[DE] KEK publishes opinion on EMFA

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On 2 March 2023, the *Kommission zur Ermittlung der Konzentration im Medienbereich* (Commission on Concentration in the Media – KEK) published its opinion of 14 February 2023 on the draft European Media Freedom Act (EMFA). Although it supports the objectives of the EMFA in principle, it points out that protecting pluralism is a task to be carried out at member state level, independently of state authorities. It believes this is not reflected in the current proposal.

The KEK is a joint organ of the 16 German state media authorities. It is responsible for guaranteeing plurality of opinion in relation to the organisation of television channels throughout Germany. Its activities in this regard include checking, by analysing their respective audience shares, whether companies exercise a dominant influence on public opinion by acquiring television broadcasting licences or changing their ownership structure. The media concentration provisions of Articles 20 to 22 of the EMFA are therefore relevant to the KEK's remit. In its opinion, the KEK states that, in principle, it supports the EMFA's objective of protecting and strengthening media diversity and independence in Europe. However, it believes the proposal urgently needs fundamental revision.

The KEK notes that media diversity is a core part of member states' national identity, including Germany's federal system. Therefore, the adoption of rules protecting plurality cannot simply, and "certainly not to such an absolute degree", be based on internal market competences, as the EMFA proposes. Therefore, national competences and associated measures, designed to guarantee plurality, should not be viewed as a barrier for the internal market for media services that could trigger such an internal market competence for the EU. However, the KEK also believes the proposal needs amending at a material level: the structures through which the EMFA gives the Commission the power to intervene (Articles 20(4) and 21(6) EMFA) do not take into account existing supervisory structures and responsibilities at national level or any additional national peculiarities. In Germany, for example, the principle of separation of state and media applies to broadcasters under broadcasting freedoms enshrined in the *Grundgesetz* (Basic Law). According to this principle, broadcasters must be largely free of state interference in terms of both the organisation and supervision of broadcasting. In sub-constitutional law, the principle is set out in various provisions of the German

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Medienstaatsvertrag (state media treaty) in relation to the independent structures of the *Landesmedienanstalten* (state media authorities) in the private broadcasting sector and the supervisory boards of the public service broadcasters, for example. The KEK does not believe the powers assigned to the Commission under the EMFA guarantee adequate separation between the state and broadcasters. This particularly applies to the Commission's authority to issue guidelines on the factors to be taken into account when applying the criteria for assessing the impact of media market concentrations at national level (Article 21(3) EMFA).

Stellungnahme der KEK zur Verordnung des Europäischen Parlaments und des Rates zur Schaffung eines gemeinsamen Rahmens für Mediendienste im Binnenmarkt (Europäisches Medienfreiheitsgesetz) und zur Änderung der Richtlinie 2010/13/EU

https://www.die-medienanstalten.de/fileadmin/user_upload/KEK/Publikationen/Reden_und_sonstige_Beitraege/Stellungnahme_KEK_EMFA.pdf

KEK opinion on the Proposal for a Regulation of the European Parliament and of the Council establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU

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