

# MONITORING MEDIA PLURALISM IN THE DIGITAL ERA

## APPLICATION OF THE MEDIA PLURALISM MONITOR IN THE EUROPEAN UNION, ALBANIA, MONTENEGRO, THE REPUBLIC OF NORTH MACEDONIA, SERBIA & TURKEY IN THE YEAR 2020

Country report: Belgium

Peggy Valcke, CiTiP - imec - KU Leuven

Ingrid Lambrecht, CiTiP - imec - KU Leuven

**Research Project Report**

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# 1. About the project

## 1.1. Overview of the Project

*The Media Pluralism Monitor (MPM) is a research tool designed to identify potential risks to media pluralism in the Member States of the European Union and in candidate countries. This narrative report has been produced on the basis of the implementation of the MPM carried out in 2020. The implementation was conducted in 27 EU Member States, as well as in Albania, Montenegro, the Republic of North Macedonia, Serbia and Turkey. This project, under a preparatory action of the European Parliament, was supported by a grant awarded by the European Commission to the Centre for Media Pluralism and Media Freedom (CMPF) at the European University Institute.*

## 1.2. Methodological note

### Authorship and review

*The CMPF partners with experienced, independent national researchers to carry out the data collection and author the narrative reports, except in the case of Italy where data collection is carried out centrally by the CMPF team. The research is based on a standardised questionnaire developed by the CMPF.*

*In Belgium the CMPF partnered with Peggy Valcke and Ingrid Lambrecht (CiTiP - imec - KU Leuven), who conducted the data collection, scored and commented on the variables in the questionnaire and interviewed experts. The report was reviewed by the CMPF staff. Moreover, to ensure accurate and reliable findings, a group of national experts in each country reviewed the answers to particularly evaluative questions (see Annex II for the list of experts). For a list of selected countries, the final country report was peer-reviewed by an independent country expert.*

*Risks to media pluralism are examined in four main thematic areas: Fundamental Protection, Market Plurality, Political Independence and Social Inclusiveness. The results are based on the assessment of a number of indicators for each thematic area (see Table 1).*

<b>Fundamental Protection</b>	<b>Market Plurality</b>	<b>Political Independence</b>	<b>Social Inclusiveness</b>
Protection of freedom of expression	Transparency of media ownership	Political independence of media	Access to media for minorities
Protection of right to information	News media concentration	Editorial autonomy	Access to media for local/regional communities and for community media
Journalistic profession, standards and protection	Online platforms concentration and competition enforcement	Audiovisual media, online platforms and elections	Access to media for women
Independence and effectiveness of the media authority	Media viability	State regulation of resources and support to media sector	Media Literacy
Universal reach of traditional media and access to the Internet	Commercial & owner influence over editorial content	Independence of PSM governance and funding	Protection against illegal and harmful speech

Table 1: Areas and Indicators of the Media Pluralism Monitor

## **The digital dimension**

*The Monitor does not consider the digital dimension to be an isolated area but rather as intertwined with traditional media and existing principles of media pluralism and freedom of expression. Nevertheless, the Monitor also extracts digital-specific risk scores and the report contains a specific analysis of risks related to the digital news environment.*

## **The calculation of risk**

*The results for each thematic area and indicator are presented on a scale from 0 to 100%.*

*Scores between 0 and 33%: low risk*

*Scores between 34 to 66%: medium risk*

*Scores between 67 and 100%: high risk*

With regard to indicators, scores of 0 are rated 3% while scores of 100 are rated 97% by default, to avoid an assessment of total absence or certainty of risk.

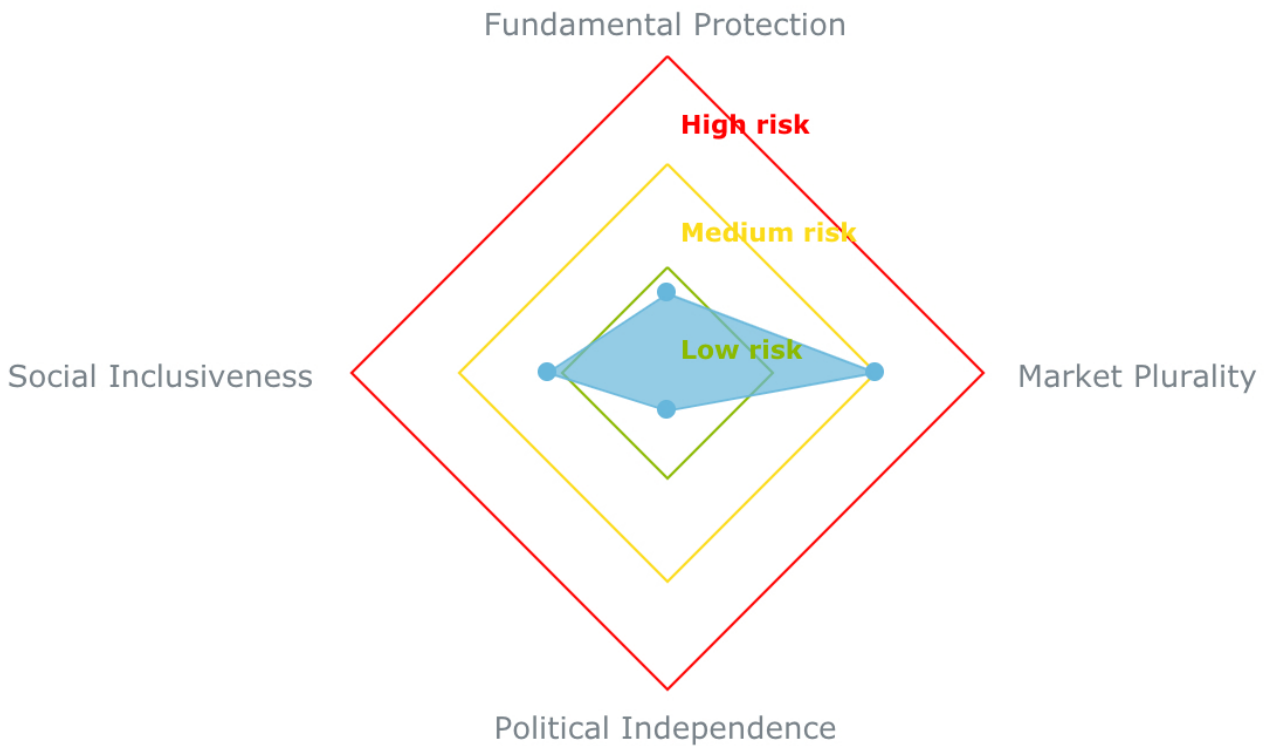
**Disclaimer:** The content of the report does not necessarily reflect the views of the CMPF, nor the position of the members composing the Group of Experts. It represents the views of the national country team that carried out the data collection and authored the report. Due to updates and refinements in the questionnaire, MPM2021 scores may not be fully comparable with previous editions of the MPM. For more details regarding the project, see the CMPF report on MPM2021, soon available on: <http://cmpf.eui.eu/media-pluralism-monitor/>.

## 2. Introduction

- **Country overview.** Belgium is a country situated in Western Europe, officially called the Kingdom of Belgium. It has a size of approximately 30k km<sup>2</sup> and a population of over 11.5 million. The capital is Brussels. Its institutional organization is complex and is structured on both regional and linguistic grounds. It consists of three regions: the Flemish (Flanders), Walloon (Wallonia), and Brussels-Capital Region.
- **Languages.** Belgium has two main linguistic groups: the Dutch-speaking Flemish community (approx. 60% of the population), and the French-speaking community (approx. 40% of the population). Additionally, there is a smaller German-speaking community in the eastern part of Belgium, consisting of approx. 80k citizens.[\[1\]](#)
- **Minorities.** For historical reasons, Belgium and its Language Communities in principle refrain from clearly defining and recognizing certain minorities by law. French and Dutch native speakers form a minority in some parts of the country but not in others, so that none may generally be considered a minority, with the exception of the German-speaking population.
- **Economic situation.** Considering its location at the heart of Europe, Belgium has a globalized, service-oriented economy. The economy's health differs between regions however, with the northern Flanders region generally performing better than the southern Wallonia region.
- **Political situation.** Belgium has a complex myriad of political institutions, which primarily revolve around the linguistic Communities. Since a series of State reforms in 1970, political parties have split across linguistic Communities, so that parties generally have a counterpart representing the interests of their Community. Political parties in Belgium may generally be considered to be political center, with the most popular parties being Christian Democrats, Liberals and Social Democrats, followed by a variety of smaller parties focused on nationalist, specific liberal ('separatism') or environmental themes.
- **Media Market.** Economically speaking, there are two media markets: certain media companies concentrate on the north of Belgium with its predominantly Flemish speaking population, whereas other companies address the predominantly French-speaking population in the south of Belgium.[\[2\]](#)[\[3\]](#) This results in smaller media markets compared to neighbouring countries.[\[4\]](#) The Belgian public also has access to a broad range of foreign media outlets, which are especially popular in the French-speaking and German-speaking parts of the country.[\[5\]](#)
- **Regulatory Environment.** During the 1970 State reforms, Community authorities were given more powers to regulate radio and television broadcasting markets. As a consequence, each Community has its own (audiovisual) media law and a separate media regulator with sometimes varying tasks and competences. The autonomy of regional authorities also explains the need to assess both markets separately for those aspects which fall under the competences of the linguistic Communities. It is important to clarify, though, that the Belgian population has in principle access to (nearly) all media outlets provided in both languages irrespective of location.
- **COVID-19.** Like neighbouring countries, the pandemic has had a profound impact on the Belgian media landscape. Perhaps unsurprising however, freelance journalists and smaller - often local and/or non-profit - media outlets have arguably been hit the hardest. Nevertheless, a combination of State and Community government efforts to provide additional support measures has been a welcome solace for many in the industry. Furthermore, while Belgium has been known to generally score relatively poorly on market concentration, the extent of market consolidation and convergence appears to have helped somewhat mitigate the impact of these trying times.

### 3. Results from the data collection: assessment of the risks to media pluralism

#### Belgium: Media Pluralism Risk Areas



JS chart by amCharts



Overall, Belgium scores relatively positively, but risk levels have increased since 2020. This is partly due to the impact of the Covid-19 pandemic and the challenges it exposed. Nevertheless, the media sector in Belgium has proven relatively resilient to the pandemic crisis, with the help of improved support mechanisms by the governments. Several traditional risks remain though, leaving Belgium with room for improvement.

**Fundamental Protection (26% - Low risk).** Belgium scores positively on basic protection of freedom of the press and of expression, albeit with increasing risks since the previous implementation. Belgium's strengths include a strong recognition of press freedoms (e.g. constitutional regime for press crimes, protection of journalistic sources) and strong protections of the journalistic profession (e.g. direct and indirect support regimes). With online developments however, this legal framework does not always succeed in creating a fair level playing field between offline and online media actors. For example, certain subsidies may not be applicable to online media outlets, while certain online media outlets do not have to provide the same level of transparency.

**Market Plurality (66% - Medium risk).** The economic situation of Belgium's media markets is a complex story. With three different language communities, markets are relatively small and concentrated. Recent years have witnessed a growing consolidation between media actors (within and across sectors). The main strategy adopted to mitigate media diversity risks resulting from high market concentration is to foster transparency, both towards regulators and the public. This transparency is currently jeopardized as international online platforms and social media greatly affect national and regional media market dynamics,

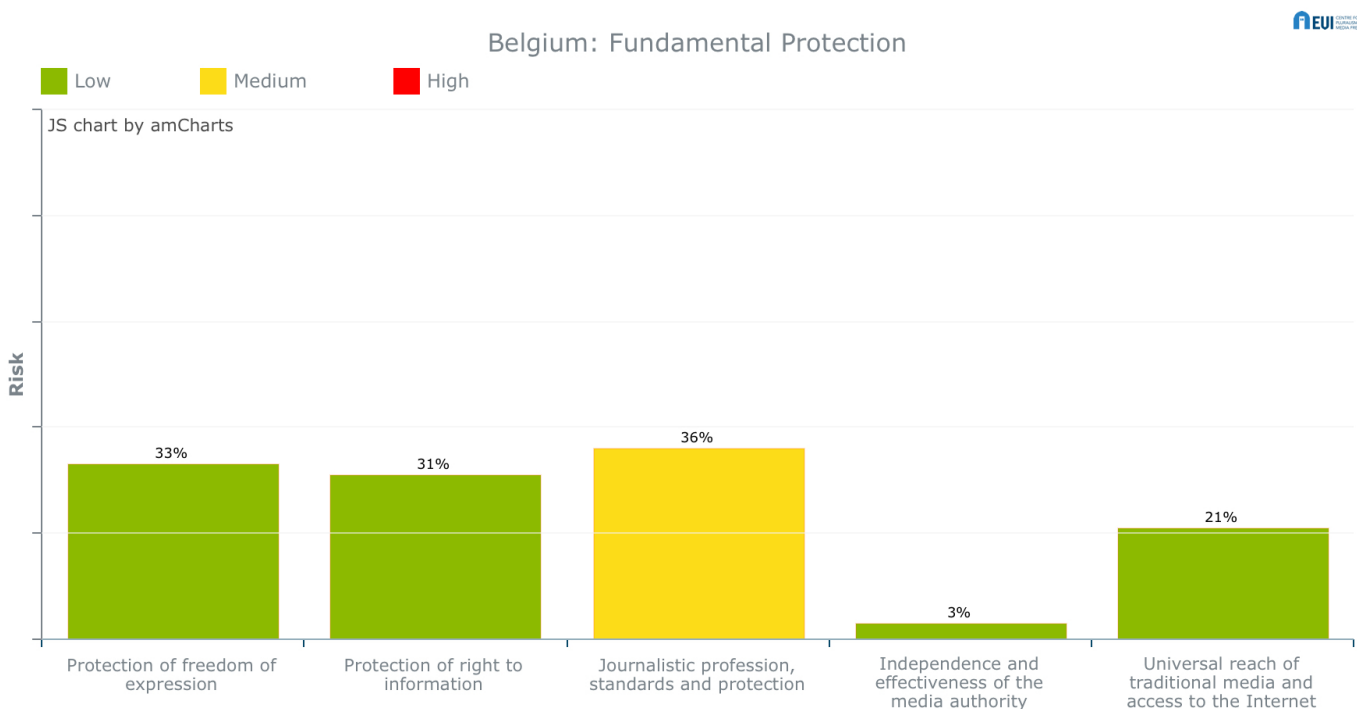
without providing similar transparency.

**Political Independence (12% - Low risk).** For audiovisual media outlets political and commercial independence of the press has been legally enshrined. Strong co- and self-regulatory traditions in the print media have created a dynamic which effectively detects undue influences or interferences. Most of these dynamics also account for digital native media outlets, but not all. While in practice, the editorial autonomy of digital native media outlets is not known to be compromised, the lack of transparency remains a concern.

**Social Inclusiveness (38% - Medium risk).** Finally, regarding social inclusion, the fragmentation of the media landscape is at the core of challenges for media pluralism in Belgium. With three different communities sharing powers over media affairs, attempts to provide legal guarantees for the inclusion of minorities have proven difficult. Nevertheless, countless efforts are made on both national and regional policy levels, in the PSM management contracts, as well as by practitioners themselves to overcome this obstacle.

### 3.1. Fundamental Protection (25% - low risk)

*The Fundamental Protection indicators represent the regulatory backbone of the media sector in every contemporary democracy. They measure a number of potential areas of risk, including the existence and effectiveness of the implementation of regulatory safeguards for freedom of expression and the right to information; the status of journalists in each country, including their protection and ability to work; the independence and effectiveness of the national regulatory bodies that have competence to regulate the media sector, and the reach of traditional media and access to the Internet.*



The indicator on **Protection of freedom of expression** scores a low risk (33%)

This is a worrisome increase from last implementation's 28% risk score. This increase is directly related to the measures taken in light of Covid-19 as they impeded on journalist's activities. It was found that sometimes less impeding measures would have been equally safe, or that journalists were denied access to public proceedings (such as courtrooms or parliament) where measures could have otherwise enabled such



access. Additionally, while Belgium has Constitutional protection of the press and of expression, it has also been the subject of – unresolved - warnings from the ECtHR for the lack of a clear legal framework of *a priori* restrictions. Overall, legal safeguards are implemented effectively, both on- and offline, but with two remarks: Belgium has continued criminalization of defamation, and damages awarded against journalists in civil court may by occasion be considered disproportionately high. Finally, there is insufficient data to assess online platforms' filtering, monitoring and/or blocking of content for Belgium. This knowledge gap is considered a risk to media pluralism.

The indicator on **Protection of right to information** scores a low risk (31%)

Belgium returned to a low risk assessment since the previous implementation round (47%). Belgium has maintained the low risk score with regard to the regulatory framework and mechanisms in place. Similarly, these mechanisms still present a medium risk score when it comes to their effective implementation in practice. The systems for obtaining access to government-held information are still not as operational as it should be to adequately protect the right to information. Finally, as external experts rightfully point out, lack of information on the uses of these mechanisms does not enable an accurate reflection of the problems in practice. This makes it difficult to assess the quality and effectivity of the systems in place. The decrease in risk compared to the previous implementation should instead be attributed to new information regarding whistleblowers, which presented an apparent absence of arbitrary sanctioning of whistle-blowers.

The indicator on **Journalistic profession, standards and protection** scores a medium risk (36%)

There is a worrying increase in risk level for this indicator since the 25% score in 2020. This is directly related to the Covid-19 pandemic, but also to the addition of new indicators on SLAPP practices. Regarding the pandemic, the media's working environment has been seriously affected. It should be noted that primarily freelance journalists have been hit by this crisis, while those working under employment contracts have remained relatively unaffected by the economic impact of the pandemic. Regarding SLAPP practices, Belgium does not have specific anti-SLAPP regulations, which results in the occasional SLAPP case. Additionally, the VVJ (Flemish Journalist Association) has developed a platform for journalists to report cases of violence, hate or intimidation. The primary results since its implementation show a concerning amount of cases. Where in earlier implementations some indicators could not be answered due to a lack of data, the new incoming data pushed those risks towards a medium risk. However, it is too soon to say whether this constitutes an increasing risk or a more accurate representation of the situation in practice. In any case, with the information now being more readily available, responses to these types of aggressions may be better responded to by both the government and practitioners alike. Finally, worthy of mention is that Belgium's implementation of the GDPR appears to be capable of safeguarding a fair exemption for the use of personal data for journalistic purposes.

The indicator on **Independence and effectiveness of the media authority** scores a low risk (3%)

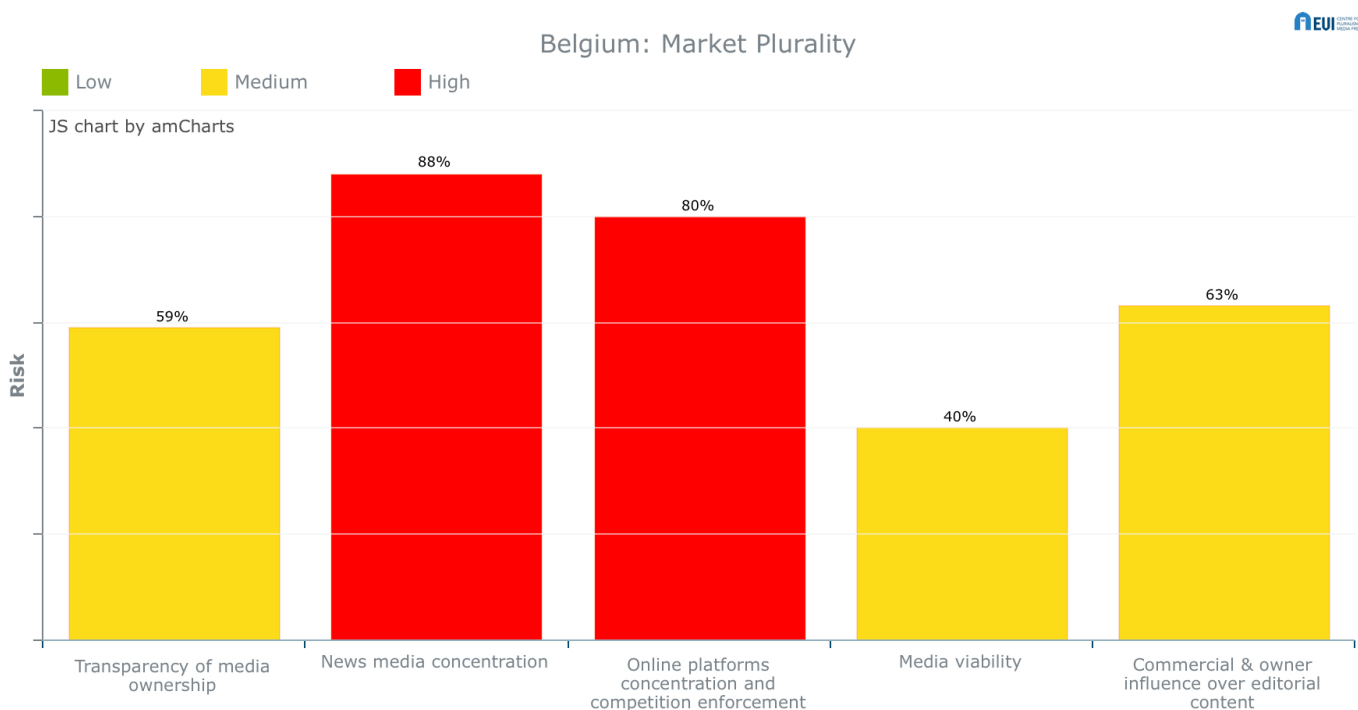
The indicator remains a solid 3% across all implementations, for three main reasons. Firstly, Belgium upholds formal independence guarantees: being a member in the Authority is incompatible with a position in the Government or with having interests in a media or advertising company. Secondly, the selection of experts is based on objective criteria. Thirdly, only a court can overturn a decision made by the Authority, providing transparency and accountability within the decision-making process.

**Universal reach of traditional media and access to the Internet** scores a low risk (27%)

The risk score has remained the same since the previous implementation. A specific concern remains the high level of concentration on the market for internet access. Nevertheless, the Belgian Institute for Postal Services and Telecommunications (BIPT) continues to be critical and alert of market developments and activities by market actors. [8] The BIPT has still not found any discriminatory practices between applications, nor any other elements that may inhibit free internet consumption by their users.

### 3.2. Market Plurality (66% - medium risk)

The Market Plurality area focuses on the economic risks to media pluralism, deriving from lack of transparency and concentration of ownership, sustainability of the media industry, exposure of journalism to commercial interests. The first indicator examines the existence and effectiveness of provisions on transparency of media ownership. Lack of competition and external pluralism is assessed separately for the news media (production of the news) and for the online platforms (gateways to the news), considering separately horizontal and cross-media concentration; the concentration of online advertising market; and the role of competition enforcement. The indicator on media viability measures the trend of revenues and employment, in relation with GDP trends. The last indicator aims to assess risks to market plurality posed by business interests on production of editorial content, both from commercial and owners influence



The indicator on **Transparency of media ownership** scores a medium risk (59%)

The score shows a troubling increase from MPM2020's risk score, though it remains a medium risk. This is mostly due to a methodological revision of the sub-indicator on the transparency of digital news media actors for which media regulatory authorities in Belgium have limited data regarding financial or ownership structures. High market concentrations tend to be counterbalanced by the argument that ownership is transparent and media regulators are independent. While the latter may be true, the lack of transparency regarding ownership, control and funding of digital news media remains a concern. Belgium (like neighbouring countries) has a tradition of leaving non-audiovisual news media relatively free and unsupervised. For the purpose of safeguarding media pluralism however, transparency on their ownership,

control and funding is considered essential, including for those active in the online environment.

The indicator on **News media concentration** scores a high risk (88%)

While ranking high already in previous implementation rounds, this risk has even further increased to a very high risk level. Only a handful of companies own all media outlets on the Flemish and Walloon markets. The market and audience concentration shares of the Top4 in any media format are close to 100%, resulting in very high concentration indices for the Flemish and French-speaking markets. Nevertheless, due to language overlaps with neighbouring countries, content from media outlets based in France, Germany, Luxemburg and the Netherlands help diversify the available offer.

A second factor explaining the high risk level is the lack of sector-specific anti-concentration rules. Apart from some restrictions on the accumulation of radio or TV licenses, regional media laws do not contain specific thresholds or procedures for (cross-)media mergers, mainly caused by the division of powers in Belgium between the federal state and communities. General merger control rules also apply to the media sector. The Belgian Competition Authority occasionally attaches conditions to a merger with the goal of ensuring diversity of media content, but this has not prevented the current high level of concentration.

The indicator on **Online platforms concentration and competition enforcement** scores a high risk (80%)

Similar to the above, this indicator scores higher risks over the years. It primarily looks at the capacity of international online market players to compete with national and regional media players (e.g. video streaming services), and their capacity to absorb important economic resources from these players, such as advertising revenue and audiences (e.g. side-door access to news and information). Similar to previous indicators, Belgium shows high risks primarily due to an absence of media-specific considerations in the regulation of ownership, advertising or audience concentrations in the online environment. The market impact of these international players has incentivised leading Belgian advertising and media companies to cooperate, for example in the context of the announced Belgian Data Alliance.<sup>[7]</sup> Regulatory authorities are not always sufficiently equipped to assess the potential harm of these activities, not only to the market, but also to media pluralism.

The indicator on **Market viability** scores a medium risk (40%)

Rather surprisingly, risks concerning market viability have decreased since the previous implementation, despite the Covid-19 pandemic greatly impacting the media industry. Revenue numbers show an overall positive result for 2020 which is in large part due to DPG Media's merger, as well as to the release of its video streaming services, before the pandemic. To some extent, the viability of the media sector may be owed to high market concentration, as vertically and horizontally integrated companies were better equipped to spread losses and mitigate income loss caused by the resulting economic harm. This also prevented larger media companies from having to, or limiting the need to, perform lay-offs or similar large budget cuts. It would appear that the media outlets suffering the most are those working on a freelance basis, such as some printed press and digital native news outlets, As reflected in a medium risk, viability thus appears precarious but manageable.

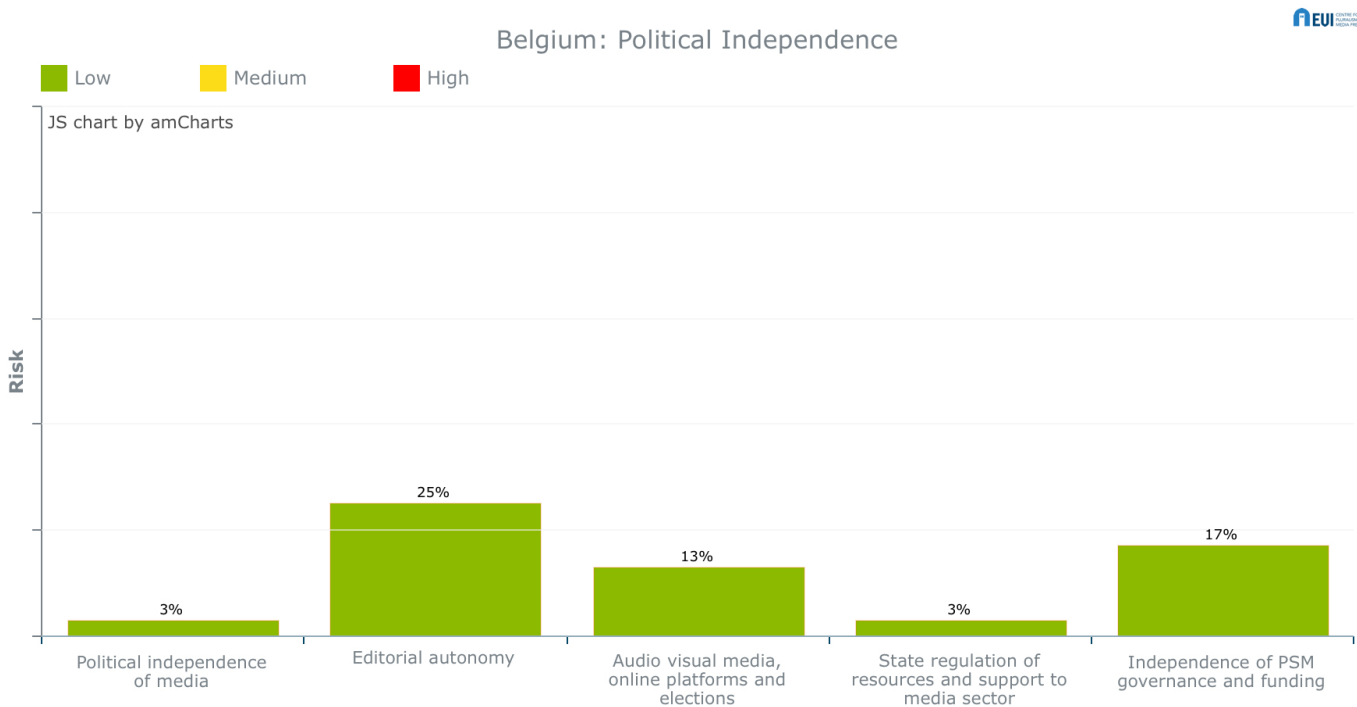
The indicator on **Commercial and owner influence over editorial content** scores a medium risk (63%)

Belgium's near-high risk has remained the same since the previous implementation. The cause for this high

risk primarily lies with the lack of social protection for journalists and editors accounting for the risks associated with the profession (i.e. failing to protect against undue commercial influences or conflict of interests with management or boards, other than through traditional ‘soft’ regulation such as self-regulatory statutes and deontology). On a positive note, regulation of advertising may be considered well-implemented and effective.

### 3.3. Political Independence (12% - low risk)

The Political Independence indicators assess the existence and effectiveness of regulatory and self-regulatory safeguards against political bias and political influences over news production, distribution and access. More specifically, the area seeks to evaluate the influence of the State and, more generally, of political power over the functioning of the media market and the independence of public service media. Furthermore, the area is concerned with the existence and effectiveness of (self)regulation in ensuring editorial independence and availability of plural political information and viewpoints, in particular during electoral periods.



The indicator on **Political independence of media** scores low risk (3%)

Risks dropped even lower in this year’s implementation as direct political interferences with the workings of the media appear to remain absent in Belgium. Even though such political influence is not immediately known or shown in practice, it is necessary to bear in mind that legal safeguards for political independence only exist for the broadcasting sector (radio and television), in contrast to newspapers and media distribution (leaving aside the general constitutional protection of freedom of expression and press freedoms, and self-regulatory codes of ethics for journalists). This poses concerns for the larger legacy media outlets, but equally so for digital native news outlets. For now, the informal mechanisms in place amongst practitioners appear effective in preserving political independence of the media in Belgium.

The indicator on **Editorial autonomy** scores low risk (25%)

The risk level for this indicator domain has been slightly decreasing over the years. As mentioned before, it needs to be noted that there are no regulatory safeguards to guarantee autonomy when appointing and dismissing editors-in-chief. In practice, stakeholders have, on the one hand, reported no cases in which a certain appointment or dismissal was considered politically influenced. On the other hand, they agree that there is a lack of hard evidence regarding genuine independence from political influences in editorial content. This year however, external experts could confirm a positive assessment of this absence, which contributed to a slightly lower risk level than previous implementations.

The indicator on **Audiovisual media, online platforms and elections** scores a low risk (13%)

The risk assessment has remained the same since the domain's inception in the previous implementation. The risk score remains low thanks to the existence of rules on impartiality and fair political representation on PSM and commercial broadcasters, as well as evidence of effective implementation of those rules.<sup>[8]</sup> A point of concern, however, is the lack of transparency of online political advertising during campaigning as there is no specific regulation obliging parties or intermediaries to be transparent to authorities on whether these campaigns are run fairly and by use of which techniques.

The indicator on **State regulation of resources and support to media sector** scores low risk (3%).

This domain sees a significant drop in risk level and this is almost solely due to the increased efforts by all relevant governments to support the media sector given the Covid-19 pandemic. This implementation round had specific attention for measures that were called into effect to help mitigate the negative economic and financial impact caused by the pandemic. Considering the efforts in this respect from all respective governments in Belgium, this domain was assessed positively for this year specifically. It will however be interesting to compare these results with following implementation rounds, to see if this level of duty and care are transposed to general direct and indirect support mechanisms. These mechanisms were previously rated as effective but flawed, commonly due to a lack of transparency regarding the applied criteria or its beneficiaries.

The indicator on **Independence of PSM governance and funding** shows a low risk (17%).

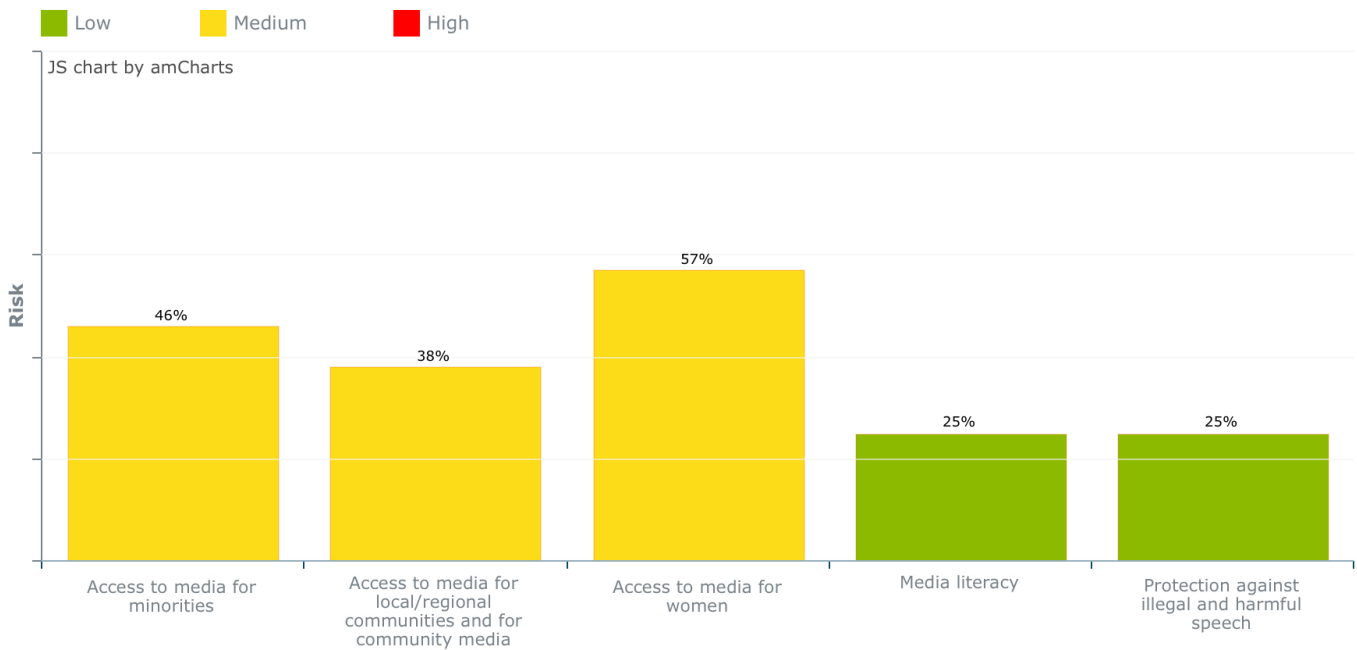
Risks regarding the independence of the PSM again increased, albeit slightly. The traditional low risk comes from extensive regulatory safeguards, overseen by independent regulatory authorities, in both language communities, with the Council of State as competent appeal mechanism. There have been no cases before these bodies that provide any cause of concern in relation to independence of either PSM. However, the increase of the risk is due to two indicators signalling on what grounds the government may base its decision of assigning funds. Risk is considered low if this is done based on a set of objective pre-defined economic criteria, taking into account not to distort competition, including that of the online environment. Considering that this is not entirely the case in Belgium, the independence of the PSM may be considered at risk when allocation of funds is based on non-economic factors.

### **3.4. Social Inclusiveness (38% - medium risk)**

*The Social Inclusiveness area focuses on the access to media by specific groups in society: minorities, local and regional communities, women and people with disabilities. It also examines the country's media literacy environment, including the digital skills of the overall population. In addition, for the 2021 edition of the MPM, a new indicator has been added to the Social Inclusiveness area in order to assess new challenges*

raising from the uses of digital technologies: Protection against illegal and harmful speech. Due to this modification of the indicators, comparison with previous editions of the MPM should be handled with extreme care.

### Belgium: Social Inclusiveness



The indicator on **Access to media for minorities** scores a medium risk (46%)

In this year’s implementation round, this indicator scored a slightly lower risk, but this is primarily due to a shift in content, as the previous indicator concerning access to media for people with disabilities has been merged with Access to media for minorities. As was clarified in previous implementations, the different language communities have difficulty defining clear categories of minorities due to politically sensitive language legislation. French and Dutch speakers form a minority in some parts of the country but not in others, so that none can generally be considered a minority. As a result, any protection of access to media for minority groups, is mostly based on general anti-discrimination regulation. Similarly for PSM, while legal obligations to include third-party programming from certain minority groups in society have eroded, PSM still have the obligation to represent the diverse ideological and sociological groups in society in their programming. Furthermore, Belgium scores various medium risks on access to media for people with disabilities. Different institutions and regions in Belgium have policies and regulations in place<sup>[1]</sup>, though in practice this creates a fragmented implementation of measures. PSM generally do a better job than private actors in implementing them, as they annually have to report their efforts in this regard. Overall, Belgium would benefit from a thorough revision, streamlining and correct implementation of the existing policies.

The indicator on **Access to media for local/regional communities and community media** scores medium risk (38%).

There is a slight increase in risk for this indicator since 2020, which could be directly related to the impact caused by the Covid-19 pandemic. Despite various government efforts to support local media players to mitigate the impact of the pandemic, many of them still struggle to survive. The risk also remains low due to the inclusion of popular local editions published by established media players. Furthermore, the wide range of policies in both language communities have resulted in a fragmented system of subsidies and protection

of community media. When looking at independent community or local media, the risk is higher since the allocation of support, funds or subsidies is often opaque, but nevertheless present.

The indicator on **Access to media for women** scores a medium risk (57%).

For MPM2020, the media regulator of the French speaking Community had recently started a new monitor on the representation of various groups in the media, including women<sup>[2]</sup>. It originally increased the risk score by 24%, though its latest iteration showed positive progress. In addition to the finding that women are generally underrepresented in management, board or CEO positions, the monitor, as well as academic experts<sup>[3]</sup>, reveals that women are still underrepresented in news media, both as 'news subjects' and as 'reporters or presenters'. Moreover, a big gender gap exists regarding news personnel, in radio, television and print media and between entertainment and news media. This is only the second record of these data sources within the MPM specifically, however. These indicators would need to be tracked for a longer period of time for more accurate assessments of whether the situation is improving or not.

Belgium scores a low risk on **Media literacy** (25%).

Belgium's continuous efforts in the field of media literacy has left this risk virtually the same as in previous rounds, with a 3% risk increase since the previous round. This low risk is the result of a differing policy in the French and Flemish language communities regarding the mandatory inclusion of media literacy in the education curriculum, combined with a limited extent of media literacy in non-formal educational settings. Additionally, Belgium scores a medium risk regarding the share of internet users that have at least basic digital usage and communication skills. However, various and extensive initiatives on media literacy in both language communities have been taken to improve these results, both by educating citizens and by contributing to the democratic debate.

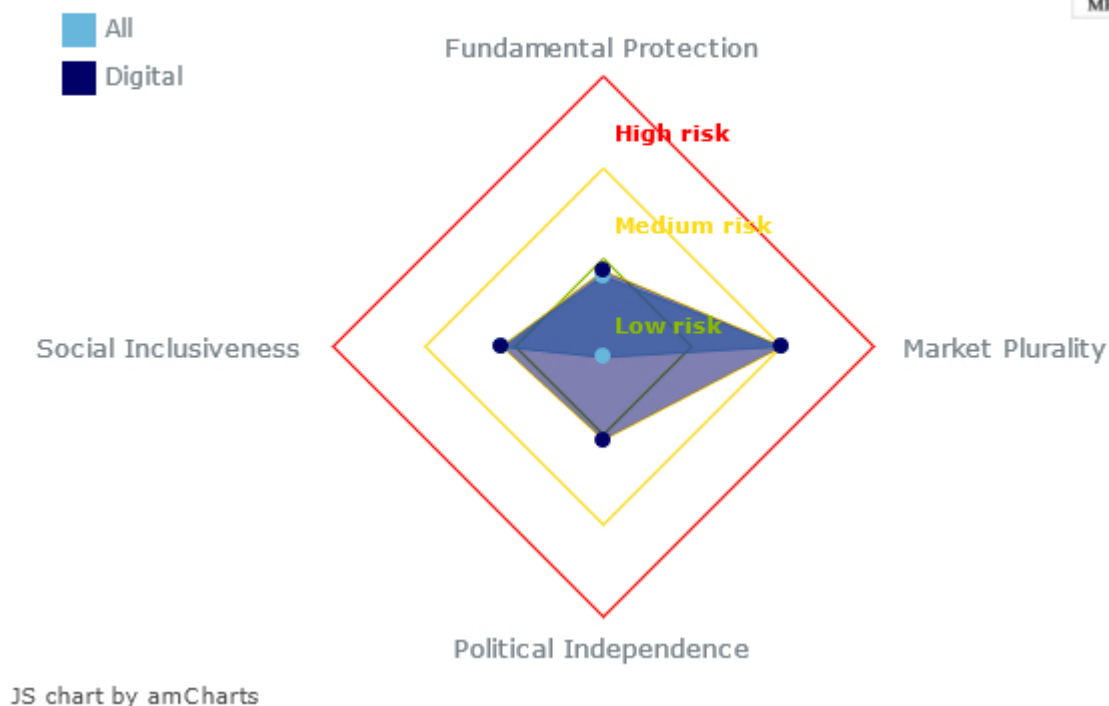
**Protection against illegal and harmful speech** scores a low risk (25%)

This indicator domain has been introduced for the first time in this implementation round and is especially relevant in light of the Covid-19 pandemic. Belgium scores a low risk overall, though not all of it is due to the governments' efforts. As an external expert<sup>[4]</sup> pointed out, the problem of the spread of disinformation appears relatively limited, though this leads to a rather low political incentive to increase efforts in mitigating the risks. Consequently, a sudden influx of disinformation would be difficult to grapple on the short-term. Nevertheless, it may be argued that the reason the risks are currently so low is because of the continuous efforts from a wide range of stakeholders, such as media practitioners, PSM, academia and factchecking non-profits, with financial support from the government. In an attempt to better streamline the existing patchwork of efforts in the Flemish community, a new project is ready to kick off next year which aims to streamline fact-checking efforts (Working title: 'De Checkers').

With regard to efforts in the fight against online hate speech, it is necessary to say that, while there is a fairly well-developed legal and policy framework, as well as active civil society organisations working on these matters, this year's implementation round had to respond with a lack of data regarding 2020 specifically, as many institutions and organisation have been suffering delays in their data collection due to the pandemic.

## 4. Pluralism in the online environment: assessment of the risks

### Belgium: Media Pluralism Risk Areas - Digital



#### Fundamental protection

Concerning freedom of expression online, the law makes in principle no distinction between online and offline restrictions. Firstly, the Constitution does not prevent the imposition of *a posteriori* restrictions on the freedom of expression. This has resulted in a very broad and fragmented array of restrictive measures, protecting e.g. anti-discrimination, protection of honour and reputation, of public decency, and data protection and privacy. Secondly, the ECtHR has found a violation of Article 10 ECHR in the case of Belgium due to the lack of a clear legal framework regarding *a priori* restrictions.<sup>[9]</sup> In both cases (*a posteriori* and *a priori* restrictions), the lack of clear legal basis is at the core of the issue, which in practice may be mitigated by the proportionality test and the balancing exercise with other fundamental rights, applicable both on- and offline and accounting for each case's characteristics.

Concerning the freedom of expression of journalists specifically, journalists appear to distinguish between two types of digital intimidation or aggression, one by critical-minded citizens and one by third parties from a powerful position. Journalists tend to actively minimize the chilling effects where it originates from citizens, while those from third parties are considered unacceptable.<sup>[10]</sup> Since the VVJ (Flemish Journalist Association) implemented their new platform on which journalists may report any types of aggression towards them, known numbers of cases are rapidly increasing.<sup>[11]</sup> It will be vital to track the information from this platform for future assessments regarding Belgium's efforts to protect its journalists.

In other efforts to safeguard journalists' rights, Belgium has an improved data retention law in force since July 2016<sup>[12]</sup>, to better comply with human rights standards. The law now clearly defines which authorities can access and retain data and for how long, and specifies the requirements for accessing three different categories of data. The EU-FRA has noted however, that the blanket retention of data by telecommunication providers has not yet been removed.<sup>[13]</sup>



Finally, concerning the possibility of illegal monitoring of journalists online, Belgium has assigned the Standing Committee I to monitor data processing activities by numerous government services, including by intelligence services. It also deals with individual requests from those targeted individuals. In addition, the Committee may cooperate with other Belgian supervisory authorities, with due safeguards for the rights of the individuals involved. Finally, in specific cases the Data Protection Act obliges the inspected services to cooperate with the Committee, meaning that they do not only have to provide the necessary transparency to the Committee, but also have to comply when the Committee orders them to stop certain processing activities it deems unlawful or illegal.<sup>[14]</sup>

## **Market plurality**

As digital native news media do not (yet) fall under the competence of the transparency obligations towards their respective community media regulator, little is known on their market share or ownership structures.<sup>[15]</sup> In 2019, the Flemish media regulator highlighted that “the popularity of the largest read online digital native newspaper coincides with that of the lowest read legacy media affiliated paper”.<sup>[16]</sup> This gap becomes especially clear when we look at audience concentration of all online news media, with DPG Media, the Flemish public broadcaster VRT and Mediahuis having the largest audience concentration shares (reaching a combined share of 92%), followed by the French community PSM RTBF and Roularta<sup>[17]</sup> Furthermore, there are virtually no cross-media ownership restrictions and no specific thresholds incorporated in media legislation, mainly the result of the division of powers in Belgium limiting each legislator’s scope for action. Nevertheless, the media sector is by no means excluded from the Code of Economic Law, and the Belgian Competition Authority has intervened several times in the past in cases of concentrations in the media sector. Without having the obligation to, the Belgian Competition Authority has had due regard for media pluralism aspects, but only as part of its consumer welfare analysis.<sup>[18]</sup>

Risk scores also increase when looking at the effects of online platforms and social media. 59% of Belgians access news through platforms and intermediaries.<sup>[19]</sup> Among others, this creates risks to the media’s traditional advertising revenue model. In response, Belgian advertising companies are increasingly cooperating and the largest Belgian media players started cooperating under the Belgian Data Alliance. The strong market effects by these international players on a national or regional level of competition is thus a risk not to be underestimated.

## **Political independence**

Similar to the remark about transparency on the ownership structures of digital natives, data on their revenue or employment trends are sparse and provided on a voluntary basis, making it especially difficult to assess the challenges these players currently face. Fortunately, regulatory incentives to support online media and pluralism also apply to online media. An academic research project, DIAMOND, interviewed several digital native players on their use of these mechanisms, finding that they are generally aware of and make use of them.<sup>[20]</sup> Additionally, the Flemish Media Regulator found an increase of subsidized small local players.<sup>[21]</sup> In sum, while it is difficult to assess the difficulties these digital natives face, traditional support mechanisms are available and prove to be obtainable.

These difficulties spark the question if digital natives can sufficiently protect themselves against undue commercial influences. Considering that journalists tend to work for different players and freelance journalism is on the rise, ‘online journalists’ are equally bound to journalistic deontology. Journalists and

editors alike would also benefit from the relatively new Social Charter aimed at protecting their position against undue influences, regardless of medium, signed by the Flemish community government on June 28, 2019.[\[22\]](#)

Additionally, political control also poses a risk to digital native news media. Notwithstanding that they do not appear to be under any political control,[\[23\]](#) the abovementioned concern can be repeated that they currently do not fall under the same transparency obligations as most legacy media. Voluntary political ideology of a news medium aside, it may thus be questioned what certain players' relationship to political groupings are.

Regulations aside, self-regulatory bodies updated deontological codes on the do's and don'ts of publishing and advertising on the internet in line with international standards and policy reports. Finally, at the level of the company, it is generally known that the largest Belgian private media players have internal internet and social media guidelines ready, but not publicly available.

Risks related to the political sphere also situate themselves in the online advertising industry. Online political advertising is generally covered by the election expenditure rules. The Electoral Commission provided the guidance that while parties and candidates are free to use their resources, under the conditions imposed by the law, for the financing and organization of their election campaign, they must conduct a privacy-friendly election campaign and respect the GDPR and all its implementations.[\[24\]](#) In practice however, there is no strict enforcement or compliance audit being done and the Data Protection Authority (DPA)'s role appears to be limited to information and awareness.

On another note, while the position of PSM's may provide a more neutral playing field in the online environment, making it important for them to have a strong online presence, neither media decree contains provisions that their online mission cannot distort competition with private actors.

## **Social inclusiveness**

With respect to Belgium's efforts in the fight against disinformation, it is especially noteworthy that the problem of disinformation in Belgium still appears to be limited, despite an increase since the Covid-19 pandemic. Efforts to tackle issues primarily originate from industry stakeholders, sometimes with government support. Additionally, Belgium scores a medium risk regarding the share of internet users that have at least basic digital usage and communication skills. However, various and extensive initiatives on media literacy in both language communities have been taken to improve these results, both by educating citizens and by contributing to the democratic debate.

Finally, the democratic debate online requires more efforts against the large amount of hate speech present today. In that regard, UNIA has reported a new trend for 2019, stating hate speech on social media is effectively prosecuted and punished. It reports two major convictions in 2018 and four successful cases before court, alongside increased efforts to combat hate speech against minority groups, including ethnic, foreign or religious background, sexual orientation, women and persons with a disability.[\[25\]](#)

Overall, the results show many of the risks associated to the online environment confirmed for Belgium, but results also show the many efforts in effect, which combined could mitigate these risks and enable open

democratic debate online.

## 5. Conclusions

Overall, Belgium scores relatively positively, but risk levels have increased since 2020. This is partly due to the impact of the Covid-19 pandemic and the challenges it exposed. With regard for the basic protection area for example, risk increases were directly related to the pandemic as it directly affected working conditions for media practitioners. Belgium's media sector has proven relatively resilient to the crisis nevertheless. High market consolidation played an important part in this, as it provided some economic stability to the industry and its practitioners. Furthermore, the pandemic has been a driver for governments to improve their support mechanisms. Finally, new sources are continuously feeding into the findings being introduced based on new findings. These sometimes present positive trends (e.g. absence of abusive litigation against whistleblowers and improving representation of women in the media) or negative trends (e.g. more detailed information on cases of violence, intimidation and hate speech against media practitioners). Thanks to the increasing efforts of stakeholders and experts in Belgium to monitor various aspects of the media in Belgium, findings continuously become a more accurate reflection of reality with every MPM implementation. Several traditional risks remain as well, though, leaving Belgium with room for improvement. Below is a list of considerations based on the MPM risk assessment that may benefit the situation of media pluralism in Belgium.

### Fundamental protection

- Align Belgian legislation with ECtHR case law by further clarifying the conditions for *a priori* restrictions to freedom of expression as well as by decriminalizing defamation;
- Extending responsibilities of Independent Media Authorities to monitor (more effectively) and remedy risks in relation to online and social media, without unduly compromising their capacities or resources;
- Improving transparency and efficiency of the process to obtain government-held information and of whistle-blower protection;

### Market plurality

- Developing social protections for journalists and editors-in-chief across all media formats;
- Extending competences for the Independent Media Authorities to obtain transparency on ownership, control and finances of all media, regardless of format or medium;
- Considering integrating media-specific considerations into existing competition regulations in dialogue with the various levels of government;

### Political independence

- Extending regulations on transparency of online political advertising during electoral campaigning to include the techniques and data used;
- Assigning the Belgian DPA the competence to monitor the fairness and legality of the above activities;
- Establishing objective pre-defined economic criteria which account for possible distortions of market competition, to complement other criteria for a fair quantification of the PSM budget;

### Social inclusiveness

- Maintaining access of different minority groups to PSM;
- Streamlining subsidies and protection of community media, including clarifying the objective criteria on the basis of which support may be granted;

- Streamlining and supporting endeavours and policies aimed at improving the situation for women in media, for access to media content and for media literacy.

## 6. Notes

- [1] For the Flemish community, the Access to media for people with disabilities is mentioned in the Art. 151 of the FIRTA (Flemish Community Radio and Television Broadcasting Act). [https://www.vlaamseregulatormedia.be/sites/default/files/act\\_on\\_radio\\_and\\_television\\_broadcasting.pdf](https://www.vlaamseregulatormedia.be/sites/default/files/act_on_radio_and_television_broadcasting.pdf) For the French community, the Access to media for people with disabilities is mentioned in Art. 40 of the Contrat de Gestion de la RTBF 2019-2022. [https://www.csa.be/wp-content/uploads/documents-csa/contrat\\_de\\_gestion\\_RTBF.pdf](https://www.csa.be/wp-content/uploads/documents-csa/contrat_de_gestion_RTBF.pdf)
- [2] CSA, Etude égalité et diversité - L'égalité de genre dans les métiers de l'audiovisuel, more information available at <https://www.csa.be/egalitediversite/ressources-humaines-home>
- [3] Vandenberghe, Hanne. 2019/02/05 - Representation of Women in the News: Balancing between Career and Family Life, Media and Communication
- [4] Virtual interview with Prof. Dr. Peter Van Aelst - 15:30 - 08/12/2020 - (Zoom) on indicators 194-195

## 7. References

- [1] The Communities mainly have powers in the domains of culture (theatre, libraries, audiovisual media, etc.) education, health care, social welfare and protection of youth.
- [2] No separate market for German-speaking media has been assessed, given the small scale of it. This was decided by the research team already during the previous implementation rounds, in consultation with the stakeholders and the Medienrat (the media regulator of the German-speaking Community in Belgium). Only three local media providers are active in the German-speaking Community, solely offering radio services (BRF, Offener Kanal Ostbelgien and Private Sender). The media policy of the bilingual region Brussels-capital falls within the competences of both the Flemish and French Community. Media consumption in that region has been considered in assessing both markets.
- [3] Valcke, P., Groebel, J. and Bittner, M., 2016. Media Ownership and Concentration in Belgium -Noam, E. (ed.), *Who Owns the World's Media? Media Concentration around the World*, Oxford University Press.
- [4] For more information, see Valcke, P., Picard, R., Sükösd, M., Sanders J. et al, 2009. Independent study on Indicators for Media Pluralism in the Member States – Towards a Risk-Based Approach, European Commission, Volume 2: User Guide, 358 et seq.
- [5] For more information about online news consumption in Belgium see: RISJ Digital Report 2020, p. 64, accessible at <https://www.digitalnewsreport.org/>
- [6] BIPT, 2019. Jaarlijks verslag betreffende het toezicht op netneutraliteit in België 2018-2019, available at: <https://www.bipt.be/consumenten/publication/jaarlijks-verslag-betreffende-het-toezicht-op-netneutraliteit-in-belgie-2018-2019>
- [7] Soontjens, K., Remoortere, A.V., Walgrave, S., 2021. The hostile media: politicians' perceptions of coverage bias. *West European Politics* 44, 991–1002. <https://doi.org/10.1080/01402382.2020.1792671>
- [8] The Belgian Data Alliance aims to make targeted advertising on digital TV as well as on online platforms by alliance members more effective by sharing data on their users. It is made up of Proximus, DPG Media (VTM, HLN, ...), Mediahuis (De Standaard, ...), VRT (Dutch-speaking public broadcaster), SBS (Play4, Play5...), Telenet, Rossel (Le Soir), RTBF (French-speaking public broadcaster) and RTL Belgium; <https://www.intotheminds.com/blog/en/belgian-data-alliance-media-telco-gafa/>; Mediaconcentratie in Vlaanderen - Vlaamse Regulator voor de Media – 2019, p.94. At the time of writing, such collaboration has not yet been operationalised in practice.
- [9] ECtHR, Case of RTBF v. BELGIUM, 50084/06, Strasbourg, 29 March 2011.
- [10] Mailing interview conducted January 2020 with Prof. dr. Sarah Van Leuven, Director Research Centre for Journalism, UGent
- [11] VVJ, 2019. VVJ richt meldpunt in voor agressie tegen journalisten. Available at: <https://journalist.be/2019/03/vvj-richt-meldpunt-in-voor-agressie-tegen-journalisten>.
- [12] 2016 Data Retention Law: Wet van 29 Mei 2016 betreffende het verzamelen en het bewaren van de gegevens in de sector van de elektronische communicatie. However, there is currently a case pending before the Constitutional Court which may (again) declare the unconstitutionality of this revised data retention law (News article: [https://www.standaard.be/cnt/dmf20210318\\_98028590](https://www.standaard.be/cnt/dmf20210318_98028590) (Dutch)). These developments will be elaborated on in a future MPM implementation round.
- [13] EU Agency for Fundamental Rights, 2017. Data retention across the EU. <https://fra.europa.eu/en/publication/2017/data-retention-across-eu>
- [14] Vast Comité van Toezicht op de inlichtingen- en veiligheidsdiensten, 2019. Activiteiten Verslag 2018.
- [15] This suggestion for extended competences is a part of the Flemish Media Regulator's policy recommendations this year: Vlaamse Regulator voor de Media, 2020. Mediaconcentratie in Vlaanderen, 333.
- [16] Vlaamse Regulator voor de Media, 2019. Mediaconcentratie in Vlaanderen, 218.
- [17] Vlaamse Regulator voor de Media, 2020. Mediaconcentratie in Vlaanderen, 246-247; combined with

data from Alexa: <https://www.alexa.com/topsites/countries/BE>.

[18] E.g. Decision BMA-2013-C/C-03, 25 October 2013.

[19] For more information about online news consumption in Belgium see: RISJ Digital Report 2020, p. 64, accessible at <https://www.digitalnewsreport.org/>

[20] DIAMOND SBO. Deliverable 7.13 Online media pluralism indicators applied to Flemish online-only/digital native news outlets, future publication 2021, <https://soc.kuleuven.be/fsw/diamond/>.

[21] Vlaamse Regulator voor de Media, 2019. Mediaconcentratie in Vlaanderen.

[22] VVJ, 2019. Nieuw sociaal charter voor de brede mediasector. Available at: <https://journalist.be/2019/07/nieuw-sociaal-charter-voor-de-brede-mediasector>, with links to further documentation.

[23] MPM: In this context control is to be understood as broader than ownership and it includes both direct ownership and indirect control. Indirect control implies that party, partisan group or politicians are not directly involved in the ownership structure but they use intermediaries (e.g. family members).

[24] Belgische Kamer van Volksvertegenwoordigers, 28 January 2019. Commentaar en aanbevelingen van de Controlecommissie met betrekking tot de interpretatie van de wet van 4 juli 1989 betreffende de beperking en de controle van de verkiezingsuitgaven voor de verkiezingen van de federale Kamers, de financiering en de open boekhouding van de politieke partijen. Publication available at:

[https://verkiezingen.fgov.be/sites/default/files/inline-files/VadeMecum\\_2019\\_54K3491001.pdf](https://verkiezingen.fgov.be/sites/default/files/inline-files/VadeMecum_2019_54K3491001.pdf).

[25] UNIA, 2019. Jaarverslag 2018 Mensenrechten in ere herstellen, 35; UNIA, 2019. Cijfersverslag 2018.



## Annexe I. Country Team

First name	Last name	Position	Institution	MPM2021 CT Leader
<i>Peggy</i>	<i>Valcke</i>	<i>Prof. Dr.</i>	<i>CiTIP - imec - KU Leuven</i>	X
<i>Ingrid</i>	<i>Lambrecht</i>	<i>PhD Researcher</i>	<i>CiTIP - imec - KU Leuven</i>	

## Annexe II. Group of Experts

The Group of Experts is composed of specialists with a substantial knowledge and recognized experience in the field of media. The role of the Group of Experts was to review the answers of the country team to 16 variables out of the 200 composing the MPM2021. Consulting the point of view of recognized experts aimed at maximizing the objectivity of the replies given to variables whose evaluation could be considered as subjective, and therefore to ensure the accuracy of the final results of the MPM. However, it is important to highlight that the final country report does not necessarily reflect the individual views of the experts who participated. It only represents the views of the national country team that carried out the data collection and authored the report.

First name	Last name	Position	Institution
<i>Leen</i>	<i>d'Haenens</i>	<i>Professor</i>	<i>IMS - KU Leuven</i>
<i>Johan</i>	<i>Cassimon</i>	<i>Legal/Economic Research Unit Member</i>	<i>Vlaamse Regulator voor de Media</i>
<i>Charlotte</i>	<i>Michils</i>	<i>Juridisch adviseur</i>	<i>VVJ/AVBB (Algemene Vereniging van Beroepsjournalisten/Vlaamse Vereniging van Jou)</i>
<i>Jonathan</i>	<i>Van de Velde</i>	<i>Representative of a media association</i>	<i>Medianet Vlaanderen vzw</i>

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