

# Regulatory Framework for the Media between EU and Member State Level - in light of Recent Developments including the DSA Proposal

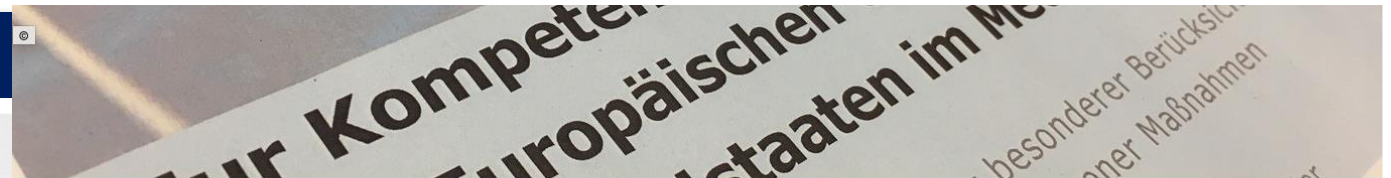
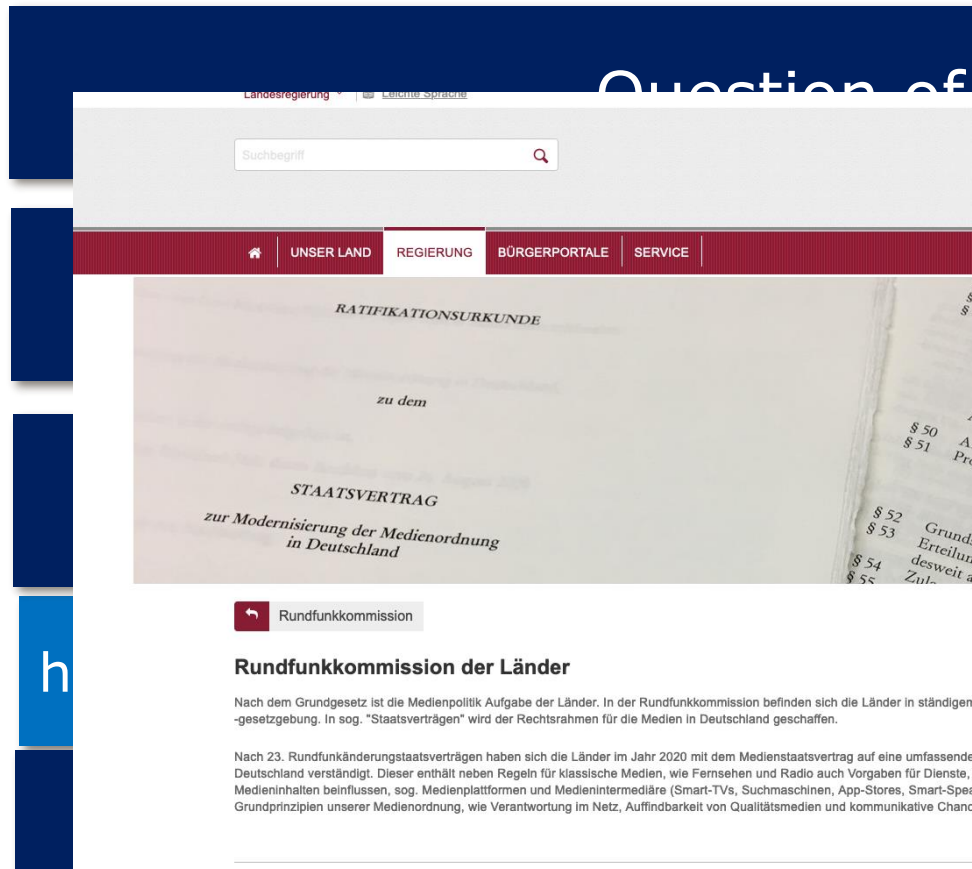
Presentation of a Study by the EMR  
on behalf of the German Länder

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Dr. Jörg Ukrow, LL.M.Eur.



Institut für Europäisches Medienrecht  
Institute of European Media Law  
Institut du droit européen des médias

# Background to the EMR-Study



## Aktuelle Studien / Gutachten

### Studie zur Sicherung der Medienvielfalt in Deutschland und Europa

Medienpolitik liegt in Deutschland in der Verantwortung der Bundesländer. In der Rundfunkkommission gestalten sie den rechtlichen Rahmen für die Medien in Deutschland in sogenannten "Staatsverträgen".

2020 haben sich die 16 Bundesländer auf den Medienstaatsvertrag geeinigt, der viele der neuen Herausforderungen in der Medienlandschaft angeht: Es gibt neue Medienanbieter und es gibt neue Gatekeeper für Medieninhalte: Smart-TVs, Smart-Speaker oder Unternehmen wie Facebook, Google oder Twitch sind zu wichtigen Vertriebsplattformen geworden.

Die Regulierung dieser „Online-Welt“ erfordert einen kohärenten Rechtsrahmen. Das Ziel von Kohärenz und Konsistenz wirft schwierige Fragen auf, insbesondere wie europäische Regulierung eines digitalen Binnenmarkts mit der Kompetenz der Mitgliedstaaten in Einklang gebracht werden kann, um den Medienpluralismus und die Besonderheiten des Mediensektors sicherzustellen.

Diese Fragen untersuchen Prof. Dr. Mark D. Cole, Dr. Jörg Ukrow und Christina Etteldorf in ihrer von den Bundesländern in Auftrag gegebenen aktuellen Studie "[Zur Kompetenzverteilung zwischen der Europäischen Union und den Mitgliedstaaten im Mediensektor](#)". Ihre Erkenntnisse werden in den bevorstehenden Diskussionen auf nationaler und europäischer Ebene wegweisend sein, um den Medienpluralismus in Deutschland und in Europa sicherzustellen.

### Study on ensuring media pluralism in Germany and Europe

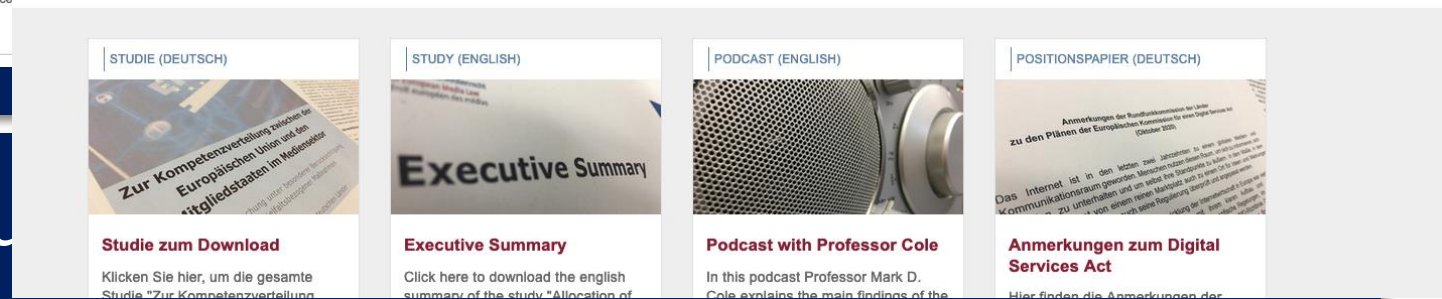
Media policy in Germany is the responsibility of the federal states, the "Länder". In the Broadcasting Commission they shape the legal framework for the media in Germany in so-called "State Treaties".

In 2020 the 16 German Länder agreed on the State Media Treaty, which addresses many of the new challenges in the media landscape: There is a new kind of content providers. Today everyone can do „media“, and there are new Gatekeepers for media content: Smart-TVs, Smart-Speakers or companies like Facebook, Google or Twitch have become very important distribution platforms.

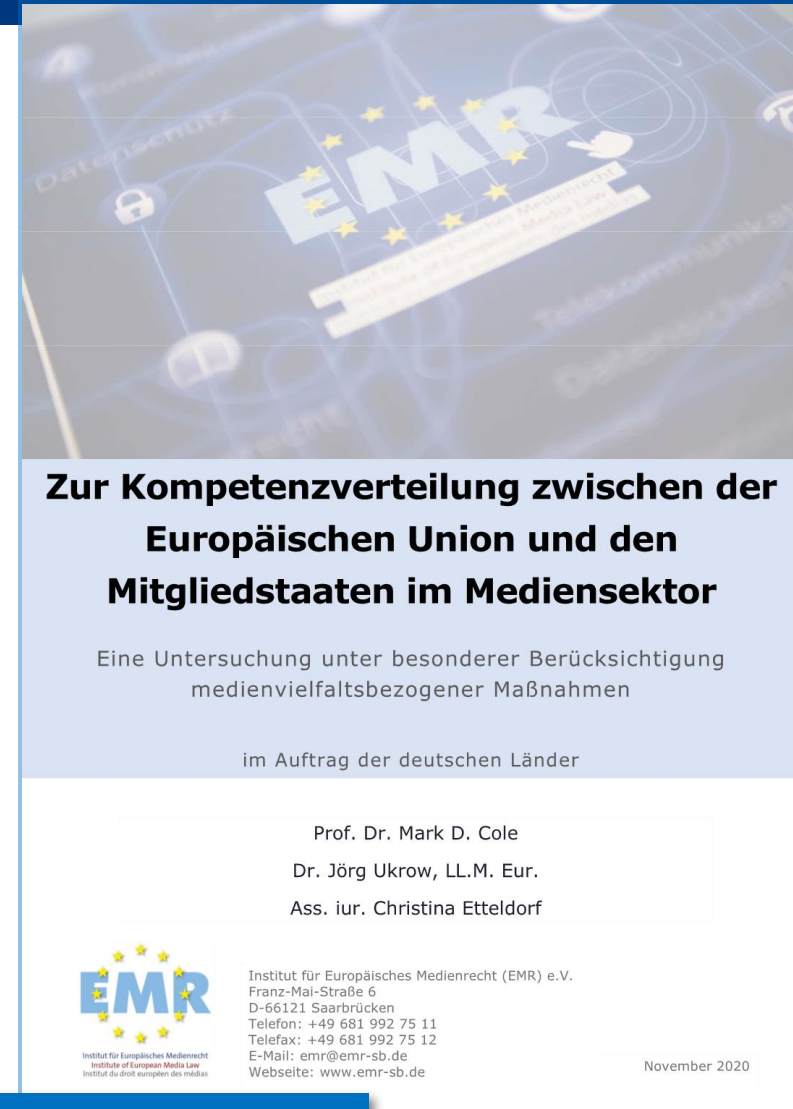
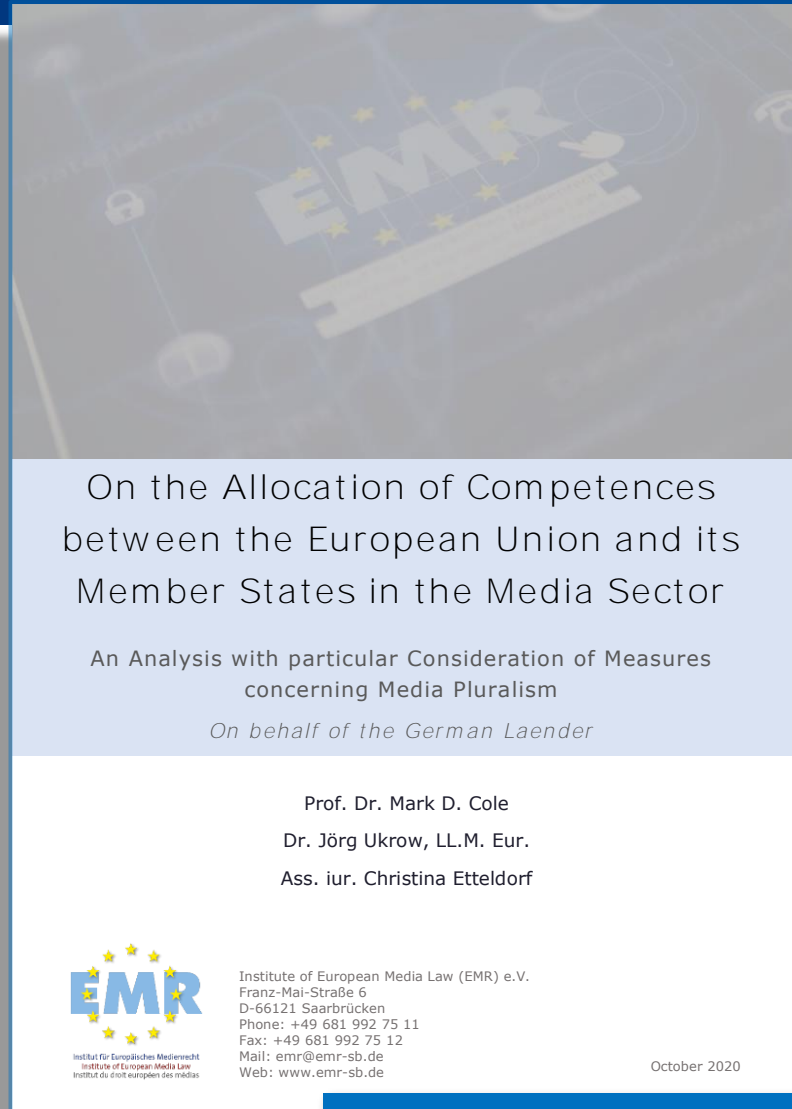
Regulating this "online world" needs a coherent legal framework. This goal of consistency and coherency raises difficult questions, especially how European regulation on a digital single market can be brought into balance with the competence of the Member States to ensure media pluralism and the specifics of the media sector.

In their new study "[On the Allocation of Competences between the European Union and its Member States in the Media Sector](#)", commissioned by the German Länder, Prof. Dr. Mark D. Cole, Dr. Jörg Ukrow and Christina Etteldorf examine these questions. Their findings will lead the way in the upcoming discussions on national and European level in order to ensure media pluralism in Germany and in Europe.

## Where to find out



# The EMR-Study online and in print



Legal framework for the allocation of competences  
at EU primary law level

On the importance and legal sources of media pluralism at EU level

Framework for “media law” and media pluralism  
at EU secondary law level

Key problems of public international law in the regulation of the  
“media sector” with regard to possible conflicts with EU law

The Proposals of Regulations for a Digital Services Package

# Legal framework for the allocation of competences at EU primary law level

EU Member States as  
“Masters of the Treaties”

Constitutional openness  
of EU Member States  
for an ever closer union

Constitutional limits of  
EU Member States for a  
unitary federal  
statehood of the EU

Constitutional limits  
with regard to  
regulation of the  
democratic function of  
the media by the EU

Limits of the EU  
integration program  
with regard to ensuring  
media pluralism and a  
possible collision of  
national law and  
European law

Primacy of EU law and  
the position of  
constitutional courts  
with regard to a  
collision of national law  
and European law

# Legal framework for the allocation of competences at EU primary law level

Principle of conferral vs. the lack of a cultural and media exception in the EU Treaties

Burden of proof with respect to EU regulation in the field of media pluralism

Openness of EU primary law for digitalization

EU competence catalogue and its blank space on media and the *in dubio pro* media regulation by the Member States argument

Limits to the supervisory competences of EU institutions in the field of media law

Irrelevance of EU's internal market competences with regard to harmonizing legislation in the area of media pluralism

# Legal framework for the allocation of competences at EU primary law level

Culture clause  
of Art. 167 TFEU and  
its role in the field of  
media regulation

Principle of  
subsidiarity and  
its role in the field of  
media regulation

Principle of  
proportionality and  
its role in the field of  
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# On the importance and legal sources of media pluralism at EU level

Fundamental rights of media freedom and pluralism enshrined in the CFR and the ECHR

Fundamental rights vs. enlargement of competences for the EU

Fundamental rights and the limitation of the use of competences by the EU and its Member States

EU Member States as guarantors of the essential role of media in democratic systems as “public watchdog”

Media pluralism as a general interest objective justifying restrictions to TFEU-fundamental freedoms

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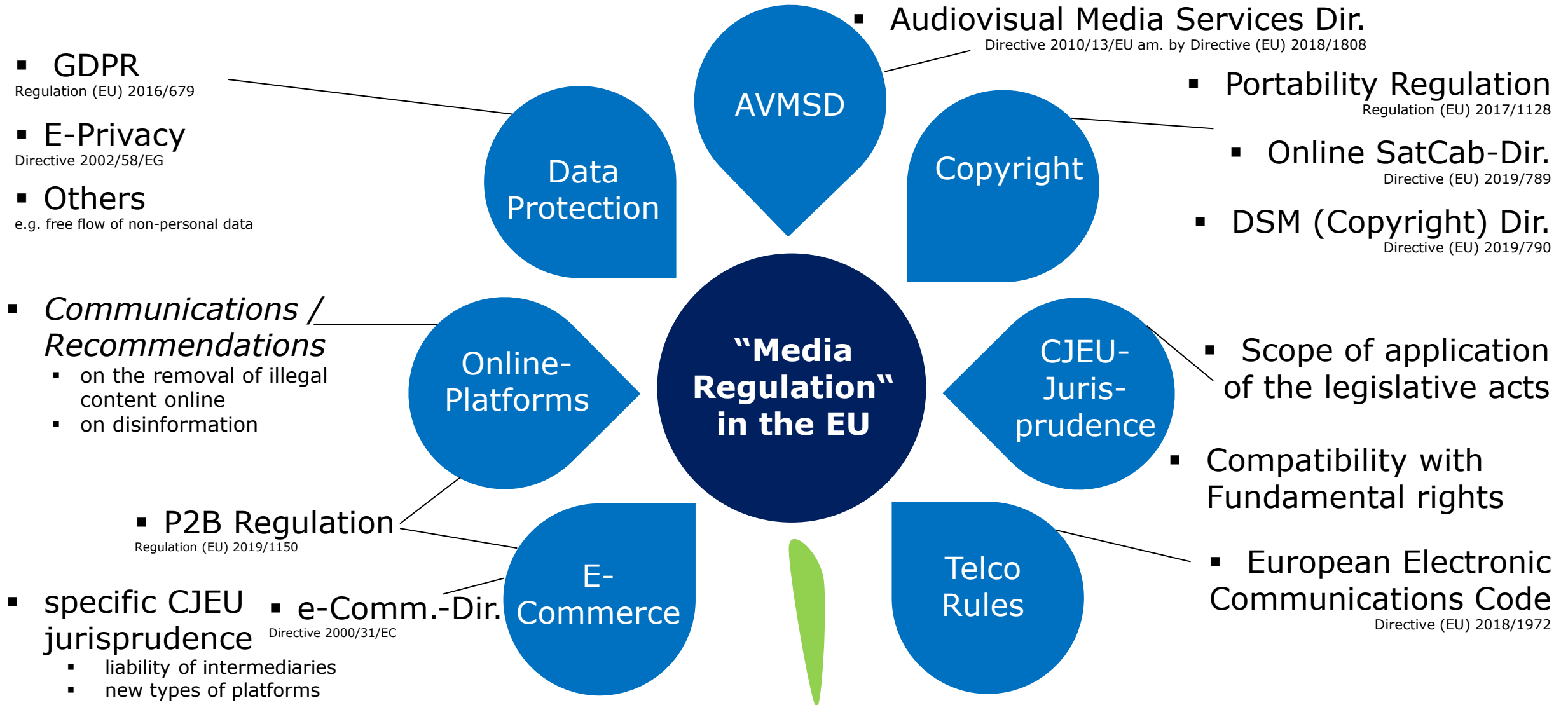
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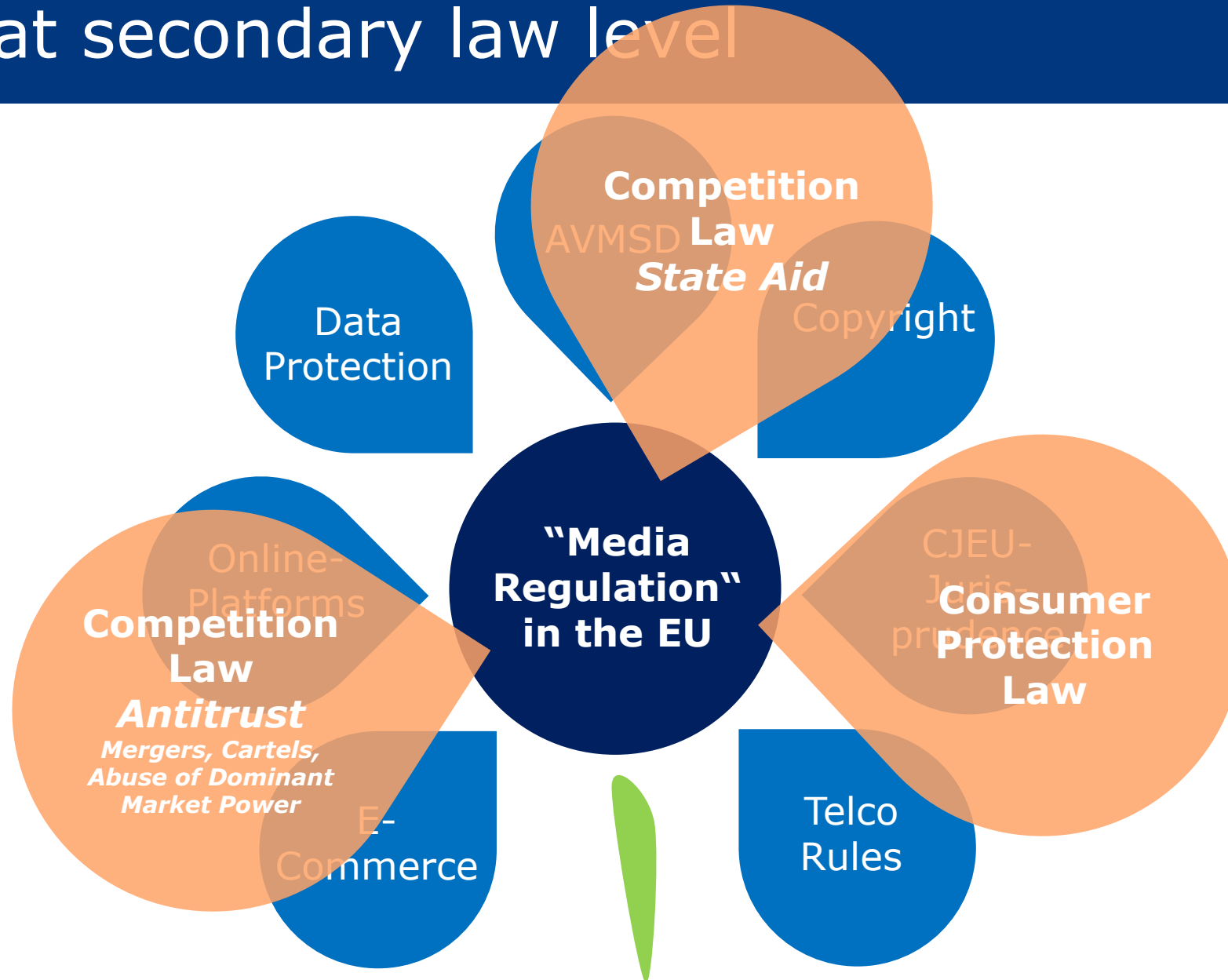
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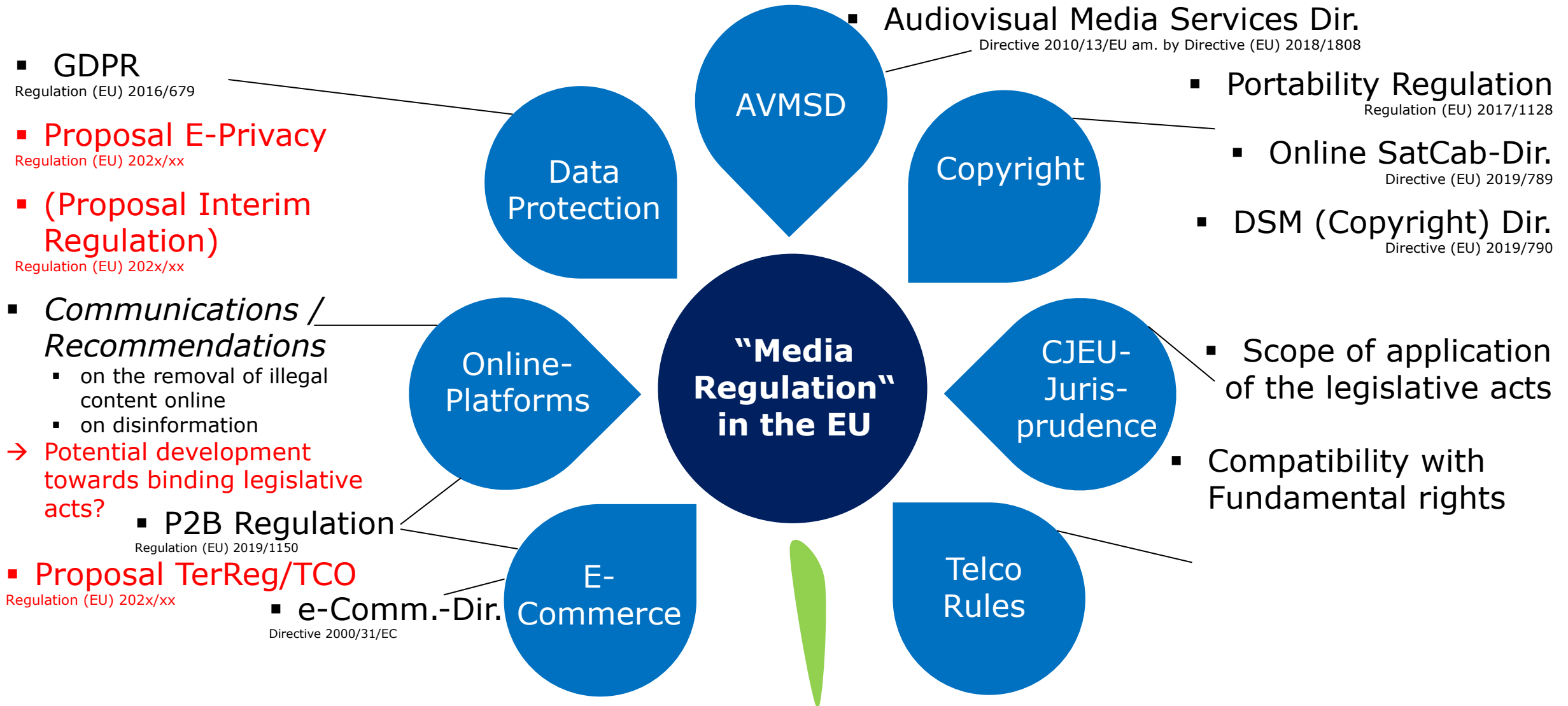
# Framework for “media law” and media pluralism at secondary law level



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# Key problems of public international law in the regulation of the “media sector” with regard to possible conflicts with EU law

Duties to protect  
fundamental rights and  
public international law

Territorial sovereignty  
and the principle of  
non-intervention in the  
internal affairs of a  
state

Genuine link approach  
of public international  
law and the regulation  
of foreign players in the  
media ecosystem

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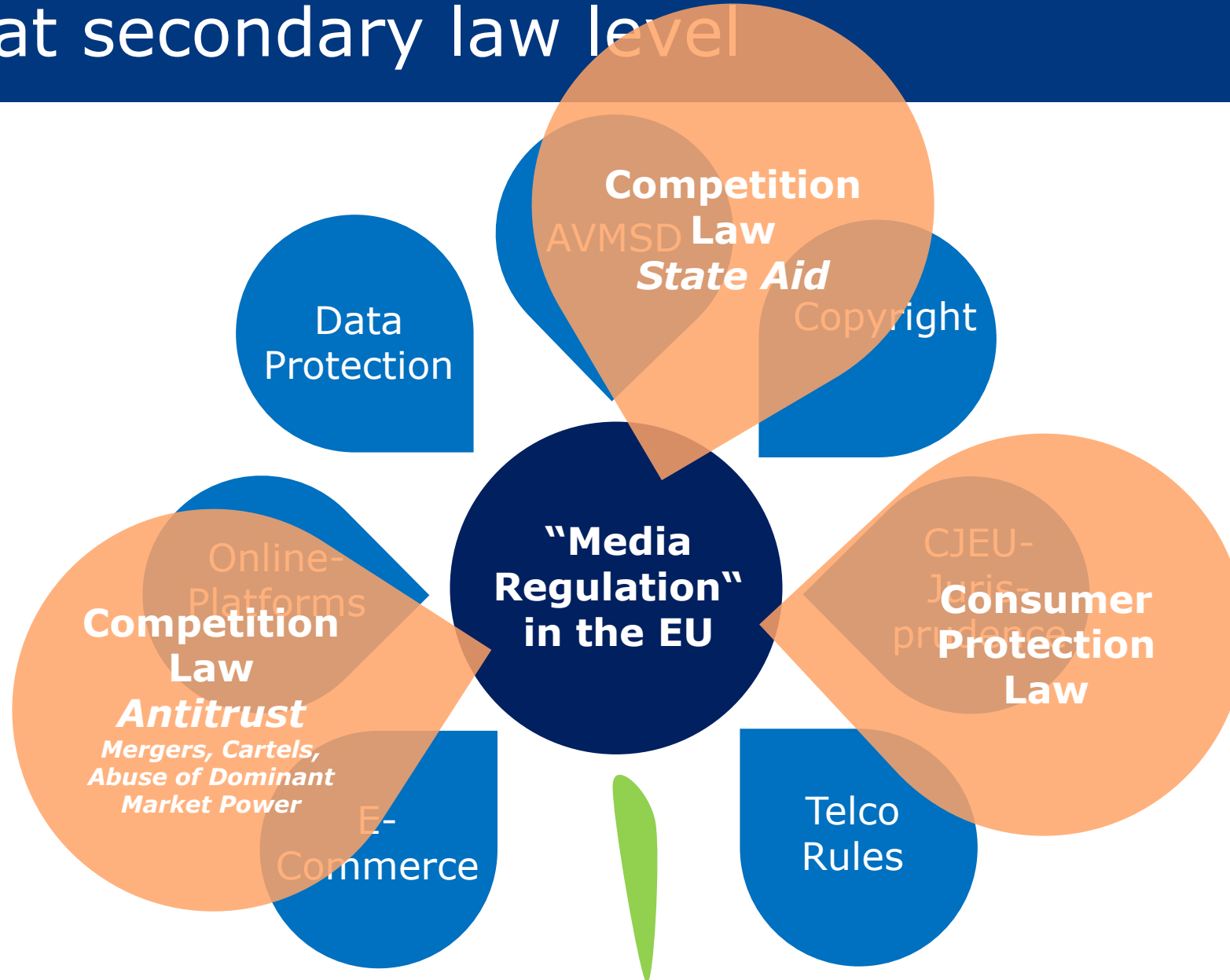
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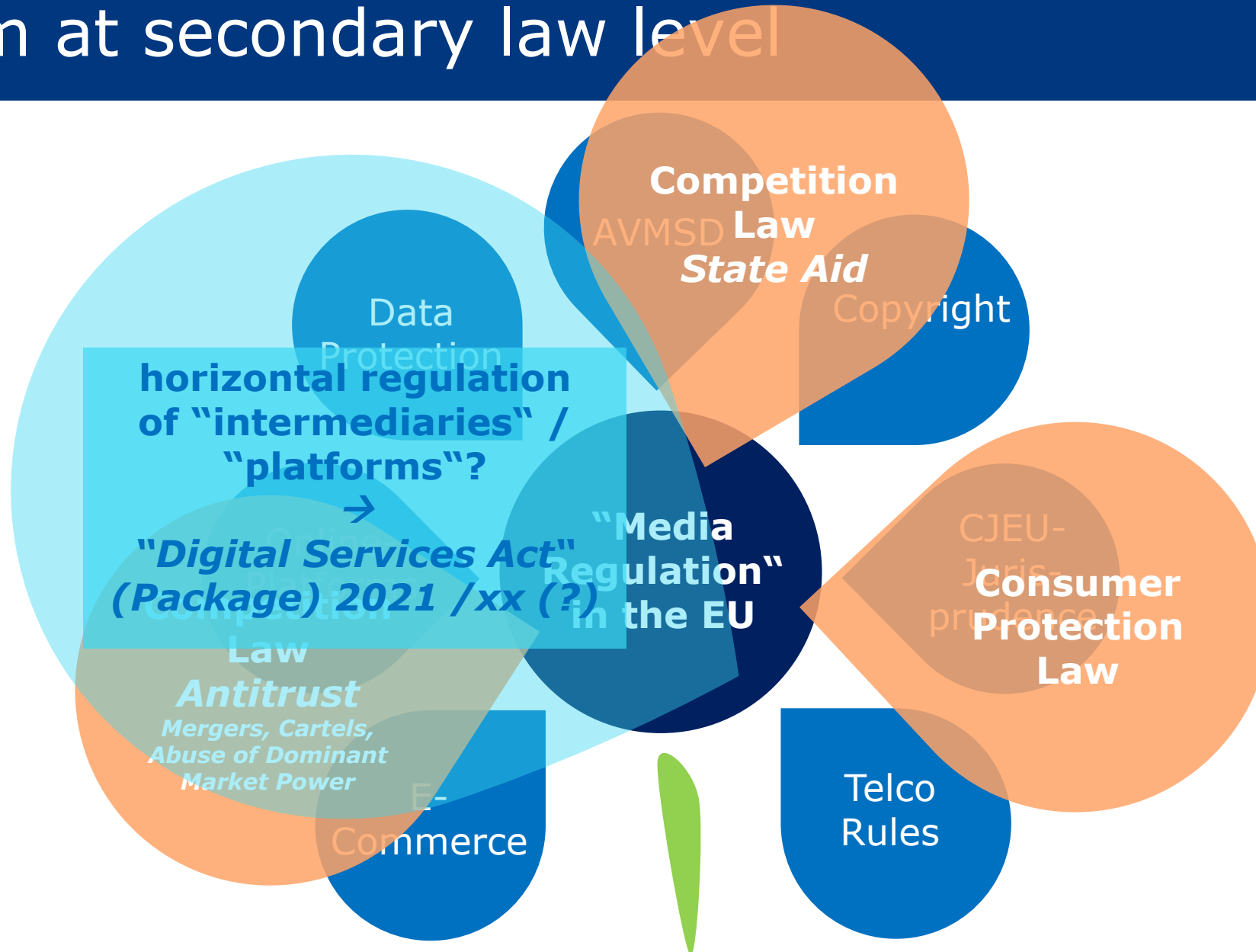
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# The Proposals of Regulations for a Digital Services Package

Compatible with the  
principle of subsidiarity?

Compatible with the  
AVMSD system?

A point of reference for  
a better digital future?



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