

“A Bit of Fun. A Bit of Truth.”

Jannis Lennartz

2023-06-14T08:30:27

The intersection of media, politics and power has its normative problems and today again they are strongly felt, although the reactions are different: The United States got “Succession” from HBO, Europe got a proposal from the European Commission – the [European Media Freedom Act \(EMFA\)](#). This is no coincidence but an expression of a different approach to the relationship of media and the state. The extent of (private) media regulation depends on the willingness to trade private for public power. The following therefore takes the Commission’s proposal as an opportunity to question the assumptions about media, markets, and politics behind it. It finds that the Commission’s approach treats private like public media: First, it functionalizes the fundamental rights of private individuals and companies in terms of their public benefit; second, it imagines the conditions of qualitative journalistic work as those of civil servants.

Media between function and expression

“Succession” is a TV show about a billionaire family modelled on the Murdoch’s that centres on the human consequences of concentrations of wealth and power. Logan Roy, media mogul and *pater familias*, describes his TV channel offering as “A bit of fun. A bit of truth” – probably not the societal most beneficial way to run a media company. The show’s unspoken background assumption is the fact that such policies and the decision upon them by very few people are undesirable but also to be accepted. The same could be said about Europe: It is fairly easy to identify disreputable as well as venerable media products that have existed for a long time, thereby increasing the social as well as political importance of their owners. Some use their influence, some don’t (think of Agnelli and Berlusconi, Springer and Burda). Is Media just a product, sold on free markets?

The Commission, albeit acting on its go-to internal market competence, portrays media as serving a higher purpose. The press release and the explanatory memorandum are full of praise for the sector, which in the [memorandum](#) is deemed “essential for a healthy civic sphere and for economic freedoms and fundamental rights, including equality.” A vision board for an optimal media landscape would probably contain a lot of the things the Commission envisions as its aims. Free and high-quality media are, of course, vital for the function of European democracies. But this aspect must not obscure the fact that the use of freedoms does not need to serve any beneficial function. Media freedom also exists for bad journalists, moreover for editors and owners – even if they want to please the government. Furthermore, it is questionable whether the instruments which the Commission intends to apply will really help to achieve the objectives it has in mind.

The Commission’s approach is in part strongly reminiscent of the German one, where the constitutionally guaranteed freedom of broadcasting is called a “serving

freedom” (“dienende Freiheit”) – thereby entailing the risk that the attributed social benefit consumes the freedom itself (see [Hartmann, JZ 2016](#), 18 for a critique). In Germany, this questionable description is limited to broadcasting, in whose original limitation to a few frequencies the doctrine finds its reason, and balanced by a regulatory framework that emphasizes broadcaster’s self-control and distance from politics and state influence (“Staatsferne”). Both restrictions are missing from the Commission’s proposal. The Commission seems to generalize a public broadcasting model for media in general and follows a pattern reminiscent of public institutions in the design of media companies and their supervision. But private media neither exists to better the citizens nor to further democracy. It exists as an expression of freedom, and its degrees of freedom depend on the proximity to the maxim “From each as they choose, to each as they are chosen” (Nozick, *Anarchy, State and Utopia*, 2008, S. 180). A liberal society has to be taken as it is, although one can always hope for better days. But only seldom is social hope furthered by supervisory bodies.

The Commission’s approach gains its significance from the fact that media regulation is taking place in the shadow of digitization, which puts parts of the industry under strong pressure. It therefore coincides with a demand for economic support on the part of the media, which the Commission meets, for example, through the related right for press publishers (Art. 15 [DSM Directive](#)). The EMFA also serves in part to strengthen the European media against American platforms (the proposed Art. 17). Combined with concerns about political interference by foreign powers this leads to a surprising closeness between European politics and European media. From a liberal perspective, one would like to see more distance in both directions. After all, the reason for financial problems of European media is that European citizens do not value the traditional media services offered by both private and public broadcasters as highly as people in media would like them to.

Media between private and public masters

Media, private as well as public, is conceived as an important public good. Therefore, in the Commission’s perspective, its virtue has to be protected – apparently also against the free market, where private media compete. In the face of American superiority in digital technology and the production of mass culture, state support for private media is becoming more and more viable in Europe. It is striking that the Commission, which claims to further the internal market, does not really believe in this market as media’s *modus operandi*. To quote the [press release](#): “The proposal aims at strengthening editorial independence of media service providers. In parallel, financial sustainability is a key element for protecting editorial independence from external and market pressures. (...) Consequently, the media sector has been increasingly turning to the EU for financial support, in view of the fact that the Commission has for long co-financed the independent media coverage of European affairs to foster a European public sphere.” In his [soundbite](#), Thierry Breton, Commissioner for the Internal Market, stated: „The European Media Freedom Act provides common safeguards at EU level to guarantee a plurality of voices and that our media are able to operate without any interference, be it private or public.“ Market scepticism affects not only the Commission’s view on competition

but also its ideas about the internal organization of media companies and editorial independence: it should not only be secured against the market but also against their owner.

In the Commission's view, the socially important contribution of high-quality media depends on journalists being able to do their work, qualified, undisturbed and well paid. The Commission's proposal thereby treats journalists like bureaucrats and media companies like European agencies: if they are well funded and free of influence, they will do 'a good job'. But this mode of task completion only works for situations in which the goals are clear and the success can be measured. The only measurable success factor for journalism is its ability to generate profits. Even surpassed by tech, press and TV still have enviable gross margins thanks to their scalability. But the properties which benefit the public discourse referenced in the proposal's Art. 3 are in the eye of the beholder. And rightly so: good journalism should not be defined by politicians or bureaucrats. Nor can it be deduced from Art. 2 TEU.

Journalists are no less political than their private or public backers. Even the quality press does not report entirely *sine ira et studio*, but typically has a certain political baseline – which is often enough the reason for buying a newspaper, more than the pen of the individual journalist. The idea that quality journalism is achieved through extensive independence is doubtful. Diversity lives from the plurality of voices, guaranteed by a market in which supply depends on demand. Political interference is extremely harmful to democracy, but extremely difficult to prevent through European legislation. Media freedom depends on living norms more than on external rules. But these can only be created and maintained within an existing context. For the time being, this context is mainly a national one.

The institutional component of the EMFA raises further doubts. It consists primarily in the establishment of a "European Board for Media Services" (Art. 8 (1) EMFA) which is composed of independent national regulators on the one hand and the Commission as a manifestly political institution on the other. In the Commission's design, national regulators should be isolated from their democratically elected governments, but interact with the Commission at the European level – an institution with a muscular record in regard to its behavior in regard to such bodies (see CJEU, [C#632/20 P](#)). The proposed europeanization of media supervision is a high price to be paid by states with functioning media regulation for a little promising attempt at safeguarding threatened media freedom in others. A liberal approach, on the other hand, trusts that in the end the market will serve the demand of citizens who will balance truth and fun in a way not ordained by supervisory bodies.

