[DE] Broadcasting Commission and Federal Council adopt position on EMFA

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At its meeting on 19 October 2022, the *Rundfunkkommission* (Broadcasting Commission) of the German *Länder* expressed its views on the proposed European Media Freedom Act (EMFA). The draft Act had been published by the European Commission on 16 September.

The EMFA is designed to protect media pluralism and independence in the EU. It also includes special rules for public service media and establishes an EU-wide media regulation authority. Its key objective is to protect the independence of the media and media professionals. It bans state interference, in particular direct and indirect state influence on journalists or their family members. This includes searches, sanctions and similar measures. In particular, the use of spyware is prohibited, except on grounds of national security. The proposal also contains various transparency obligations concerning media and media ownership.

The Broadcasting Commission's statement was critical of the EMFA. Although it shared the European Commission's wish to guarantee and protect media diversity and independence in Europe, the Broadcasting Commission did not believe that the EMFA was an effective way of achieving this. It thought that the creation of supposedly good competitive conditions was not enough on its own to ensure that the broadest possible variety of topics and opinions would receive media coverage or be accessible to users. The purely economic view of media and media companies, created by the single market, fell short and led to concentration in the media sector. In its current form, the proposed legislation was a threat to diversity at national, regional and local level.

The Broadcasting Commission stressed in particular that cultural sovereignty and, therefore, competence for media regulation, lay with the member states, and that this was not sufficiently reflected in the proposal. The *Länder* feared that the EMFA would lead to significant centralisation at European level, with the European Commission exercising too much influence. From the point of view of a broadcasting system such as the one in Germany, which was independently regulated and deliberately decentralised for this very reason, this had to be viewed critically.

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In their resolution, the *Länder* promised to take every possible step, including legal measures at both national and European level, to protect diversity. In particular, they expressly mentioned the possibility of instigating court action to assert their rights to be involved in the legislative process, which were enshrined in the *Grundgesetz* (Basic Law).

Meanwhile, at its meeting on 25 November 2022, the *Bundesrat* (Federal Council), the second chamber of the German parliament alongside the *Bundestag*, referring to the Broadcasting Commission's position, unanimously adopted a so-called "subsidiarity complaint" alleging violation of the division of powers. The *Länder* claimed that the proposal, especially in its form as a Regulation, lacked an adequate legal basis, interfered with national sovereign rights, and went against the principles of subsidiarity and proportionality.

Beschluss der Rundfunkkommission vom 19.10.2022

https://www.rlp.de/fileadmin/rlp-stk/pdf-Dateien/Medienpolitik/Beschluesse_der_Rundfunkkommission/2022-10-19_RFK-Beschluss_zum_EMFA.pdf

Broadcasting Commission resolution of 19 October 2022

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