom of expression.

3. Promoting media freedom and pluralism and fostering an understanding among public authorities of the dangers of unwarranted interference with impartial/critical reporting

29. An open society based on the rule of law can only operate effectively if there is an independent media composed of many actors. A free, diverse and independent press and other media are essential in any society to ensure freedom of opinion and expression and the enjoyment of other human rights.

The EU will:

a. Support third countries' actions to improve transparency of media ownership and adoption of measures against media concentration.

b. Support actions by third countries aiming at strengthening journalistic and editorial independence.

c. Encourage the promotion in third countries of different measures, in particular of voluntary self-regulatory initiatives and mechanisms such as media ethic codes, aimed at ensuring press accountability.
d. Recommend that all public bodies that regulate media, broadcasting or telecommunications are fully independent and protected against political or commercial interference.

e. Encourage equitable political parties' access to media during election campaigns as well as free and pluralistic media reporting on elections.

4. Promoting and respecting human rights in cyberspace and other information communication technologies

Information 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 citizens, both online and offline, must be protected.

The EU will:

a. Continue its important role in maintaining the multi-stakeholder model for internet governance of the internet⁷
b. Continue to advocate for the application of all human rights, including the right to freedom of opinion and expression, both offline and online.

c. Support the efforts of third countries to increase their citizens' access to and use of the Internet and digital communications.

d. Promote free, uncensored and non-discriminatory access to ICTs for all, in accordance with international law.

 e. Work against attempts to block, jam, filter, censor or close down communication networks in violation of international law.

f. Continue to provide technical support to individuals on the ground to counter such attempts, when feasible.

5. Promoting best practices by companies

30. ICT companies play a key role in ensuring and enabling freedom of expression 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.

⁷ As set out in the June 2013 Council conclusions on the EU Cyber security Strategy.
The EU will:

a. Promote action at the international level to prohibit the export of technologies that could be used for surveillance or censorship to authoritarian regimes

b. Promote awareness of and compliance with the guidance note for ICT companies on business and human rights*, developed by the European Commission on the basis of the UN Guidelines on Business and Human Rights.

c. Raise awareness among judges, law enforcement authorities, staff of the human rights commissions and policymakers around the world on the need to promote international standards including those aiming at the protection of Internet intermediaries unduly burdened with the obligation of an arbitrary censorship of Internet content.

6. **Promote legal amendments and practises that enable data protection and privacy online/offline:**

31. States must ensure compliance with their international standards as regards the right to privacy and the right to access to information/data protection, including availability of effective remedies for users.

32. States must ensure that any measure taken on the field of surveillance complies with their international obligations, bearing in mind that it does not restrict the right to privacy according to which no one shall be subjected to arbitrary or unlawful interference with his privacy.

The EU will:

a. Promote practices to ensure the right to privacy and the protection of personal data, including the development of rules concerning the transparency and proportionality of government access to personal data based on the rule of law and subject to proper democratic oversight.

b. Support legal reforms aiming at improving and extending the protection of the right to privacy and the protection of personal data.

c. Promote measures to put an end to violations of the right to privacy and the right to access information, and to create the conditions to prevent such violations, including by calling on third countries to comply with their obligations under international human rights law.

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C. Tools

33. 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

34. 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.

35. In political dialogues with partner countries, the EU will raise serious violations and restrictions on the right to freedom of opinion and expression as appropriate. The EU will encourage partner countries to ratify and implement relevant international human rights instruments. The EU will encourage partner countries to invite 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.

36. 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. Such visits will, when appropriate, raise the priorities and themes covered by these guidelines with local counterparts and include meetings with journalists and human rights defenders.

Monitoring, assessing and reporting on freedom of expression

37. EU missions (EU Delegations, CSDP missions and Member States Embassies) and headquarters will monitor the respect for freedom of opinion and expression online as well as off line 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.

38. Reports from EU Missions should 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.

39. EU missions should encourage close coordination and consultation with and between international and local civil society, local and foreign correspondents and UN and regional
bodies which monitor the situation of freedom of opinion expression on the ground, online as well as offline.

40. Promote the publication of articles and the granting of interviews to local media outlets, by EU and Member States Heads of Delegations and by other appropriate EU officials, in order to defend and promote freedom of opinion and expression in different countries.

**Public Statements and Demarches**

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

42. It will also consider issuing statements in reaction to legislative or other relevant developments with an impact on freedom of opinion and expression and emphasise best practices.

**Financial instruments:**

43. All appropriate EU external financial instruments can 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 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.

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

45. Member States, the EEAS and the European Commission services 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.

46. 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 the cooperation, notably as regards financial assistance.
47. The EEAS and European Commission services should include press media support components in its electoral assistance.

Public diplomacy in multilateral fora

48. The EU will ensure that freedom of expression remains prominently on the UN agenda, working actively in multilateral fora to ensure strong cross-regional support for the promotion and protection of freedom of opinion and expression, 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.

49. The EU will build on the content of relevant UN resolutions such as UN Human Rights Council Resolution on “The Safety of Journalists”\(^9\), the resolution on the "Promotion, Protection, and Enjoyment of Human Rights on the Internet\(^{10}\)" and the UN General Assembly resolution on "The right to privacy in the digital age\(^{11}\); as well as relevant concluding observations of UN treaty monitoring bodies and recommendations of special rapporteurs to third countries.

50. 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.

51. The EU will step up its engagement with other international and regional organisations and mechanisms, including the UN (especially OHCHR and UNESCO), OSCE, the Council of Europe and others donors or entities supporting freedom of opinion and expression.

52. Member States, the EEAS and the European Commission services 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, a multi-stakeholder model and to foster awareness on freedom of opinion and expression issues in co-operation with civil society.


\(^{10}\) A/HRC/RES/20/8 adopted by the Human Rights Council on 16 July 2012

\(^{11}\) A/C.3/68/L.45 adopted by the UN General Assembly November 2013
53. The EU will 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) and the World Day Against Cyber (12 March).

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

**Media Freedom in the EU enlargement policy**

55. Member States, the EEAS and the European Commission services will monitor the state-of-play with regard to media freedom, online as well as offline, and pluralism through respective frameworks (i.e. pre-accession dialogue, accession negotiations, progress reports, European Neighbourhood Policy etc.) and will implement projects to monitor and document violations of the European Convention of Human Rights and of the European Charter for Freedom of the Press.

**Promoting Council of Europe acquis**

56. The EU will explore the possibilities to better promote Council of Europe's standards on freedom of opinion and expression with third countries that are members of the Council of Europe, including by encouraging co-operation 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. 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.

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

**Trade measures**

58. Member States, the EEAS and the Commission services must ensure the appropriate application of Council Common Position 2008/944/CFSP, which defines common rules governing control of exports of military technology and equipment, and which provides that the respect for human rights in the country of final destination should be considered before licences to export to that country are granted.
59. The EU should promote legislation that makes it possible to prohibit the export of technology if there is a suspicion that these will be used for human rights violations.

60. Follow up on the Commission Staff Working Document (2013)\(^7\), which is considering under the on-going export control policy review, the control of the export of certain sensitive information and communication items as an 'ICT challenge' for and to promote a structured and consistent approach to these ICT controls. 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**

61. The EEAS 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. Training will be practical in its orientation, focused 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.

62. The EU should promote a responsible use of ICTs through and in the context of programmes of education and training on human rights, according to the UN Declaration on Education and Training on Human rights raising awareness and promoting media and internet literacy and its importance for safe and adequate use of internet, especially for children and young people.

63. The EU will promote the implementation of the guidance for ICT/telecommunications companies on business and human rights\(^12\), developed by the Commission on the basis of the UN Guidelines on Business and Human Rights.

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

**Capacity building**

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

III. Implementation and Evaluation

66. COHOM and its task force on freedom of expression will support the implementation of these guidelines involving, when 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.

67. COHOM will evaluate the implementation of these guidelines after a period of three years, if appropriate, and in consultation with civil society and relevant academic experts. 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.

68. 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

A. Examples of legal restrictions and potentially abusive restrictions on 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 even 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 morality, national security or protection of national values: International human rights law does not permit placing restrictions on the exercise of freedom of expression in order to protect abstract notions such as religions, cultures, schools of thought, ideologies or political doctrines. States frequently invoke public morality as a means of curtailing the right to freedom of expression. For example, in many countries, women or women’s groups
that publicly criticize discriminatory religious tenets have frequently been the targets of severe harassment and intimidation, both by state as well as non-state actors.

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

**Blasphemy laws:** Laws that criminalize or prohibit 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 advocates for the decriminalisation of such offences and condemns the use of the death penalty, physical punishment, or deprivation of liberty as penalties for blasphemy.

"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, namely the "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence" (art 20.2 ICCPR). 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”. The EU Framework decision on combating certain forms and expressions of racism and xenophobia by means of criminal law stipulates the need of an “intentional conduct” requirement in order for Member State to take measures to punish incitement to hatred.

**A lack of media plurality and diversity:** Freedom of expression is closely linked with the market. The financing structure enabling a real independence for both, public and private media is an important pre-requisite in that regard. To this end, fair regulation and professional and independent supervision of the media markets are essential for exercising the right to free expression. Regulatory activity can be used (or misused) 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.

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14 Handyside v. the United Kingdom, 7 December 1976, § 49.

Lack of plurality constitutes a restriction of the 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 plurality diminishes the media’s ability to act as a public watchdog holding power to account. A financing structure enabling real independence for both public and private media is an important prerequisite to ensure plurality.

Traffic management should never be used to block or degrade access to websites except in very limited circumstances (eg. conforming to the law enforcement provisions on child abuse18, crucial security issues, 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.

Jamming is another way of censorship which deprives individuals of their right of freedom of expression.

**The lack of independence of regulatory bodies:** The independence of regulatory from government 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.

**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 through intellectual property rights:** Blocking access to websites on the grounds of copyright protection is a serious measure that could constitute a disproportionate restriction of freedom of opinion and expression. Any restriction must be provided by law in order to protect the rights or reputations of others; invoking national security or public order or morals must be proven necessary. Any restriction should be implemented by a judiciary decision taking into account due necessity and proportionality.

**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 of holding opinions without interference and can lead to restricting freedom of expression.

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Undue interference with individuals’ privacy can both directly and indirectly limit the free development and exchange of ideas. Restrictions of anonymity in communication, for example, have an evident chilling effect on victims of all forms of violence and abuse, who may be reluctant to report 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.

Overly broad 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

Non-exhaustive list of international norms, standards and principles
Related to freedom of opinion and expression the EU may invoke or use in
contacts with third countries

1. 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”.

2. 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.

* 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 treaties 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.”
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.”

3. **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."

4. **Convention on the Rights of the Child**

(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.

5. **Rabat plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence - 2012**


6. **UN Special Rapporteur on Freedom of Opinion and Expression**

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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.

[link](http://www.ohchr.org/EN/ISSUES/FREEDOMOPINION/Pages/OpinionIndex.aspx)

7. **Convention on Prevention and Punishment of the Crime of Genocide**

8. **UNESCO: Selected Declarations, Decisions and Strategic Documents**

- Constitution of UNESCO (Article I.2.a - 1945)
- Belgrade Declaration on Support to Media in Violent Conflict and in Countries in Transition
- Maputo Declaration on Freedom of Expression, Access to Information and Empowerment of People (2008)
- Brisbane Declaration on Freedom of Information: The Right to Know (2010)

- 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)

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9. **Council of Europe:**

[European Convention on the Protection of Human Rights and Fundamental Freedoms](http://www.ohchr.org/EN/ISSUES/FREEDOMOPINION/Pages/OpinionIndex.aspx)

(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”.

*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

A non-exhaustive of useful instruments is described below:

- **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").

- 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. 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.

- 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=FFB55&BackColorLogged=FFAC75

- Council of Europe work on Internet governance and Internet freedom, and support its Internet governance principles, 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) 3 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 Convention4 (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).18


The Office of the OSCE Representative on Freedom of the Media remains the world’s only intergovernmental institution mandated to protect and promote media freedom in 56 OSCE participating States. It was created in 1997, In March 2010, Dunja Mijatovic from Bosnia and Herzegovina was appointed Representative.
http://www.osce.org/fom/31230

11. 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 in Africa is Ms. Faith Pansy Tlakula (insert link

12. 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 Catarina Botero.

13. ASEAN

Human rights Declaration:

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:

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".

A(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.** (currently under revision)

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".

**EU instruments on Data Protection**:  

- 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 2006/24/EC on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC.


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19 On 25 January 2012, the Commission proposed a comprehensive reform of the EU’s data protection rules to strengthen online privacy rights 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) 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. The two proposals are currently in discussion in the Council and the European Parliament (ordinary legislative proposal).