



Media4Democracy.EU

UNDERSTANDING AND IMPLEMENTING THE EU HUMAN RIGHTS GUIDELINES ON FREEDOM OF EXPRESSION ONLINE & OFFLINE

Freedom of Expression Policy Essentials Webinar

Quick Guide for EU Delegations

October 2019



The Quick Guide is for participants in the Media4Democracy *Freedom of Expression Policy Essentials* Webinar, which is available to individual EU Delegations. The Quick Guide, like the Webinar, provides summary information on the central policies and EU priorities that form the foundation of the *EU Human Rights Guidelines on Freedom of Expression Online and Offline*.

Note: This publication was produced with the financial support of the European Union. Its contents are the sole responsibility of Media4Democracy and do not necessarily reflect the views of the European Union.



CONTENT

Introduction	5
Part One: What EU Delegations Need to Know	7
Definitions and Concepts.....	7
The EU Guidelines’ Six Priority Areas of Action.....	9
Relevance to EU Delegations	10
The Global Context for Freedom of Expression.....	12
Part Two: What EU Delegations Can Do	15
Priority One: Combating violence, persecution, harassment and intimidation of journalists and media actors.....	16
Priority Two: Promoting laws and practices that protect freedom of opinion and expression.....	19
Priority Three: Promoting media freedom and pluralism	22
Priority Four: Promoting and respecting human rights in cyberspace and other information and communication technologies	25
Priority Five: Promoting best practice by companies	28
Priority Six: Promoting legal amendments and practices aimed at strengthening data protection and privacy online and offline.....	30



INTRODUCTION

The *EU Human Rights Guidelines on Freedom of Expression Online and Offline* (the Guidelines) were approved by the Council of the European Union (EU) in 2014. The Guidelines provide a policy and operational foundation for EU Delegations, EU institutions and Member States working to support freedom of expression and media pluralism. The Guidelines also present good practice approaches to responding in strategic and systematic ways to the challenges of promoting and protecting freedom of expression in diverse contexts.

Freedom of expression is a cornerstone of democracy, human rights and sustainable development and is central to achieving EU policy objectives and programming priorities worldwide. Independent media play crucial roles in ensuring citizens can exercise their right to freedom of expression. Yet, in many countries, the media face increasing threats and challenges, jeopardising journalists' and citizens' right to freedom of expression, both online and offline.

EU Delegations are working on the frontlines in countries where the threats to media are significant, and the challenges to strengthening and protecting freedom of expression and media freedom are complex and rapidly evolving. This Quick Guide provides a summary of the Guidelines alongside information designed to support EU Delegation staff working in third countries, focusing first on: *What EU Delegations Need to Know*; then on: *What EU Delegations Can Do*.

PART ONE: WHAT EU DELEGATIONS NEED TO KNOW

Definitions and Concepts

Freedom of Expression

Everyone has the right to 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.

Article 19, Universal Declaration of Human Rights

The right to freedom of expression is guaranteed in Article 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), which most countries have ratified. It is also guaranteed in regional human rights treaties such as the European Convention on Civil and Political Rights and the Africa Charter on Human Rights.

Article 11 of the Charter of Fundamental Rights of the European Union also emphasises that *'The freedom and pluralism of the media shall be respected'*.

Access to Information

Access to information is the fundamental right of all citizens to access information held by their governments and other public bodies. The principle of access to information is that information collected and held by governments belongs to the people they serve, not the state, and governments cannot refuse to disclose or disseminate official data and documents without clear legal reasons.

The right to access information is an integral component of freedom of expression, and requires dedicated laws, policies and institutions to promote and protect it.

Core Principles of Freedom of Expression

The Guidelines explain the international human rights standards on freedom of expression, highlighting core principles.

- ▶ Freedom of expression is a universal right.
- ▶ States have a primary obligation to protect and enable freedom of expression and access to information.
- ▶ International standards on freedom of expression provide benchmarks that guide domestic laws and policies.
- ▶ A plural, independent and free media is an essential component of providing freedom of expression and access to information for citizens.
- ▶ The right to freedom of expression is not an absolute right. International standards allow some restrictions.
- ▶ The right to freedom of expression must be balanced with the right to privacy, including online privacy.

Further Resources

- ▶ International Standards on Freedom of Expression: <https://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/Standards.aspx>
- ▶ A Practical Guide for EU Delegations on Access to Information: <https://media-4democracy.eu/wp-content/uploads/2019/04/M4D-Ati-Practical-Guide-web-complet.pdf>
- ▶ ‘Hate Speech’ Explained: A toolkit: <https://www.article19.org/data/files/medialibrary/38231/‘Hate-Speech’-Explained---A-Toolkit-%282015-Edition%29.pdf>
- ▶ Upholding Human Rights in the Digital Age: <https://www.rightscon.org/cms/assets/uploads/2019/06/RC19-RightsCon-Tunis-2019-Community-Learnings-draft-2.pdf>



The EU Guidelines' Six Priority Areas of Action

The Guidelines present six priority areas of action, which are all of equal importance. They provide a framework for a systematic approach to strengthening freedom of expression, both as a fundamental right in and of itself, and as a cornerstone for achieving all other human rights, democracy and the Sustainable Development Goals (SDGs).

The six priorities are:

1. Combatting violence, persecution, harassment and intimidation of journalists and media actors because of their exercise of their right to freedom of expression online and offline, and combating impunity for such crimes.
2. Promoting laws and practices that protect freedom of opinion and expression.
3. Promoting media freedom and pluralism and fostering an understanding among public authorities of the dangers of unwarranted interference with impartial/critical reporting.
4. Promoting and respecting human rights in cyberspace and other information and communication technologies.
5. Promoting best practices by companies.
6. Promoting legal amendments and practices aimed at strengthening data protection and privacy.
7. EU Delegations can undertake assessments of the local context to identify the specific challenges and opportunities for freedom of expression and access to information, and which policy areas are of paramount importance to address in the context.

Relevance to EU Delegations

Relevance to Democracy, Rule of Law & Development Priorities

*Freedom of opinion and expression are fundamental human 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.**¹*

EU Human Rights Guidelines on Freedom of Expression Online and Offline

When citizens have access to relevant information and open channels to express their views and be heard, they are able to participate in decision-making and democratic processes, and can better hold governments to account on issues that affect them, such as public service delivery, corruption, human rights and natural resource management.

Sustainable Development Goals and SDG 16

Specific targets on freedom of expression and access to information were included for the first time in 2015 with the adoption of the SDGs.



SDG Target 16.10 outlines the obligation of States to: *Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.*

SDG indicator 16.10.1 measures **the number of verified cases of killing, kidnapping, enforced disappearance, arbitrary detention and torture of journalists, associated media personnel, trade unionists and human rights advocates in the previous 12 months.**

SDG indicator 16.10.2 measures **the number of countries that adopt and implement constitutional, statutory and/or policy guarantees for public access to information.**

¹ The Guidelines, para. 1, pg. 1.

Both SDG 16.10 indicators are aligned with indicators in the EU's current sector guidance for democracy.²

All UN Member States have committed to these goals and to reporting on progress towards achieving them, providing EU Delegations with a mechanism for holding governments of third countries to account



Cross-Cutting Objectives

The Guidelines also intersect with other EU policies, such as the Gender Action Plan (GAP) II and the EU Action Plan on Democracy and Human Rights.

Political Priority

The Guidelines emphasise that freedom of expression is a high political priority for the EU and for EU Delegations engaging in political dialogue and public diplomacy.

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.³

EU Human Rights Guidelines on Freedom of Expression Online and Offline

This is also reinforced by senior EU officials.

EU (is determined) to keep protecting and promoting freedom of opinion and of expression as rights to be exercised by everyone everywhere... through any media, within our borders and beyond.⁴

Federica Mogherini, EU High Representative for Foreign Affairs and Security Policy.

² <http://indicators.developmentresults.eu/pag.cfm?id=42>

³ The Guidelines, para. 38, pg. 11.

⁴ <https://www.consilium.europa.eu/en/press/press-releases/2018/05/02/declaration-by-the-high-representative-federica-mogherini-on-behalf-of-the-eu-on-the-occasion-of-the-world-press-freedom-day-3-may-2018/>

The EU High Representative appoints a Special Representative on Human Rights to promote EU policy, including on freedom of expression and media support.⁵

The Global Context for Freedom of Expression

Freedom of Expression in Decline

Global indexes in 2019 broadly tell the same story: Freedom of expression is in decline worldwide and currently at its lowest point for ten years.

- ▶ According to the Freedom in the World 2018 report from Freedom House⁶ media freedom has declined over the past decade, with new forms of repression taking hold in open societies and authoritarian states alike.
- ▶ Sixteen countries saw a decline in press freedom over the preceding decade, including in established democracies such as the US and EU Member States.
- ▶ One of the most important trends documented in the report is that authoritarian regimes continue to throttle the media through censorship, imprisonment or harassment; whereas in established democracies populist leaders use more indirect approaches to control the media – such as offering lucrative state contracts, backing changes in ownership, giving preferential access to state-held information, or publicly denouncing journalists that criticise the government.
- ▶ In 2018, only 10 per cent of the world’s population lived in a country with a free press.

5 https://eeas.europa.eu/headquarters/headquarters-homepage_en/3606/EU%20Special%20Representatives

6 <https://freedomhouse.org/report/freedom-world/freedom-world-2018>

Figure 1: Countries are ranked according to their levels of media freedom, with dark colours showing countries with the least free media



Main Threats to Freedom of Expression and Media Freedom

The key threats to independent media can be summarised as follows:

- ▶ Journalism safety is in decline, as governments in more countries directly threaten journalists and media outlets, or fail to protect them, and fail to prosecute perpetrators of crimes.
- ▶ Media houses – offline and online – have seen a collapse in levels of revenue from advertising, threatening financial viability and independence.

- ▶ Politicians – in government or in opposition – increasingly capture and influence media content either by directly taking ownership of media houses, or by selectively spending their advertising budgets with media outlets that most support them.
- ▶ The rise of dominant transnational telecommunication companies – such as Facebook and Google – usurp online advertising revenues and sometimes audiences for online content too.
- ▶ The capacity of powerful government and non-governmental actors to produce and rapidly disseminate false information has increased, and this information may influence citizens’ beliefs and behaviour, including during elections.

Further Resources

The following are sources of information that provide national and global data and analysis on freedom of expression:

- ▶ Article 19 – <https://www.article19.org/xpa-18/>
- ▶ Freedom House 2019 – <https://freedomhouse.org/report/freedom-media/freedom-media-2019>
- ▶ RSF 2018 – <https://rsf.org/en/news/rsfs-2018-round-deadly-attacks-and-abuses-against-journalists-figures-all-categories>
- ▶ UNESCO 2017/18 report – <https://unesdoc.unesco.org/ark:/48223/pf0000261065>
- ▶ IWMF 2018 – <https://www.iwmf.org/attacks-and-harassment/&https://www.iwmf.org/resources/violence-and-harassment-against-women-in-the-news-media-a-global-picture/>



PART TWO: WHAT EU DELEGATIONS CAN DO

This section reviews each of the six thematic priority areas of the Guidelines, explains global trends and presents excerpts from the Guidelines' recommendations for EU Delegation action.

The Guidelines emphasise that **'The EU will make use of all available political and external financial instruments in order to further the promotion and protection of freedom of opinion and expression'**⁷ and includes reference to the following tools available to EU Delegations:

- ▶ political dialogues and high-level visits;
- ▶ the monitoring, assessing and reporting on freedom of expression;
- ▶ public statements and demarches;
- ▶ financial instruments;
- ▶ public diplomacy in multilateral fora;
- ▶ media freedom and pluralism in the EU enlargement policy;
- ▶ promotion of Council of Europe and OSCE acquis;
- ▶ trade measures;
- ▶ training and technical exchanges;
- ▶ capacity building.

7 The Guidelines, para. 37, pg. 11.



PRIORITY ONE: COMBATting VIOLENCE, PERSECUTION, HARASSMENT AND INTIMIDATION OF JOURNALISTS AND MEDIA ACTORS

The Guidelines stress **‘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 exercising the right to freedom of opinion and expression online and offline.’**⁸

The Guidelines additionally highlight that **‘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.’**⁹

Key Concepts and Issues

- ▶ According to the Guidelines, journalists in need of protection include professionals as well as citizen journalists and a wide range of other media actors.
- ▶ Protecting the safety and security of journalists means promoting their physical and digital safety, as well as their ‘psychosocial’ wellbeing.
- ▶ The Guidelines give examples of the types of attacks against journalists as *‘execution, enforced disappearance, torture or arbitrary arrest of journalists or other individuals because of his or her exercise of the freedom of expression.’*
- ▶ Journalists face both *unintended* danger as they carry out their work, for example if they are caught in the crossfire when reporting on violent conflict, as well as *intended* danger when they are deliberately targeted in order to silence them.
- ▶ Impunity for crimes against journalists is very high, with estimates pointing to around only 12% of serious crimes resulting in prosecution.¹⁰

⁸ The Guidelines, para. 28, pg. 6.

⁹ The Guidelines, para. 29, pg. 6.

¹⁰ Link to updated 2019 UN data



Global Trends

- ▶ 2018 was the deadliest year for journalists on record, according to the UN. At least 99 journalists were killed, 348 imprisoned and 60 were held hostage.¹¹
- ▶ The majority of journalists killed are men, yet the proportion of murdered female journalists is rising.
- ▶ The majority of journalists are killed in countries not experiencing armed conflict, but instead, while reporting on corruption, trafficking, environmental issues and political wrongdoing.
- ▶ The majority of victims are local journalists reporting for local media.

International Initiatives

- ▶ The *UN Action Plan on Safety and Security and the Issue of Impunity*,¹² launched in 2011, recommends each country develop its own National Action Plan to be driven by multi-stakeholder coalitions.
- ▶ SDG 16.10 requires UN Member States to submit annual reports about crimes against journalists and the level of impunity for those crimes. UNESCO leads this effort. The data reports on Indicator 1 – ‘the number of verified cases of killing, kidnapping, enforced disappearance, arbitrary detention and torture of journalists, associated media personnel, trade unionists and human rights advocates in the previous 12 months.’
- ▶ International Day to End Impunity for Crimes Against Journalists on 2 November is focused on increasing investigation, prosecution and justice in cases of crimes against journalists.
- ▶ July 2019, a High-Level Panel of Legal Experts¹³ was launched at the London Global Conference for Media Freedom convened by the UK and Canada governments. Its Secretariat is the International Bar Association Human Rights Institute (IBAHRI) and it currently has five projects to develop legal and policy mechanisms and tools that States can use to protect journalists.

¹¹ Link to 2019 UN data

¹² <https://en.unesco.org/un-plan-action-safety-journalists>

¹³ <https://www.ibanet.org/IBAHRISecretariat.aspx>

From the Guidelines: Recommended Actions for EU Delegations

- ▶ **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 UN General Assembly Resolution** on 'The safety of journalists and the issue of impunity' and the UN Plan of Action on the same subject.
- ▶ **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.



PRIORITY TWO: PROMOTING LAWS AND PRACTICES THAT PROTECT FREEDOM OF OPINION AND EXPRESS

The Guidelines emphasise that **'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.'**¹⁴

The Guidelines also state **'All governments must allow journalists to work in a free and enabling environment in safety and security, without the fear of censorship or restraint.'**¹⁵

Key Concepts and Issues

- ▶ All governments ratifying the International Covenant on Civil and Political Rights (ICCPR) have a duty to proactively protect the right to freedom of expression in laws and practices.¹⁶

Figure 2: Countries that have ratified the International Covenant on Civil and Political Rights



¹⁴ The EU Guidelines, para. 30, pg. 7.

¹⁵ The EU Guidelines, para. 31, pg. 7.

¹⁶ Map indicating ratification of 18 International Human Rights Treaties, <https://indicators.ohchr.org/>.

The Guidelines say that *'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.'*¹⁷

- ▶ The right to freedom of expression must be balanced with Article 20 of the ICCPR, which requires States to prohibit *'any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence'*.
- ▶ The Guidelines refer to the UN Rabat Action Plan,¹⁸ which presents a six-part threshold test as a useful tool for assessing whether speech or text constitutes 'hate speech' and should therefore be prohibited.

Global Trends

- ▶ Governments continue to pass regressive laws, and acts which restrict freedom of expression in all regions.
- ▶ The Guidelines highlight a significant worldwide trend that *'Journalists and media actors... across the world continue to be imprisoned for defamation. Defamation can also lead to strong self-censorship to avoid the fear of being subject to severe criminal or civil sanctions.'*¹⁹
- ▶ Governments in many countries abuse laws related to hate speech, privacy, national security or religious blasphemy as excuses for censoring content, wrongfully arresting journalists and closing internet access.

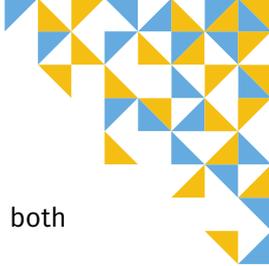
From the Guidelines: Recommended Actions for EU Delegations

- ▶ **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.

¹⁷ The Guidelines, ANNEX 1, A. Examples of actions that may violate or undermine the enjoyment of the right to freedom of opinion and expression pg. 16.

¹⁸ <https://www.ohchr.org/EN/Issues/FreedomOpinion/Articles19-20/Pages/Index.aspx>

¹⁹ Ibid.

- 
- ▶ **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 multilateral 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, recognise and **respect the rights of the child**, as enshrined in the Convention on the Rights of the Child.



PRIORITY THREE: PROMOTING MEDIA FREEDOM AND PLURALISM

The Guidelines emphasise that 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.'**²⁰

Key Concepts and Issues

- ▶ The Guidelines highlight that a *'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.'*²¹
- ▶ A lack of media freedom and pluralism also diminishes the media's ability to act as a public watchdog holding power to account.
- ▶ A plural media landscape includes media owned by diverse public, private and community organisations.
- ▶ The Guidelines say that *'Fair and independent media markets are essential for exercising the right to freedom of expression.'*²² Governments have a role to play in ensuring a fair market and for promoting equitable and transparent access to public sources of funding, such as government advertising and tax incentives.
- ▶ Government and media have a duty to foster regulatory bodies independent of government influence, and professional mechanisms such as codes of conduct.
- ▶ The protection and promotion of the right of access to information requires states to establish effective legislation, institutions and procedures.

²⁰ The Guidelines, para. 32, page 8.

²¹ The Guidelines, ANNEX 1, A. Examples of actions that may violate or undermine the enjoyment of the right to freedom of opinion and expression pg. 17.

²² Ibid.



Global Trends

- ▶ The current level of economic and political threats to the independence of media in many countries limits their ability to inform citizens and hold governments to account.
- ▶ Within the last 30 years there has been remarkable international progress in terms of legal protection for the right of access to information, with the number of countries passing laws rising from 12 to more than 125 today. Many developing countries have established strong legislative frameworks.²³
- ▶ Media pluralism continues to be limited by the fact that women remain heavily underrepresented in the media, in decision-making roles as well as in media content, both as sources and as subjects in the latter.
- ▶ Independent media outlets have declining sources of revenue and more costly forms of journalism, such as news and Investigative Journalism (IJ), are not affordable for many media outlets, including those serving rural areas and marginalised communities.

International Initiatives

- ▶ Inclusion of access to information as part of target 10 in SDG 16 was a result of successful multi-stakeholder advocacy. There are civil society and media coalitions in many countries seeking to build on this to increase open and transparent government.
- ▶ The Universal Periodic Review (UPR) is used by international actors and civil society in many countries to make recommendations to governments on freedom of expression, media independence, safety and security of journalists and to hold governments to account for any commitments they make during the UPR process.
- ▶ The Global Media Monitoring Project 2020²⁴ will collect data on gender inequalities in the news and will contribute data for national and international reporting on SDG5: Achieve gender equality and empower all women and girls.

²³ See www.ratings-info.com which assesses the quality of RTI laws and ranks Afghanistan and Mexico as having the strongest frameworks in 2019.

²⁴ <http://whomakesthenews.org/gmmp-2020>

From the Guidelines: Recommended Actions for EU Delegations

- ▶ Support actions 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, self-regulatory 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.



PRIORITY FOUR: PROMOTING AND RESPECTING HUMAN RIGHTS IN CYBERSPACE AND OTHER INFORMATION AND COMMUNICATION TECHNOLOGIES

The Guidelines emphasise that **‘information and communication technologies (ICT) 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.’**²⁵

The EU Strategic Framework on Human Rights and Democracy also highlights the risks that new ICTs present **‘Modern information and communication technologies, while facilitating the free flow of information between individuals, have also massively increased the coercive power of authoritarian states.’**²⁶

Key Concepts and Issues

- ▶ While the internet, digital platforms and ICT have created immense opportunities, these advancements also create risks that can threaten rights, increase social and economic divisions.
- ▶ Access to the internet is a universal right requiring new laws and practices to ensure that companies or governments provide all citizens with reliable and open access.
- ▶ The power of governments to shut down the internet and communication platforms, to block and filter content, and to surveil online users must only be used in strict circumstances and according to clear legal processes that align with international standards on freedom of expression.
- ▶ The concept of voluntary self-regulation, which was evolved over the last two centuries for print and broadcast media, needs new policies and institutions to make it work for the digital age. When states are developing new laws and institutions to regulate online content, international standards on freedom of expression must be applied.

²⁵ The Guidelines, para. 33, page 9.

²⁶ https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf

- ▶ Companies taking decisions to remove content from online platforms – including upon request by governments – must also adhere to international standards on freedom of expression.

Global Trends

- ▶ According to Freedom House's 2018 Freedom on the Net report, *The Rise of Digital Authoritarianism*, online freedom declined in nearly half of countries assessed, often during times of elections.²⁷
- ▶ The key driver of the decline is largely the rise of leaders in authoritarian regimes as well as populist leaders in more established democracies seeking to tighten control over citizens' data and stifling dissent.
- ▶ There has been a sharp rise in the number of governments closing down access to the internet or to specific apps for communication as a response to public protests, demonstrations or during periods of tension and crisis.²⁸
- ▶ Governments are using the threat and fear of fake news as a pretext for tightening control of the content across offline and online media including social media platforms.
- ▶ The number of governments using online technologies to surveil and control citizens has increased, with China exporting tools and approaches to a growing number of regimes.

International Initiatives

- ▶ The UN High-Level Panel on Digital Cooperation 2019 report²⁹ proposes modalities to address challenges for promoting and protecting freedom of expression in the digital age.

27 <https://freedomhouse.org/report/freedom-net/freedom-net-2018>

28 <https://www.accessnow.org/keepiton/>

29 <https://digitalcooperation.org/report/>

- 
- ▶ The International Partnership on Information and Democracy was launched at the UN General Assembly in September 2019. This inter-governmental accord, which was initiated by Reporters Sans Frontières (RSF), was signed by 20 governments and aims to promote democratic principles in the online public arena.³⁰
 - ▶ The UN Special Rapporteur on Freedom of Expression, David Kaye, and civil society organisations are exploring multi-stakeholder rights-based models for regulating content online in a way that balances freedom of expression with the public need for fact-based information.³¹
 - ▶ Media and Information Literacy campaigns, including within the EU, explore how citizens can build skills to assess the reliability of media content and sources, particularly on social media platforms.

From the Guidelines: Recommended Actions for EU Delegations

- ▶ **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**.

30 <https://rsf.org/en/news/20-countries-sign-information-and-democracy-partnership-started-rsf>

31 <https://freedex.org/wp-content/blogs.dir/2015/files/2018/05/G1809672.pdf>



PRIORITY FIVE: PROMOTING BEST PRACTICE BY COMPANIES

The Guidelines highlight that ICT companies (such as Facebook, Twitter, Google) **'play a key role in ensuring and enabling freedom of expression, access to information and privacy on the Internet and through telecommunications.'**³²

Referencing the UN Guiding Principles on Business and Human Rights, the Guidelines emphasise 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.'**³³

Key Concepts and Issues

- ▶ Private companies and others designing and managing the infrastructure of digital spaces should respect human rights standards on freedom of expression, access to information, privacy and data protection.
- ▶ The EU's ICT Sector Guidance³⁴ explains steps for implementing the UN Guiding Principles on Business and Human Rights, including that companies have a responsibility to consider the human rights impact of their policies and to minimise negative impact on the right to freedom of expression and access to information and other human rights.

Global Trends

- ▶ While seeking to curb extremism, hate speech and disinformation private companies often respond to government's requests to remove content, hand over private data or shut down the internet in contravention to international human rights law on freedom of expression and privacy.

³² The Guidelines, para. 34, pg. 10.

³³ The Guidelines, para. 35, pg. 10.

³⁴ <https://www.ihrb.org/pdf/eu-sector-guidance/EC-Guides/ICT/EC-Guide ICT.pdf>
(http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr-sme/csr-ict-hrbusiness_en.pdf)

- 
- ▶ Most companies lack transparency about how they make decisions when removing content or how they respond to government demands to remove content.

International Initiatives

- ▶ In 2018, representatives of online platforms, social networks, advertisers and the advertising industry agreed to a regulatory EU Code of Practice on Disinformation to address the spread of online disinformation and fake news in Europe.³⁵
- ▶ Ranking Digital Rights³⁶ is a multi-stakeholder effort to increase the transparency of telecommunication companies such as Google and Facebook. They publish an annual Corporate Accountability Index that looks at the performance of 24 companies in terms of their commitments to freedom of expression and privacy.

From the Guidelines: Recommended Actions for EU Delegations

- ▶ 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** on the basis of the UN Guiding Principles on Business and Human Rights.
- ▶ **Raise awareness among judges, law enforcement officers, staff** of human rights commissions and policymakers around the world of the need to **promote international standards protecting intermediaries** from the obligation of blocking internet content without prior due process.

³⁵ <https://ec.europa.eu/digital-single-market/en/news/code-practice-disinformation>

³⁶ <https://rankingdigitalrights.org/>



PRIORITY SIX: PROMOTING LEGAL AMENDMENTS AND PRACTICES AIMED AT STRENGTHENING DATA PROTECTION AND PRIVACY ONLINE AND OFFLINE

The Guidelines note that 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.’**³⁷

The Guidelines say that **‘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.’**³⁸

Key Concepts and Issues

- ▶ Governments have a responsibility to ensure that both they and private companies respect the right to privacy of individuals. This includes provisions for the protection of personal data shared with online companies and platforms when using their services.
- ▶ Algorithmic decisions about what content and online adverts users see is driven by the collection of personal data. Companies argue that, by agreeing to Terms of Service, individuals provide ‘informed consent’ to them to gather, use and re-sell this personal data, but it is very hard for most users to know how to opt out of sharing personal data.
- ▶ The EU General Data Protection Regulation, which went into force in 2018, is considered a significant standard setter in data protection regulation, one which protects and empowers EU citizens’ data privacy. Users in developing countries have less protection, because data protection regimes are weak. Additionally, governments, civil society and media don’t have resources to understand or respond to the scale of the legal and technical challenges of privacy related to data protection.

³⁷ The Guidelines, para. 35, pg. 10.

³⁸ The Guidelines, para 36, pg. 10.



Global Context and Trends

- ▶ Governments are increasingly able to intercept personal communication, which threaten journalists' ability to protect themselves and their sources.
- ▶ Governments in all regions unlawfully collect personal data, often citing reasons of national security.
- ▶ Governments often ask private companies to assist them in unlawful or arbitrary surveillance of users and for access to their users' personal data.
- ▶ Private companies sell data generated by users to other companies, who then use the data to target users in order to influence behaviour, including voting during elections.

From the Guidelines: Recommended Actions for EU Delegations

- ▶ 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.

Contact:

📍 Media4Democracy.EU

Ravensteingalerij 4, 1000 Brussels, Belgium

🐦 twitter.com/media4dem

📘 www.facebook.com/Media4democracy.eu/

✉ info@media4democracy.eu

🌐 www.media4democracy.eu/

Media4Democracy is a technical assistance facility established by DEVCO B1 supporting Delegations in developing contexts to implement the *EU Human Rights Guidelines on Freedom of Expression Online and Offline*. Media4Democracy provides advocacy support, capacity building and in-country technical support to Delegations.

Consortium: Article19 / DW Akademie / European Partnership Democracy / Free Press Unlimited / Particip / Thomson Foundation