[DE] Federal Council adopts position on proposed European Media Freedom Act

IRIS 2022-5:1/24

Dr. Jörg Ukrow
Institute of European Media Law (EMR), Saarbrücken/Brussels

In a resolution adopted on 11 March 2022, concerning the European Media Freedom Act announced by the European Commission, the German *Bundesrat* (Federal Council) expressed support for sector-specific rather than fully harmonised regulation in the media sector.

The Federal Council welcomed the Commission's decision to launch a debate on how media freedom could be protected and strengthened in Europe, as well as an open public consultation on the subject. The German *Länder* believed the answer to this question was crucial for Europe's future because the EU was not only a single market for goods and services, but also an area of democracy and freedom. However, democracy could not exist without a functioning, free and pluralistic media landscape.

The Federal Council stressed that the threat to journalists from hatred, smear campaigns and physical assaults put media freedom in serious danger. It shared the European Commission's fundamental view that media independence and pluralism were extremely valuable. This particularly concerned journalistic freedoms, editorial independence, public access to media services, transparent allocation of state funding and ensuring that the governing bodies of public-service media were sufficiently independent from the state.

The *Länder* reiterated that, in a digital single market in particular, there was still a need for sector-specific media regulation governing both the media themselves and their distribution. This was especially true in the modern world, in which the Internet had become the main forum for media and communication.

In the Federal Council's opinion, (primarily) market-oriented legal acts, that were based on the internal market rules of Article 114 of the Treaty on the Functioning of the European Union (TFEU), could support the media's specific role in relation to democracy, society and opinion-forming, as well as media distribution. However, horizontal market rules such as the EU Digital Services Act (DSA), that was currently being negotiated, were not a suitable way of fully and effectively protecting media freedom and media diversity. The *Länder* therefore wanted to constructively answer the question of how legal acts based on Article 114 TFEU could take into account the media's specific role and how they could sensibly be

© European Audiovisual Observatory (Council of Europe) 2026

combined with media regulatory measures. The *Länder* were keen to discuss this issue with the Commission.

The Federal Council stressed that the EU's strength lay in its cultural diversity, which was based on common rules and shared values. The resulting need for different regulatory frameworks, as well as market and supervisory structures, had therefore – including as an expression of the subsidiarity principle and the distribution of powers between the member states and the EU – never been disputed. This diversity should be protected and promoted, rather than threatened by the pursuit of harmonisation and centralisation. Measures to safeguard media freedom, independence and diversity at national level should not be questioned. A European market approach should neither narrow perspectives on the media as an economic asset, nor ignore the fact that large emerging markets could hinder the preservation of diversity, especially at a regional level.

Furthermore, the *Länder* accepted that transparency rules relating to ownership structures in the media sector were, to a certain extent, necessary. However, these should not result in a disproportionate level of bureaucracy and should only be a means of achieving overarching regulatory objectives. In addition, full harmonisation of regulations at European level was not a suitable means of adequately expressing the cultural sovereignty of individual member states.

In the Federal Council's opinion, it was essential that supervision of the media and media distribution was independent and decentralised. Apart from sensible, necessary cooperation among national regulatory bodies – including in the context of the Memorandum of Understanding of the European Regulators' Group for Audiovisual Media Services (ERGA) – there was no need to interfere with these principles and structures by creating supervisory bodies at European level, such as in the form of an EU-wide media regulation authority.

According to the *Länder,* the Federal Government should take the Federal Council's position into account under Article 23(5)(2) of the *Grundgesetz* (Basic Law – GG) and Article 5(2) of the *Gesetz über die Zusammenarbeit von Bund und Ländern in Angelegenheiten der Europäischen Union* (Act on Cooperation between the Federation and the *Länder* in European Union Affairs – EUZBLG) because the proposed adoption of a European Media Freedom Act affected the legislative powers of the *Länder* in relation to the organisation of broadcasting law in and for Germany. The Federal Council also urged the Federal Government, under Article 23(6) GG and Article 6(2) EUZBLG, to delegate to the *Länder* the task of discussing the matter during the forthcoming deliberations of the Council working groups and Council of Ministers.

© European Audiovisual Observatory (Council of Europe) 2026

Entschließung des Bundesrates zum angekündigten Europäischen Rechtsakt zur Medienfreiheit

https://www.bundesrat.de/SharedDocs/drucksachen/2022/0001-0100/52-22(B).pdf?__blob=publicationFile&v=1

Federal Council resolution on the proposed European Media Freedom Act

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026