Visit to Berlin
11-12 May 2023

DAY 1

Members in charge: Wojtek Talko, Marie Frenay
Meeting with NGOs and think tanks

9h45-10h45

Venue: Representation

Scene setter

You will meet disinformation expert community as you did in 2020 during your last Berlin visit. We agreed that [name] would open the meeting and present to you the situation in Germany.

From our information, it seems the political level in Berlin is finally becoming aware of the acute risks of disinformation and foreign interference, especially from Russia. The Interior Ministry is leading an inter-service group, but the results so far are underwhelming, mainly because there is no decision-making powers.

The politicians are increasingly concerned, also because the recent story by the Washington Post, about how Russia is trying to use far-left and far-right parties to undermine German democracy.

Your objectives would be to listen to the ideas and concerns of the participants. Explain to them what we are doing with the Digital Services Act and the Code of Practice. You can ask them about the recent raise of AI and if they see it as a risk in the context of disinformation.

They might also re-affirm their criticism about the German position on the so-called media exemption in the context of the Media Freedom Act.

Venue: Representation

Participants:

- [name], Reset
- [name], Reset
- [name], Landecker Foundation
- [name], Landecker Foundation
- [name], Hate Aid
- [name], Institute for Strategic Dialogue
- [name], Institute for Strategic Dialogue
Reset is a US-borne non-profit organisation engaged working on technology and democracy. It provide grants and contracts while working alongside partners with a shared policy, technology, and advocacy agenda in countries with immediate opportunities for change. According to Reset, “big tech companies” should be stopped from profiting off public harm by resetting the rules for online media. Rather, as every other major industry they should follow rules that protect the public interest. Reset funds projects in the area of research and investigation, the development of technology, public campaigns and litigation.

The Alfred-Landecker Foundation portrays itself as an “incubator for democracy in the digital age”. Its work includes studies and the production of education materials, with the main focus on Nazi crimes and the fight against antisemitism, racism and other forms of group hatred as well disinformation. The Foundation has just published a major study on online hate. Alfred Landecker is a Jewish citizen who deported by the Nazis to an unknown place. The foundation was created by his relatives.

Hate aid is a Berlin-based organisation that aims at strengthening democracy in digital space. It areas of work include: direct counselling and legal support in cases of digital violence, raising awareness of problems in politics and society and by developing specific solutions, including against disinformation. Hate aid wants to guarantee freedom of speech online, regardless of gender, origin or religious belief and to this end, aims at strengthening democratic values. The Landecker Foundation is among the donors of Hate aid as well the Federal Ministry of Justice.

Institute for Strategic Dialogue is an international non-profit organisation based in London, Washington DC, Berlin, Amman, Nairobi and Paris. It partners with governments, cities, businesses and communities, “working to deliver solutions at all levels of society, to empower those that can really impact change”. The ISD focusses on hate, extremism and disinformation worldwide. Using state-of-the-art data analytics, OSINT techniques and ethnographic research, the ISD investigates the relationship between foreign state and transnational non-state actors in producing disinformation in fields such as electoral disinformation, climate disinformation or public health disinformation.

CORRECTIV is the first donation-financed medium in Germany. The multi-award-winning editorial team is specialised on investigative journalism. The organisation also runs the most important fact-checking service in Germany. Correctiv also runs projects to strengthen local journalism, journalism at schools.
and "crowdnewsroom" that lets journalists pool information, an open software tool to foster journalism by individuals or fact-based journalism about climate change.

Disinformation and foreign interference (work on the code, with platforms, especially in the context of RU propaganda and disinformation).

Main messages

- In the past year and continuing even today, we are witnessing the brutality of Russia’s invasion of Ukraine.

- With this large-scale human tragedy, another threat has emerged. The threat of disinformation, that is the wide-scale spreading of lies, meant to deceive and confuse. The effect of this has only been magnified by the fact that a vast majority of the European population spends much of their time online. This is where they often get their news from.

- The global threat landscape over the last year has been dominated by the Russian war in Ukraine. Russian propaganda and disinformation around the continuing war in Ukraine is, of course, the latest and most powerful example of how disinformation and malign influence operations can be used as instruments of hybrid warfare.

- Russian state actors and their proxies have engaged in disinformation and information manipulation to legitimize their war of aggression, to undermine public support for Ukraine, and to deflect blame for energy and food shortages and economic disruptions.
• Ukraine is of course the first and foremost victim. However, disinformation and information manipulation target open societies and democracy worldwide, seeking to disrupt and influence regular political processes in a malign and coordinated manner, sway public opinion, and erode trust in democratic institutions.

• Addressing these issues in the digital realm, together with international partners, is essential for European and global security.

• What makes us strong is that we work together and combine our insights. But also, that we draw lessons from the specific context and use our individual capabilities to respond effectively - from the side of EU Institutions, EU Member States, researchers and think tanks, and, of course, online platforms.

• We are also in the midst of a new AI revolution. With the rise of new AI-based tools, there are many great opportunities, but also threats. One of these is the spread of disinformation. Online chat bots will allow malicious actors to produce disinformation texts on an unprecedented scale. With the rise of incredibly sophisticated AI-based image generation tools, lifelike deep fakes are also becoming very easy to produce fast.

• We are quite aware of these trends. Fighting online disinformation has been a key priority of the Commission in the past years.

• Two ground-breaking measures have recently been deployed in the EU to meet the challenge: The DSA and the 2022 Code of Practice on Disinformation.

• The DSA is a global-first legal standard for tackling disinformation while protecting freedom of expression and information. Its main regulatory tool is a supervised risk management framework for larger online platforms.
• This means for instance that, if their content moderation tools or recommender systems are found to amplify disinformation, those very large online platforms will need to take appropriate mitigation measures to address such risks.

• They will also have to report publicly on their risk assessment and risk mitigation measures and these will be audited by independent auditors and supervised by the Commission.

• The DSA also contains positive obligations on all platforms to give more information to users to hold informed opinions about the ads or recommended content they see online. This includes increased transparency obligations for online intermediaries and platforms of all sizes.

• Very large online platforms and very large online search engines will also have to provide vetted researchers access to data, including related to disinformation. This will be a step-change in our understanding of the online information space and the way that disinformation spreads online.

• In the DSA, there are also robust crisis management obligations, and crisis protocols. These are strong, anticipative measures. Crisis management starts with crisis prevention and anticipation. These measures are accompanied by safeguards for fundamental rights.

• The new Code of Practice – delivered last June and based on the Guidance from the Commission – is also a first-of-its-kind instrument. It builds on the experience gained through the 2018 Code of Practice and takes into account lessons learned from the COVID-19 crisis and Russia’s war of aggression in Ukraine. It is an unprecedented, strong tool-box, with powerful measures to fight disinformation.
On the 2022 Code of Practice and the DSA

- The strengthened 2022 Code of Practice of Disinformation is a centerpiece of the EU’s efforts.

- The new Code contains a broad range of commitments from major online platforms and other players to fight disinformation decisively – 44 commitments and 128 measures to implement them, in various areas, such as demonetisation, addressing manipulative behaviours, user empowerment or fact-checking.

- A substantial number and great variety of new signatories have signed the Code. In addition to major online platforms and players from the online advertising industry, new signatories include smaller or specialised platforms, research and civil society organisations, fact-checkers and providers of technical solutions to counter disinformation.

- The Code features a comprehensive monitoring system. The signatories’ first reports on implementation of the Code were submitted at the end of January 2023. 30 Signatories of the Code of Practice on Disinformation, including all major online platform signatories (Google, Meta, Microsoft, TikTok, Twitter), have submitted their first baseline reports.

- These baseline reports mark an important first step in establishing the monitoring and reporting under the new, 2022 Code of Practice, while the methodology and granularity of the data provision needs to be further developed. We have put in place in new legislative framework for digital services through the Digital Services Act (DSA). It is foreseen that the Code could become part of the co-regulatory regime for Very Large Online Platforms provided for in the DSA, linking it to the DSA’s enforcement mechanisms.
• The baseline reports follow a common harmonised template consisting of 152 reporting elements (111 qualitative reporting elements, and 42 service level indicators/quantitative indicators) across the Codes’ chapters.

• The harmonised reporting templates are a great step ahead for the alignment, reviewability, and accuracy of the signatories’ reporting. Notably, all individual actions and metrics are matched with the commitments and measures of the Code that they implement.

• Let me give you a few examples from the platforms’ reports:
  - When it comes to demonetisation of disinformation actors, Google indicates that in Q3 2022 it prevented more than EUR 13 million of advertising revenues from flowing to disinformation actors in the EU.
  - TikTok reported that in Q3 2022 they removed more than 800,000 fake accounts, while more than 18 million users were following these accounts. They also indicate that the fake accounts removed represent 0.6% of the EU monthly active users.
  - Meta reported that in December 2022, about 28 million fact-checking labels were applied on Facebook and 1.7 million on Instagram. When it comes to the effectiveness of these labels, Meta indicates that on average, 25% of Facebook users do not forward content after receiving a warning that the content has been indicated as false by fact-checkers. This percentage increases to 38% on Instagram. Meta also provides data on Member State level regarding fact-checking efforts.
We know that these baseline reports are only one step in a much larger journey towards meaningful transparency and oversight of online platforms. We highly encourage researchers and civil society organisations like you to also look into those reports and to tell us your views on the reporting. What gaps do you still see remaining? What data is useful to your work? What would you like to see more reporting or details on?

We are working now with the major online platforms so they can deliver better and more quality reports in July.

The experience of the Commission alone shows that without support of the civil society it will be extremely difficult to assess quickly and efficiently the constantly evolving disinformation landscape, the bad actors and tools they use.

Given that the platforms are delivering new reports (under the Code) and will gradually increase access to data, it is becoming essential to strengthen the both sides of the coin, the analysis and research of disinformation and foreign information manipulation and interference, as well as raising the awareness of the public and supporting the ability to digest, verify and draw relevant conclusions from a more transparent information environment.

So I know you need the funding and I am trying to push for it also from EU budget. I don’t want to overpromise, because our budgetary situation is very tight, but I want you to be aware that I know the issue and I am looking for solutions.

Hate Speech and illegal content

Main messages

- There is no doubt that over recent years, racism, xenophobia and other forms of intolerance have been worryingly growing and spreading across Europe.
- There is often a continuum between hate speech and hate crime.
• The online world is not exempt from this development, quite on the contrary, I think we have all seen that the problem of "lack of online inhibition", has led to a situation where sections of society have not quite understood that behaviour that is illegal in the real world, such as the incitement to violence and hatred based on race, colour, religion and ethnicity, is also illegal in the online world.

• In fact, hate speech when committed in the online world can often have even more serious consequences than hate speech in the off-line world since it is accessible to virtually anyone and have countless victims.

• In other words, it is clear that illegal hate speech in the online world is a serious problem.

On the system of protection of Fundamental rights in the EU

• Europe is unique when it comes to protecting fundamental rights. All EU Member States signed the European Convention of Human Rights.

• Furthermore, since 2009 the EU has its very own fundamental rights legal instrument: the EU Charter of Fundamental rights. It is binding on the EU institutions and on Member States when they are implementing EU law.

• Article 11 protects the right to freedom of expression and information.

• But, the right to freedom of expression is not unlimited. It does not prevent states from sanctioning and even preventing genuine and serious incitement to violence and hatred.
**Enforcing the Framework Decision on Racism and Xenophobia**

- This is why we have laws at EU level, the Framework Decision on Racism and Xenophobia, that obliges Member States to criminalise racist and xenophobic hate speech under the Framework Decision on racism and xenophobia.

**Code of conduct**

- We also need to work with **online platforms** to ensure that they take responsibility for the illegal hate speech that they host.
- Under the **EU code of conduct on countering illegal hate speech**, some of the biggest worldwide online platforms have committed to assess and remove illegal hate speech notified to them if necessary. Ensuring that the platforms only take action against content that is illegal and not protected by the right to freedom of expression, was one of the main objectives of the Code of Conduct.
- We have put in place a solid **monitoring system** together with civil society to evaluate whether the IT platforms live up to their commitment. In the first monitoring, in 2016, the platforms only responded by removing the content in respect of 28% of the cases. But there was quick improvement and in 2017 this figure was up to 70% (where it stabilised).
- The results of the latest evaluation published in November last year show that there is some slowing down in trends, as regards both time of review of notifications and removal of hate speech content. This is something that we need to work with the platforms to address.

**Digital Services Act**

- The Digital Services Act, which was published on 27 October 2022, will also be a significant step to combat online hate.
• It represents an unprecedented set of enforceable rules on accountability for online platforms for illegal content and the fundamental rights of users.

• Beyond requiring online platforms to set in place notice and action systems to help remove illegal hate speech that users detect, it also recognizes the new role of the largest platforms in terms of their role as the new town square.

• To deal with the role these platforms have for democracy, the new rules will require very large online platforms (VLOPs with more than 45 million users in the EU) to assess and mitigate systemic risks on their platforms, including as concerns the spread of illegal hate speech and negative effects for fundamental rights.

• Codes of conduct will continue to be an important tool under the DSA.

**Future of the code of conduct**

• We are currently in the process of identifying, together with the IT companies, how the Code and its collaborative approach with civil society and academia, could be an even more powerful tool under the DSA and a tool that very large platforms can use to address the specific systemic risks related to the spread of hate speech as well as to limits to freedom of expression.

**Defensives**

*How does the DSA address disinformation? / Relation with Code of practice.*

• The Digital Services Act will propose rules to ensure greater accountability on how platforms moderate content, on advertising and on algorithmic processes.
• Very large online platforms will have to conduct regular risk assessments which cover, among other issues, how their services are misused for disinformation, or on cyber-bullying. They will have to adopt measures to mitigate those risks. The first of these regular risk assessment will have to be conducted and reported to the Commission 4 months after the designation of VLOP/VLOSE.

• Regular reporting and transparency measures, such as the obligation of public ad archives, independent audits of their recommended algorithms and access to data by authorities and researchers will ensure that the societal risks and impact can be independently evaluated. The regulator will be able to investigate concrete concerns and can require services to open up their ‘black box’ of data around disinformation.

• The DSA will also provide a co-regulatory backstop for the measures developed in the updated Code of Practice on Disinformation together announced under the European Democracy Action Plan.

How will you make sure signatories deliver on their commitments from the Code?

• Monitoring and transparency will be key. The strengthened Code includes a reinforced monitoring system and creates a robust framework that incorporates clear qualitative reporting and quantitative reporting elements measurable at EU Member State levels.

• These indicators should allow evaluating the impact of the policies implemented by signatories to fulfil their commitments under the Code.

• The signatories’ first monitoring reports on the implementation of their commitments under the strengthened Code were due at the end of January.
• Taking into account expert advice and support from ERGA and EDMO, the Commission will regularly assess the progress made in the implementation of the Code, based on the granular qualitative and quantitative reporting elements expected from signatories (i.e. every 6 months for VLOPs; every year for the other Signatories).

• The DSA also creates an obligation for very large platforms to mitigate systemic risks, including disinformation, which include the intentional manipulation of their services with negative effects on public goods like civic discourse and public health.

• A means to mitigate such risks will be the adherence to voluntary Codes of Conduct. The DSA therefore creates a co-regulatory backstop ensuring that the EU Code of Practice on Disinformation fully delivers on its potential.

• This is precisely the reason why we believe that a co-regulatory model, formed by the link between the Digital Services Act and the Code of Practice on Disinformation, is the right way to address it.

**Can there be sanctions for platforms who do not comply with the Code’s commitments?**

• The Commission will be able to exert its regulatory powers under the DSA after the entry into force of the Regulation.

• The Commission will not enforce Codes of Conduct as such; they remain voluntary under the co-regulatory framework set by the Regulation.

• At the same time, Codes are expected to address systemic risks identified in the regulatory framework and online disinformation is certainly one of the main concerns addressed by the Digital Services Act. Other specific obligations under the DSA are also commitments under the Code, such as ad repositories.
• The Commission will monitor how the Code achieves its objectives and how their signatories comply with its commitments and measures.

• Once they are designated by the Commission, very large online platforms that reach more than 10% of the EU population will have to assess and mitigate systemic risks stemming from their services, including as regards disinformation.

• It is highly recommended that very large online platforms consider adhering to Codes of conduct recognised under the DSA to mitigate the systemic risks that affect their services.

Has Twitter provided a report? What do you think of it?

• Twitter has provided a report to the Commission within the deadline.

• Twitter’s report is short of data and does not provide any information regarding the commitments on empowering the factchecking community.

• Twitter reassured the Commission about its strong commitment to comply with the DSA. As stated by Commissioner Breton, the best way to comply with the risk mitigation obligations of the DSA on disinformation is to adhere to the Code of the Practice. The Commission expects Twitter to fulfil its reporting obligations under the Code.

How is the Commission ensuring that fundamental rights are taken into account when formulating digital policies?

• I am sure that you all agree that we need strong and effective laws that ensure that what is illegal in “In Real Life”, is also illegal online.
• Yet as confirmed by the Court of Justice, regulating the responsibilities for online intermediaries for illegal content is sensitive since it could have significant effects on a number of fundamental rights, including freedom of expression, data protection, the freedom to conduct a business, the right to property and the right to judicial review and a high level of consumer protection.

Background on the situation in Germany on ‘whitewashing’ disinformation.

The NATO Strategic Communications Centre of Excellence released a report on Information Laundering in Germany in December 2020.

Among the main findings of the report were inter alia:

• Certain domestic outlets were seen to enable the spread of pro-Kremlin information influence in the German media environment, mainly among German audiences

• Research reveals that information laundering actors also target Germany by strategically exploiting domestic news exclusively about Germany, or conspiracy theories among domestic and international Russian and English-speaking audiences

• Some German-language outlets registered under a German domain were seen to actively conduct SM from German-language Kremlin-official media outlets

• In the information laundering cases under investigation, pro-Kremlin and Kremlin-official media repeatedly amplified the voices of German political and public figures, primarily from the far-right Alternative für Deutschland (AfD) and leftist Die Linke. These were utilised to provide credibility to the laundered content.

• A considerable amount of social media users amplified content from information laundering processes from Kremlin-official and pro-Kremlin sources.

• These accounts largely share news from far-right or leftist German media, contributing to the polarisation of the debate in social networks

Current position of German government on the DSA

The Ministry of Digital Affairs and Transport is planning to submit a draft law for the implementation of the DSA to public consultation and inter-departmental consultation in May. The law shall be adopted by the Parliament still this year. It is expected that Federal agency for the regulation of networks (“Bundesnetzagentur”) will be the digital services coordinator and that the law will be in place before 17 February 2024, the implementation deadline.
Meeting with BZDV

15h45-16h45

Venue: Representation

BDZV (you met him virtually already last summer)

BDZV Office Brussels

You are meeting representatives of the German publisher association BDZV (Bundesverband Digitalpublisher und Zeitungsverleger, Federal Association of digital publishers and newspaper editors) to discuss the European Media Freedom Act. The BDZV has been an outspoken critic of the Act regarding the provision on editorial independence and the perceived oversight of the Board over the press.

- They allege the proposal would deprive publishers from choosing the editorial line, and complain it would prevent them from participating in the daily editorial work.

- Another big concern of publishers is that they could be subjected under the supervision of the Board instead of being able to stick to self-regulation.

- In a stakeholder hearing organised by the CULT committee of the European Parliament in February the representatives of the BDZV also argued for stronger protection of media content in Art. 17 (“what is legal offline is legal online”).

- They also stressed the importance of consolidation in the sector and for “further ambitious steps” for the financial wellbeing of media providers, beyond the Copyright Directive and the DMA.
Main messages

- Thank you for this meeting.
- I know you are very familiar with the Media Freedom and you have been very vocal about it.
- I thank you for having participated in our consultations and also virtual meetings. It is nice to see you in person this time.
- Since we proposed the text, there have been important developments.
- First, there are have been a lot of discussions about the text to explain, clarify, show the interest for the EU as a whole. And this has also led the Swedish Presidency of the EU, which is now designing the position of the Member States, to improve the text.
- For example, when it comes to Article 6, which is important for you, it is even clearer now that the media owners keep the prerogative when it comes to the editorial line and that all national laws in this area are taken into account.
- We have also received legal reassurances. The legal service of the Council, representing Member States, confirmed the legal basis of the Act and the choice of instrument.
- I think it is also important to repeat and highlight the positive elements of the Act.
- When adopted, the Act will bring more legal certainty for the media and it will improve the conditions under which journalists do their job across the EU.
• The Act will protect media companies from unjustified, disproportionate and discriminatory national measures and benefit media companies through new safeguards concerning content removals on very large online platforms. In addition, the Act will bring fairer and more transparent allocation of state advertising expenditure and audience measurement systems.

• The Act is not just about one or two countries in the European Union. The Rule of Law Reports and the findings of the independent Media Pluralism Monitor have shown us that the issues that are addressed by the Act exist across the Union and have worsened over the last years.

• In particular, in Member States where there is pressure on the media, the Act is seen as an important safety net, providing protection at EU level. This is our key reasoning behind the proposal.

• I see very constructive discussions in the meetings of the Council working party and am looking forward to the Council of Ministers next week.

• Of course, we have taken your concerns regarding the Act very seriously. The publishers are enormously important for media freedom and pluralism.

• We will continue to be constructive and to listen to all voices, thank you.
On concerns by DE publishers:

- Ensuring editorial independence is key to protect media independence.
- In our approach, we recognise that media companies have diverse organisational structures. It is not always the editor-in-chief who is the only person responsible for the content produced.
- It is not our intention to interfere with the internal organisation models of media companies. For this reason, our definition of ‘editor’ has a broad character and covers any person or entity, independently from its legal form, status or composition, that takes or supervises editorial decisions within a media service provider.
- In all cases, I understand that now this part of Article 6 is being further clarified by Member States.

On the Board for Media Services:

- It was never our intention to create a central European media authority. Our sole objective is to provide a framework for cooperation among media regulators and recognise their role in finding solutions to common challenges.
- With the new Board for Media Services, we significantly upgrade the current structure: the European Regulators Group for Audiovisual Media Services (ERGA). We are also aware of the criticism that the new oversight system under the Media Freedom Act will not be sufficiently independent.
- We empower the new Board for Media Services with a bigger role, a reinforced secretariat and a legal framework for cooperation and coordination, notably also on issues related to third country services. In the proposal we explicitly establish the independence of the Board. We are ready to think of further safeguards to ensure such independence.
• At the same time, let me stress the proportionate role we give to the Board, in full recognition media regulation remains a national or regional matter.

**Defensives**

*Subjecting media to regulation even though they are already under enormous pressure, is no help and stands in contradiction to the term “freedom”.*

• The Act contains principles that help media service providers against state interference, against lacking or biased assessment of media market concentrations or arbitrary allocation of state advertising bids.

• The only obligations for media service providers can be found in Article 6: media ownership transparency and editorial independence.

• None of these obligations put economic pressure on media companies: the transparency of ownership can be accomplished very easily on the website and measures the owner or publisher deems appropriate with a view to guaranteeing the independence of individual editorial decisions do not extend to the overall editorial line or the business strategy and do not cause costs. Most media, especially in Germany, already have these measures in place.

• We have this Article because there was a clear need to address some abusive interference by owners or shareholders who ask journalists to stop writing on a company, because it is a company of a friend. This happens in Western Europe too. However we do not prevent anyone from owning a media, even politicians can, but there is a need to have some internal safeguards, also for the credibility of the media.

• [There have been scandals and discussions also in Germany…]
How can the internal market rationale be applied to Art. 6(2)?

- The lack of any safeguards for editorial independence and the constant threat of interferences creates a climate in which ethical standards and the distribution of trustworthy information are not valued.

- Such a climate makes it more difficult for a media that wants to uphold these principles to compete on equal footing. It consequently deters media service providers from investing in another Member State.

- Also, already in 2006, in the Tobacco Advertising judgment, the European Court of Justice acknowledged a considerable amount of cross-border trade of press publications, which in the meantime has grown a lot due to the online editions of newspapers and magazines.

- This means that citizens, but also businesses, consume more and more media that have been produced in other Member States, sometimes in the same language that the recipient is using (in the case of minorities), sometimes in another language.

- Citizens and businesses should be able to rely on the quality of the production process of media also from other Member States. For businesses, in particular, this can be very important if they operate in that Member State. Otherwise, they might abstain from such media, not being able to trust them, which would hamper cross-border trade.

The Act’s provision on editorial independence collides with press freedom as guaranteed by the German Constitution.

- Art. 6(2) of the Act does not modify the publisher’s prerogative to determine the overall editorial line. The publisher can also change the overall editorial line. This right of the publisher is now clarified in the text of the Article itself.
• The provision leaves it to the publisher to decide which measures he/she “deems appropriate with a view to guaranteeing the independence of individual editorial decisions”.

• Of course, this also means that the publisher can take measures to make sure that the chosen overall editorial line is respected.

• In case (even) a so-defined protection of editorial independence is at odds with press freedom as understood by the German Constitution, the provision is explicitly without prejudice to the German Constitution and other national laws, as far as they are consistent with the Charter on Fundamental Rights.

**Self-regulation as key component of the press should be promoted instead of the regulation of day-to-day operations.**

• The Act does not interfere with self-regulation. For example, measures deemed appropriate by publishers with a view to guaranteeing the independence of editorial decisions can be self-regulatory measures.

• There is no regulation of day-to-day operations, neither in the Act nor in the accompanying Recommendation. The Act contains only basic principles and leaves it to the publisher how to ensure editorial independence as to daily editorial decisions. The Recommendation collects existing examples from the sector and is non-binding.
What happens if the owner wants to prevent the publication for economic reasons because he is afraid of a lawsuit or of a damage to reputation?

- The term ‘editorial decisions’ used in Article 6(2) refers to decisions taken on a daily basis. Normally, the person that is legally responsible for the content of a publication is involved on a daily basis and consequently that person’s decisions are protected by the provision. The same applies to any other person that is responsible to decide on a daily basis which content can be published, for example with a view to possible economic risks.

- If those safeguards are not sufficient, it should be borne in mind that Article 6(2) lets the owner decide which measures he or she deems to be appropriate with a view to guaranteeing editorial independence and that according to recital 21 the ‘legitimate rights and interests of private media owners’ must be reconciled with the principle of editorial independence.
How can Article 6(2) be enforced? Could a journalist go against a media service provider for not taking measures as envisaged under this Article?

- Article 6(2) has a novel character: while it obliges media companies to take measures with a view to guaranteeing the independence of individual editorial decisions, at the same time it will be always up to media companies to decide which measures fit best their structures and strategies and thus are deemed appropriate for them.

- Through our Recommendation we help media companies by proposing the elements which can be included in such measures. This could be for instance ethics or supervisory committees, newsroom councils or ombudspersons.

- It should also be noted that some mechanisms that we suggest in the Recommendation (e.g. right to refuse to sign articles when they have been modified or ‘conscience’ clauses) could form a part of a contractual or employment relationship between journalists and media companies. In case of breaches of such contractual clauses, a recourse to a judicial procedure would be therefore possible.

- (if pushed) It will be possible for (a collective body of) editors of a media service provider to ask a court for remedial action, for example against repeated refusals by the management of a media service provider to adopt any measures to guarantee editorial independence.

- At the same time, the goal of this provision is to create an ‘editorial independence’ culture within media companies and not to incentivise litigation. It is to be noted that the uptake of internal editorial independence safeguards will be examined as part of the general monitoring regime of the Act.
To what extent is the press sector regulated by the Act? Will the Board exercise oversight over the press?

- Press companies – just as other media service providers – benefit from the protections against state interferences and surveillance.

- The proposal makes it clear that there is no oversight by the Board for the provisions of Chapter 2, including the one ensuring editorial independence (Art. 6(2)). This provision can be enforced in national courts.

- Regarding the enforcement of the provisions under Chapter 3, the only point where we see a potential role for the Board in relation to the press sector is its task to provide opinions on media concentrations that are likely to affect the functioning of the internal media market, for example because of a significant influence on formation of public opinion.

- This task is given to the Board even though it is composed of media regulatory authorities that in many Member States are not responsible for oversight of the press. This is because it will be rare that the condition of significant influence on formation of public opinion will be fulfilled in case of transactions concerning only the press sector.

- In any case the Act does not give the Board the power to regulate the media sector or national media markets. The Board would act through non-binding opinions on certain national concentrations relevant for the internal market. The objective would be to foster consistent approaches to media pluralism and independence, and not to regulate or restrict activities in media markets.
The position of media service providers vis-à-vis big online platforms in Art. 17 should be strengthened.

- The Digital Services Act obliges providers of intermediary services already to act with due regard to media pluralism when applying their terms and conditions, which includes content moderation (Article 14).

- With Art. 17 we recognise the importance of the availability of media content hosted on very large online platforms (VLOPs) by reinforcing the position of media service providers vis-à-vis VLOPs applying their terms and conditions.

- On the other hand, we also have to take into account the task to fight disinformation.

- Our approach provides for a self-declaration of media service providers that they are editorially independent from state institutions and adhere at least to a self-regulatory mechanism.

- Such media service providers have to be informed prior to any removal of their content by VLOPs based on an alleged violation of the platforms’ terms and conditions, as long as this does not hamper the legal obligations of VLOPs under the Digital Services Act to combat illegal content and disinformation. The compromise text strengthens the position of media service providers in this context.

- We believe that this approach, taken together with the obligation of VLOPs to report annually about their removal decisions and the structured dialogue, will improve the availability of media content hosted on VLOPs.
Almost 50 percent of the news are controlled by Google and Facebook. Consolidation is often the only chance for traditional media to compete with these digital hegemons; therefore, you should not limit consolidation.

- The Act does not set any concrete limits on the concentration of media market actors. It requires an assessment of the impact of media market concentrations on media pluralism and editorial independence with the involvement of national media regulators.

- One element that has to be taken into account by national media regulators is whether, in the absence of the concentration, the acquiring and acquired entity would remain economically sustainable, and whether there are any possible alternatives to ensure its economic sustainability.

- Taking into account the online environment is also a criteria.

- So national authorities can conclude that the concentration is justified in spite of a certain impact on media pluralism.

- The Member States are now discussing the scope, which should be any concentration affecting media pluralism, so also platform to platform concentration.