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EU Expression Guidelines Fail to Recognise the Right to Information

On 12 May 2014, the Council of the European Union adopted the EU Human Rights Guidelines on Freedom of Expression: Online and Offline (Guidelines). The initiative to adopt the Guidelines, which provide “political and operational guidance” to EU staff regarding this important area of EU foreign policy and assistance, is welcome.

At the same time, there are certain problems from the perspective of freedom of expression in the Guidelines. It is, in particular, very problematical that the Guidelines fail to recognise the right of the public to access information held by public authorities as an element of the right to freedom expression and as an operational priority for the EU.

This omission seriously undermines the effectiveness of the Guidelines. The right to access information held by public bodies, or the right to information, has been recognised unequivocally at the international and European level, including by the United Nations Human Rights Committee and the European Court of Human Rights, as well as by regional human rights bodies including the African Union and the Organisation of American States. It is not clear why such an important aspect of the right to freedom of expression – an area in which the EU has been active – should have been entirely left out of the Guidelines.

Paragraph 14 of the Guidelines recognise that, in certain circumstances, human rights outcomes may “be assisted” by the disclosure of information held by the State and that this “can serve to promote justice and reparation”, but they fall short of recognising a right to information. The Guidelines also largely fail to recognise promotion of the right to information as a priority area for action, although

paragraph 32 does call for support for the adoption of freedom of information laws.

A further concern is that a document of this importance should have been the subject of an open and meaningful process of consultation before it was finalised. Instead, only limited and essentially internal consultations took place. While internal consultations are an appropriate part of the process, the Guidelines should have been the subject of an open public consultation before being adopted in a final version. At a minimum, this would require a formal draft version of the Guidelines to be posted online, with an opportunity for stakeholders to provide comments.

We do not believe the Guidelines are complete without a clear reference to the right to information and a strong commitment to priority action in this area. We therefore call on the relevant EU actors to reconsider the Guidelines with a view to addressing these concerns. Alternatively, we call on the EU to adopt a dedicated set of guidelines on the promotion of the right to information as an element of freedom of expression.

Signatories:

ARTICLE 19

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