



# Monitoring Media Pluralism in the Digital Era: Application of the Media Pluralism Monitor in the European Union, Albania and Turkey in the years 2018-2019

## Country report: Belgium

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Annexe 1. Country Team

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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 and Candidate Countries of the European Union, and considering both online and offline news environments. This narrative report has been produced within the framework of the implementation of the MPM carried out in 2019, under a project financed by a preparatory action of the European Parliament. The implementation was conducted in 28 EU Member States, Albania and Turkey with the support of a grant awarded by the European Union to the Centre for Media Pluralism and Media Freedom (CMPF) at the European University Institute.*

## 1.2. Methodological note

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

*In Belgium the CMPF partnered with Peggy Valcke, Ingrid Lambrecht (CiTiP - imec - KU Leuven), who conducted the data collection, scored and commented the variables in the questionnaire and interviewed relevant experts. The report was reviewed by 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).*

*Risks to media pluralism are examined in four main thematic areas, which are considered to capture the main areas of risk for media pluralism and media freedom: Basic 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 below).*

<b>Basic 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 people with disabilities
Independence and effectiveness of the media authority	Media viability	State regulation of resources and support to media sector	Access to media for women
Universal reach of traditional media and access to the Internet	Commercial & owner influence over editorial content	Independence of PSM governance and funding	Media literacy

Table 1: Areas and Indicators of the Media Pluralism Monitor

*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 allows for an extraction of a digital-specific risk score and the report contains a specific analysis of risks related to the digital news environment.*

*The results for each domain and indicator are presented on a scale from 0 to 100%. Scores between 0 and 33% are considered low risk, 34 to 66% are medium risk, while those between 67 and 100% are high risk.*

On the level of indicators, scores of 0 were rated 3% and scores of 100 were 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 or the EC, but 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, the MPM2020 scores may not be fully comparable with MPM2017 ones. For more details, see the CMPF report on MPM2020, soon available on: <http://cmpf.eui.eu/media-pluralism-monitor/>.

## 2. Introduction

Despite being a small country with 11,4 million inhabitants, Belgium has three linguistic Communities: Flemish, French and German-Speaking. During the successive state reforms (which started in 1970) the Community authorities were given more powers to regulate the 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). For example, the regulator of the French Community, the *Conseil Supérieur de l'Audiovisuel* (CSA), is authorised to monitor concentration indices and take regulatory action if it concludes that the media market in the French Community is becoming too concentrated, whereas the Vlaamse Regulator voor de Media (VRM) of the Flemish Community only has the power to 'map' media concentration and publish annual reports about the state of media markets (art. 7 French Community Coordinated Act on Audiovisual Media and art. 218, §2, 8° Flemish Act on Radio and Television Broadcasting). Additionally, this state reform has led the Communities to 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 truly be considered a minority. The exception would be the German speaking population in Belgium, consisting of approximately 76.000 citizens.

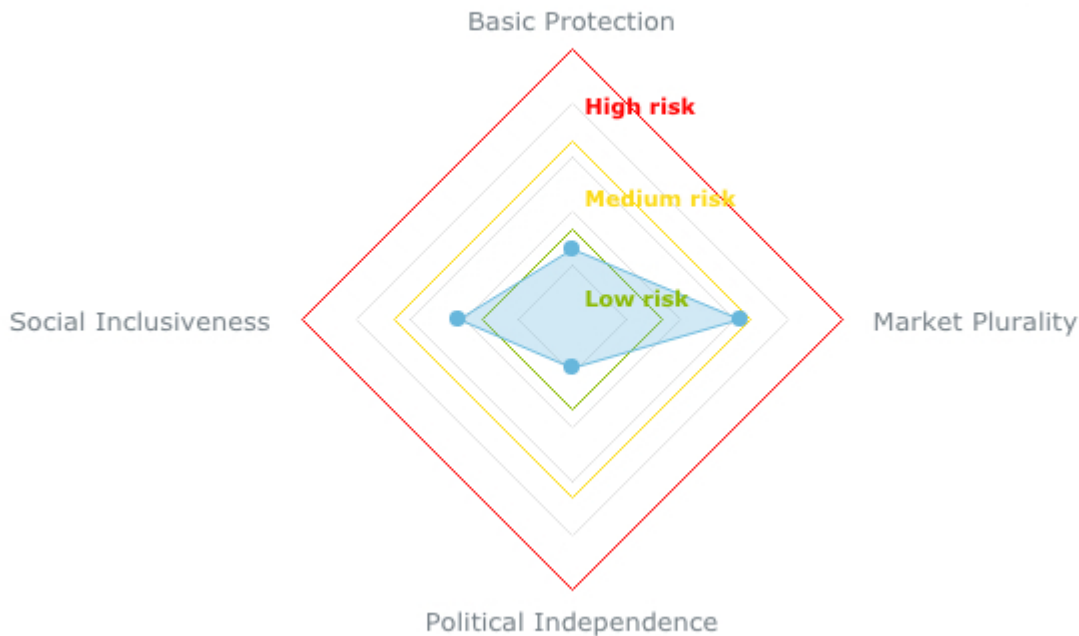
This linguistic diversity has resulted in the economic reality of supporting two separate media markets: certain media companies concentrate on the north of Belgium with its predominantly Flemish speaking population, whereas other companies address the predominantly French-speaking population in the south of Belgium. This widely accepted division of the media markets (Valcke et al., 2016) results in small media markets compared to neighbouring countries like France, Germany or the Netherlands. (ICRI et al., 2009)

Moreover, the increased autonomy of regional authorities explains the need to assess the indicators of the Media Pluralism Monitor for both markets separately for those aspects which fall under the competences of the linguistic Communities (e.g. adopt legislation on radio and television broadcasting, decide on subsidies for the press, etc.). Nevertheless, the reader should understand that, the Belgian population has access to all media outlets provided in both languages irrespective of location.

The Belgian public also has access to a broad range of foreign media outlets, both print publications and audiovisual media which are available via cable, satellite and via the internet. Especially in the French-speaking part of the country, TV channels from neighbouring countries are very popular. Similarly, the German-speaking population mostly watches audiovisual content from Germany (including terrestrial). In addition, online media consumption is on the rise, broadening access to a variety of offerings from international media players. (Newman, 2019)

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

#### Belgium: Media Pluralism Risk Areas



JS chart by amCharts

Belgium scores positively on basic protection of freedom of the press and of expression, albeit with increasing risks since the previous 2017 implementation. Belgium's strengths come from a strong recognition of fundamental rights and from its protection of the journalistic profession. However, some points still leave room for improvement, such as regulations lagging behind new developments, and some concerns are currently on the rise, especially with new information regarding online aspects affecting our media pluralism steadily becoming available.

The economic situation of Belgium's media markets is a complex story. With three different language communities, markets are very small and media actors very concentrated. Recent years have witnessed a growing consolidation between media actors (within and across sectors). Belgium has focused its energy on maximum transparency to help mitigate the risks of such concentrations. This transparency is currently at risk due to the fact that competences are not easily transposed to important market players in the online environment.

On paper, Belgium benefits from a variety of guarantees to preserve independence of the press, from both political and commercial influencers. Belgium also has a long-standing tradition of leaving print media ('non-audiovisual media') relatively unsupervised. This affects overall transparency regarding the current state of media pluralism and where risks may pose themselves, be it for commercial or political influences.

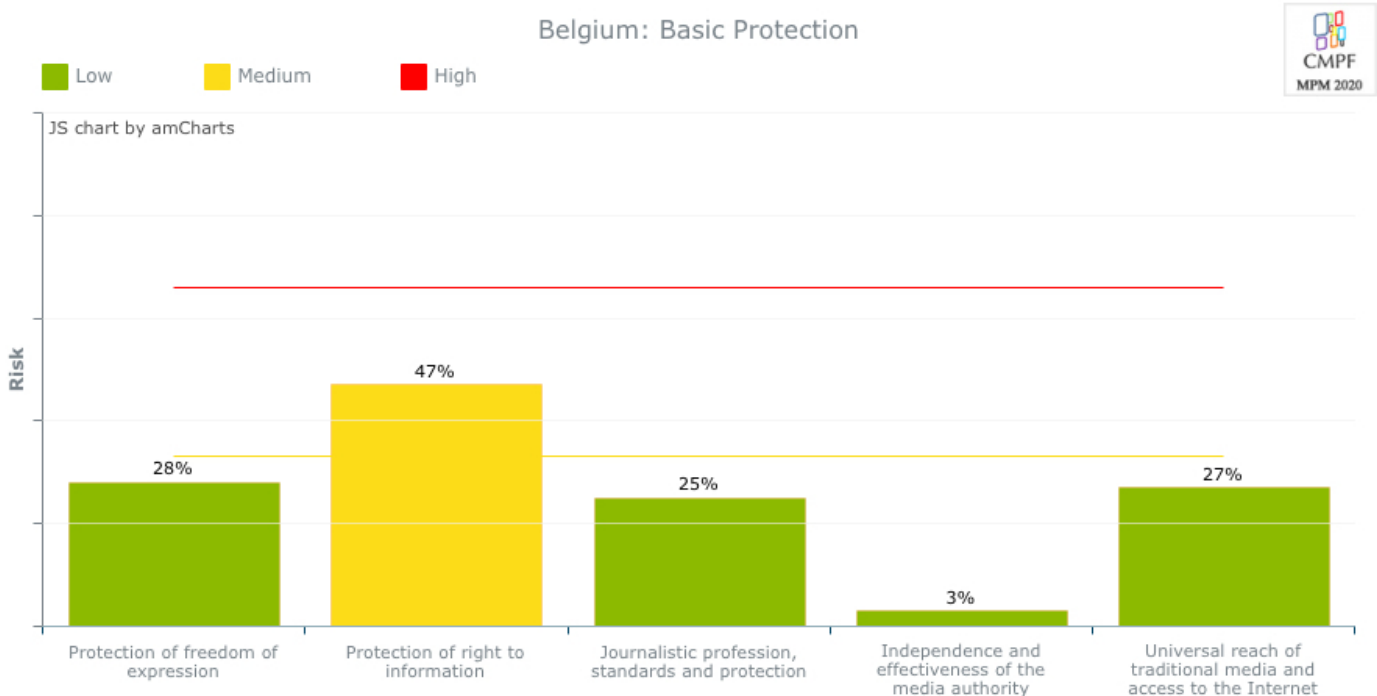
Finally, regarding social inclusion, the fragmentation of Belgium's media landscape is at the core of Belgium's challenges. With three different communities sharing powers over media affairs, attempts to guarantee inclusion of minorities has proven difficult. Nevertheless, countless efforts are made on both national and regional policy levels to overcome this obstacle.

#### 3.1. Basic Protection (26% - low risk)

*The Basic 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.



Belgium scores positively on **Basic Protection**, albeit with an increasing risk since the previous 2017 implementation. Belgium's strengths come from a strong recognition of fundamental rights and from its protection of the journalistic profession. However, some points still leave room for improvement.

The indicator on **Protection of freedom of expression** scores a low risk (28%). This is a worrisome increase of more than double of that of 2017 (12%). While Belgium has Constitutional protection of the press and of expression, Belgium has also been the subject of warnings from the ECtHR for the lack of a clear legal framework of a prior restrictions, a matter still not resolved today. Overall, legal safeguards are implemented effectively, both on- and offline, but with two remarks: Belgium maintains a medium risk score for its continued criminalization of defamation (art. 150, *De gecoordineerde Grondwet*, 1994; art. 443-452 *Strafwetboek*, 1867), and it may be argued that damages awarded against journalists in civil court are by occasion disproportionately high. Finally, there is no sufficient data to assess whether or not online platforms refrain from filtering, monitoring and/or blocking online content for Belgium, on what basis and to what effect. This knowledge gap can only be considered a risk to media pluralism.

The indicator on **Protection of right to information** scores a medium risk (47%). An alarming increase from 13% of the MPM2017, mostly due to an increased risk weight on the indicators. For the first time since the MPM's implementation, Belgium has scored a medium risk in this section for the fact that there are only a few mechanisms in place which report about e.g. the amount, qualification or procedural status of whistle-blower cases in Belgium, notwithstanding that these procedures do exist and certain protections are in effect. This makes it difficult to assess the quality and effectivity of the systems in place. Additionally, the systems of obtaining access to government-held information is still not as operational as it should be to adequately protect the right to information.

The indicator on **Journalistic profession, standards and protection** scores a low risk (25%). Again a concerning increase since the 7% score in 2017. Data shows a low risk on access to the profession, but in practice there appear to be concerns of job insecurity. More importantly, although cases of intimidations, threats or attacks to journalists in Belgium are relatively rare, it has been increasing over the past few years. Furthermore, the MPM2020 implementation accounted for the digital safety of journalists, bringing new confirmed risks for Belgium, especially concerning the treatment and protection of female journalists. On a positive note, the VVJ is working on a report mechanism to help remedy the situation. With its support, this risk may be somewhat mitigated by next year's implementation. Finally, worthy of mention is that Belgium's implementation of the GDPR appears to be capable of providing the necessary

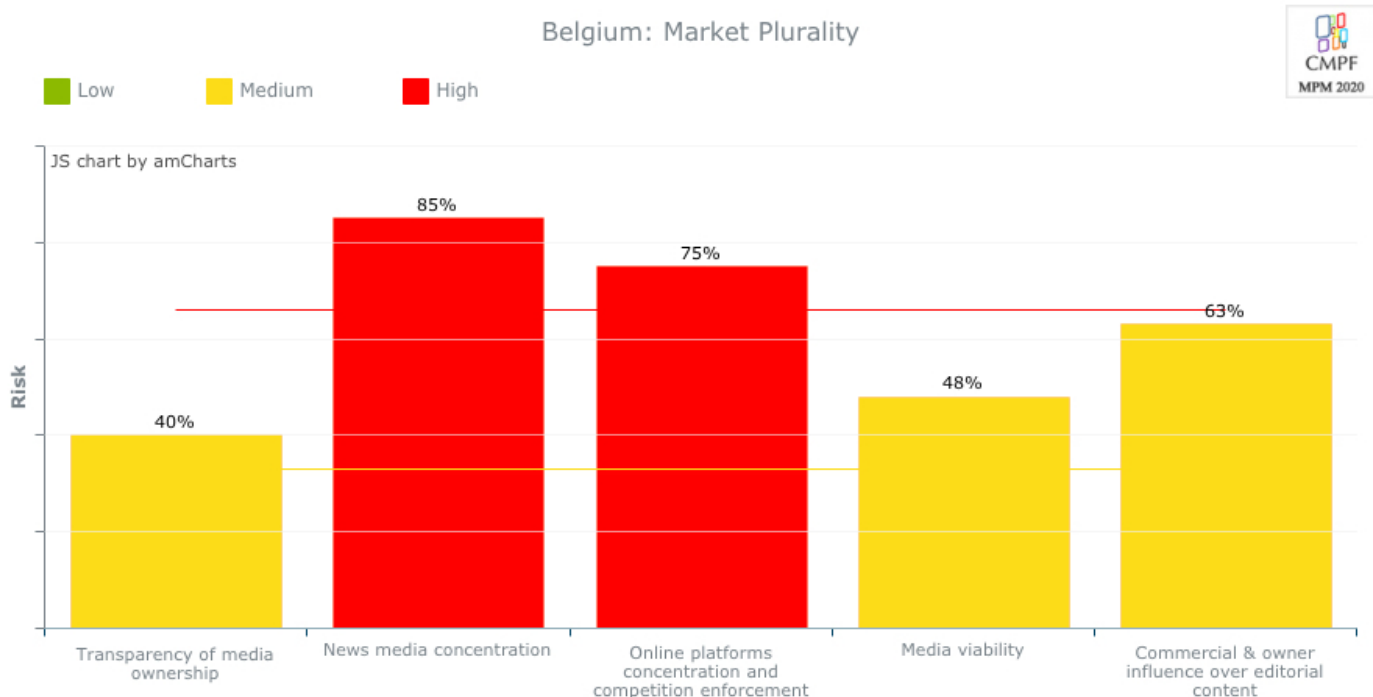
journalistic safeguards.

The indicator on **Independence and effectiveness of the media authority** scores a low risk (3%). The indicator remains a solid 3% across all implementations. First, because Belgium upholds formal independence guarantees as being a member in the Authority is generally incompatible with a position in the Government or with having interests in a media or advertising company. Second, because the selection of experts is based on objective criteria. Third, because only a court can overturn a decision made by the Authority, providing transparency and accountability within the decision-making process.

The indicator on **Universal reach of traditional media and access to the Internet** scores a low risk (27%). Another important increase from 2017's mere 6%. A specific concern is the high level of concentration on the market for internet access. Nevertheless, the Belgian Institute for Postal Services and Telecommunications (BIPT) analysed the zero-rating practices of one of the largest ISP's in Belgium, Proximus, in light of net neutrality rules (*EU Net Neutrality Regulation*, 2015, entered into force in Belgium d.d. 30.04.2016). The BIPT found no discriminatory practices between applications, nor any other elements that may inhibit free internet consumption by their users. (*Mededeling van de Raad van het BIPT van 13 februari 2017 met betrekking tot een overkoepelende analyse aangaande de postale behoeften in België*, 2017)

### 3.2. Market Plurality (62% - medium risk)

*The Market Plurality indicators examine the existence and effectiveness of provisions on transparency of media ownership and the existence and effectiveness of regulation or self-regulation against commercial & owner influence on editorial content. In addition, they assess the risks related to market concentration in the production as well as in distribution of news: as for production, considering separately horizontal concentration in each sector and cross-media concentration; as for distribution, assessing the role of online platforms as gateways to news, the concentration of online advertising market, and the role of competition enforcement and regulatory safeguards in protecting information pluralism. Moreover, they seek to evaluate the viability of the news media market.*



The indicator on **Transparency of media ownership** scores a medium risk (40%). Discussing the previous MPM's implementations, Belgium has always defended their high concentrations with the argument that ownership is transparent and media regulators independent. While, the latter may still be considered true, Belgium did not meet the expectations of transparency when confronted with the questions regarding online transparency. The specific concern is

the lack of transparency regarding ownership, control and funding of digital media (both print and advertising media specifically). 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 an essential, including for those active in the online environment.

The indicator on **News media concentration** scores a high risk (85%). An ever increasing risk across the years, with some relevant recent market changes. Only a handful of companies now own all media outlets on the Flemish and French markets. The market and audience concentration shares of the Top4 in any media format nears a 100%, resulting in very high concentration indexes for the Flemish and French speaking markets. Nevertheless, due to language overlaps with our neighbouring countries, France, Germany and Netherlands based media do carry importance within the Belgian media landscape.

A second factor 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 offers, but this has not prevented the current high level of concentration.

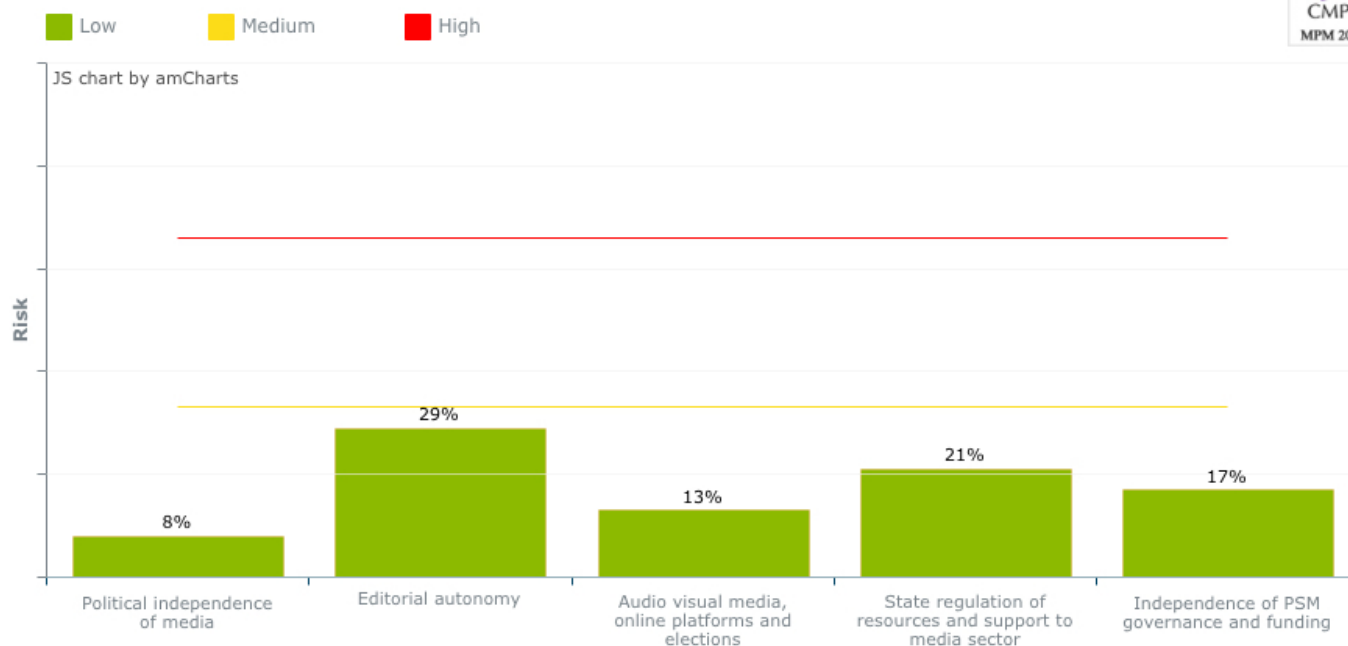
The indicator on **Online platforms concentration and competition enforcement** scores a high risk (75%). This new sub-section primarily looked at the extent of activities on and integration into a national media market of online platforms and other online international market players. Rather unsurprisingly, this shows a high risk for Belgium, as the use of social media and search engines are relatively well-established amongst our population, without the necessary transparency coming from these players. As mentioned before however, our federal, nor regional regulations do not contain provisions that account for the specific non-economic threats associated with such a highly concentrated media market. As a result our independent authorities, however much willing, currently appear ill-equipped to assess the effects and the potential harm of these activities for media pluralism.

A second ever increasing risk across the years is **Media viability**, whose indicator scores a medium risk (48%). In order to maintain the economic viability of the Belgian media companies a high level of concentration seems inevitable. With DPG Media's merger, revenue numbers show an overall positive result for this year, but viability is still under threat. When the acquisition of Mediaaan by De Persgroep was agreed to by the Belgian Competition Authority, it accounted for potential competitive harm done to the advertising space in printed magazines. It made a similar consideration for the Telenet's acquisition of De Vijver Media NV, considering the advertising market across the media value chain.

The indicator on **Commercial and owner influence over editorial content** scores a medium risk (63%). The cause of this near-high risk lies primarily 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 (18% - 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 concerns 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.*



Overall, this domain has witnessed a decrease of risk, with the exception of new indicators concerning the impact of online platforms on elections and of the independence of the PSM's.

The indicator on **Political independence of media** scores low risk (8%). An significant decrease from 2017's 25%. Results show low risks, but two indicators scored a close-to-medium risk: political control over media outlets, and editorial autonomy. This can be explained by the fact 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). Variables on legal limitations to direct and indirect control of newspapers by party, partisan group or politicians had therefore to be answered negatively, as newspapers have no legal obligation to put in place an editorial statute; instead there is a traditional informal system in place. Furthermore, news agencies and media distribution networks also do not have a legal obligation to ensure political independence. This poses concerns for the larger legacy media outlets, but equally so for digital native news outlets.

The indicator on **Editorial autonomy** scores low risk (29%). A very minor decrease from 2017's 31%. 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, but on the other hand, have agreed that there is a lack of hard evidence regarding genuine independence from political influences in editorial content.

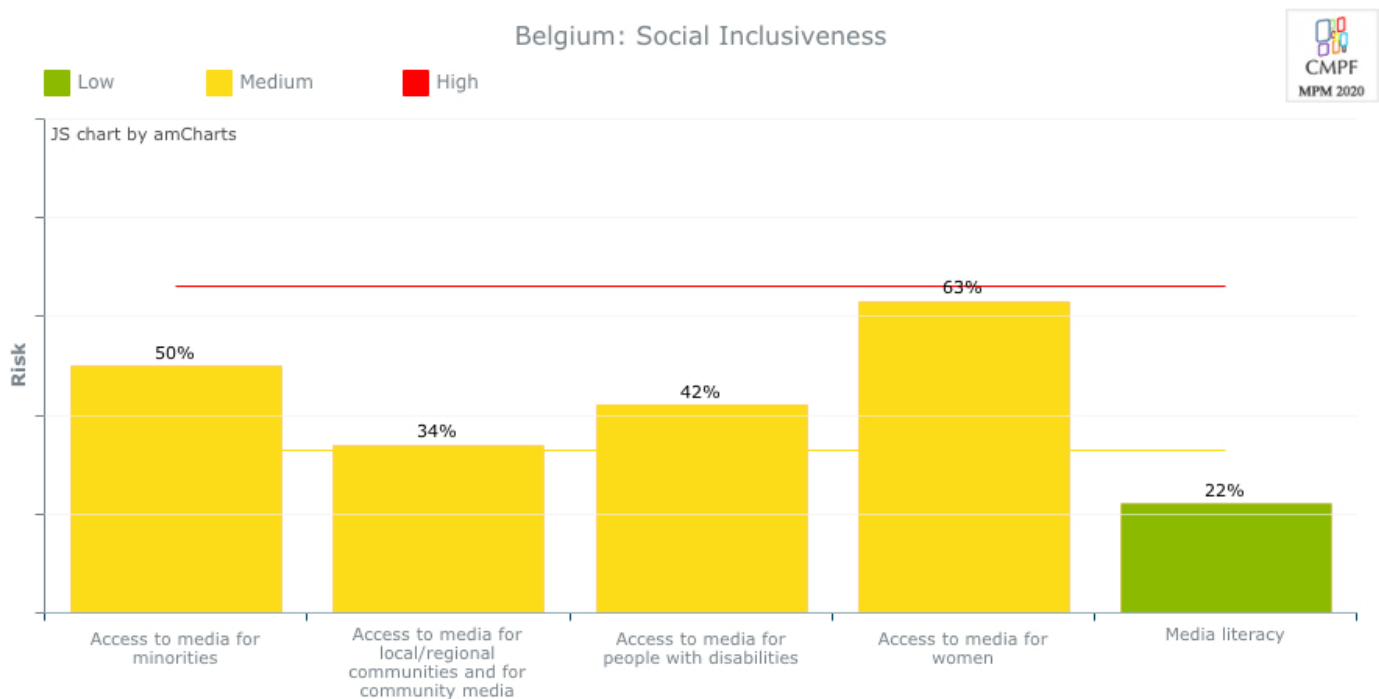
The indicator on **Audiovisual media, online platforms and elections** scores a low risk (13%). This is a new sub-section, with a mix of traditional and new risks, previously scored at 3% risk for the traditional elements. This low traditional risk can be explained by the existence of legal (besides ethical) rules on impartiality and fair political representation on PSM and commercial broadcasters, and evidence of effective implementation of those rules. The increase of 10% then lies primarily with the lack of transparency of online political advertising during campaigning as there is no specific regulation forcing 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 (21%). This is a significant increase of 15% since 2017's 4% risk calculation. This is mostly because the risks were weighed more strongly in this implementation. There is a legal framework for the distribution of state advertising, and the direct and indirect state subsidies to media. Still, experts suggest a medium risk on the allocation of direct subsidies from the federal government, emphasizing that they are distributed to media based on a set of rules, but that it is unclear whether these rules are fair and objective.

The indicator on **Independence of PSM governance and funding** shows a low risk (17%). The independence of PSM too shows an important increase of risk, coming from 3% in 2017 to 17%. 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 significant increase of risk is due to two new 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 the case in Belgium, the independence of the PSM's may be considered at risk when allocation of funds is based on non-economic factors.

### 3.4. Social Inclusiveness (42% - medium risk)

*The Social Inclusiveness indicators are concerned with access to media by various groups in society. The indicators assess regulatory and policy safeguards for community media, and for access to media by minorities, local and regional communities, women and people with disabilities. In addition to access to media by specific groups, the media literacy context is important for the state of media pluralism. The Social Inclusiveness area therefore also examines the country's media literacy environment, as well as the digital skills of the overall population.*



The indicator on **Access to media for minorities** scores a medium risk (50%). A significant decrease from 2017's risk calculation of 63%, presumably primarily due to a change in risk weight based on our country's characteristics. 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 truly be considered a minority. As a result, any protection of access to media for minority groups, is mostly based on rather abstract, generic anti-discrimination regulation. For example, legal obligations regarding third-party programming on PSM have eroded over the years, but PSM still have the obligation to represent the diverse ideological and sociological groups in society in their programming, as specified in their mission charter.

The indicator on **Access to media for local/regional communities and community media** was assessed as medium risk (34%). An interesting decrease of 10% since 2017, primarily due to the fact that more account is taken of the local editions originating from large established media players. Furthermore, different policies in both language communities have resulted in a fragmented system of subsidies and protection of community media. So that when looking at

independent community or local media, risk is higher as the allocation of support, funds or subsidies is often opaque at best.

Belgium scored a medium risk on **Access to media for people with disabilities** (42%). This again shows a minor decrease of 6% since the previous implementation, mostly due to a different scoring of weight as in practice existing policies are still both fragmented and not always implemented correctly. PSMs do a better job than private actors in implementing the regulations and policies, as they annually have to report their efforts in doing so. Overall, thorough revision, streamlining and correct implementation of the existing policies are due for the whole of Belgium.

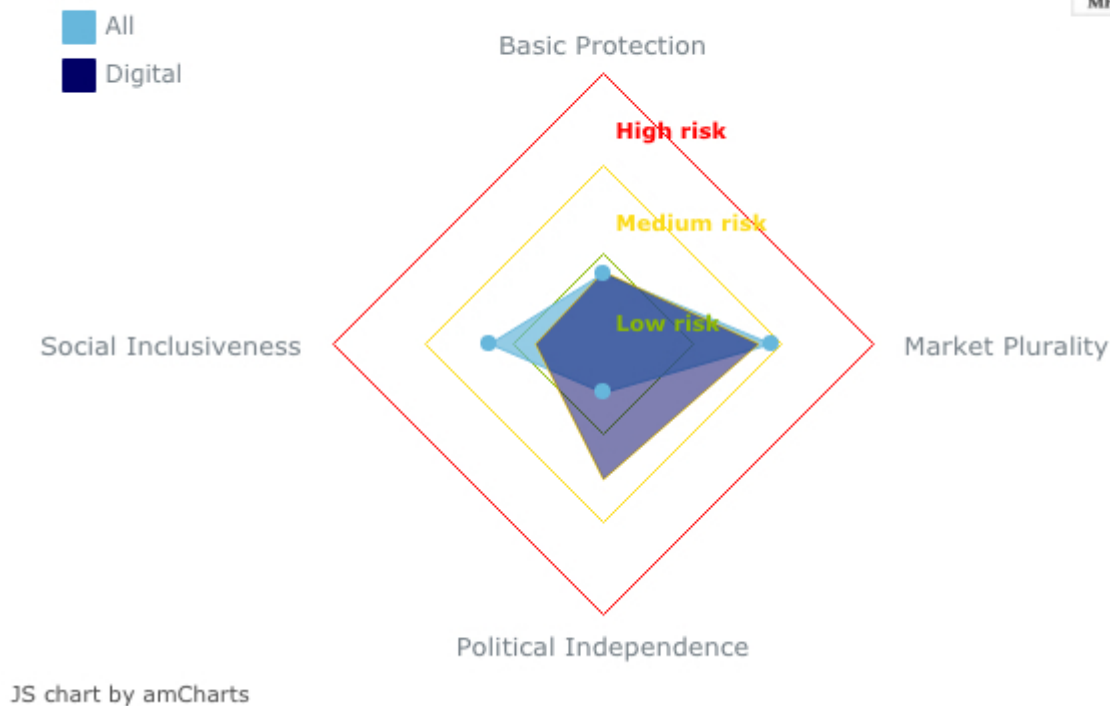
The indicator on **Access to media for women** was coded as medium risk (63%). While for social inclusivity, Belgium has shown an overall risk decrease across categories, the representation of women has witness a significant increase of 24%. In previous rounds, experts have had to reply with a lack of data or based on very limited information from the field. This round, more data was available and the results present a picture that is worse than previous estimations. But there is progress: the newly formed board of the VRT has 1/3rd of female members. In general however, women are underrepresented in management, board or CEO positions, especially those related to the production of media content. Additionally, experts reveal that women are still underrepresented in news media, both as 'news subjects' and as 'reporters or presenters', across all media. Moreover, a big gender gap exists regarding news personnel, in radio, television and print media and between entertainment and news media.

Belgium scored a low risk on **Media literacy** (22%). Belgium's continuous work in the field of media literacy has left its risk virtually the same as in previous rounds. This 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. Various and extensive initiatives on media literacy in both language communities are working hard to improve these results by educating citizens and by contributing to the public debate.



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

### Belgium: Media Pluralism Risk Areas - Digital



#### Basic protection

Concerning freedom of expression online, no principal distinction is made between online or offline restriction. 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 Belgium to lack a clear legal framework regarding *a priori* restrictions (RTBF v. Belgium, 2011). For both, the lack of clear prescription 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 (Van Leuven, 2020). 10% of journalists has reported a confrontation to the second type, both offline and online (Van Leuven and Raeymaeckers, 2018). To remedy this, the Flemish Journalist Association (VVJ) has started an online notification point for journalists (VVJ, 2019).

In other efforts to protect journalists from harm online, Belgium has an improved data retention law in force since July 2016, to better comply with human rights standards (Wet betreffende het verzamelen en het bewaren van de gegevens in de sector van de elektronische communicatie, 2016). 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 ("Data retention across the EU", 2017).

Finally, concerning the possibility of illegal monitoring of journalists online, Belgium has assigned the Standing Committee I to monitor the competence 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 ("Activiteitenverslag 2018", 2019).

### **Market plurality**

As digital native news media do not yet fall under the competence of the transparency obligations towards their respective community media regulator, there is little known on their market share or ownership structures. It is noted however that the largest read digital native newspaper is as popular as the lowest read legacy media newspaper. This gap becomes especially clear when we look at audience concentration of all online news media, with DPG Media, the Flemish public broadcaster and Mediahuis constituting a 100% audience concentration share, in that order. ("Mediaconcentratie in Vlaanderen 2019", 2019)

The above shows the extent of cross-media concentration among legacy media as well. 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. (BMA-2013-C/C-03, 2013)

The market plurality risks increase when looking at the effects of online platforms and social media. 59% of Belgians access news through platforms and intermediaries. (DNR, 2019) 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. ("Mediaconcentratie in Vlaanderen 2019", 2019)

### **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. DIAMOND SBO questioned several digital native players on their use of these mechanisms, finding that they are generally aware of and make use of them. (Lambrecht and Hendrickx, forthcoming) Additionally, the Flemish Media Regulator found an increase of subsidized small local players. ("Mediaconcentratie in Vlaanderen 2019", 2019) In sum, while it is difficult to assess the difficulties these digital natives face, traditional support mechanisms are available and prove to be obtainable.

Above 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 the increase of freelance journalism, 'online journalists' are equally bound to journalistic deontology. Journalists and editors alike would also benefit from the future Social Charter, aimed at protecting their position against undue influences, regardless of medium.

Additionally, political control also poses a risk to digital native news media. Notwithstanding that they do not appear to be under any political control, 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 advertising industry. Online political advertising is generally included into 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. ("Vademecum Controlecommissie Verkiezingsuitgaven", 2019) In practice however, there



is no strict enforcement or compliance audit being done and the 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. However, with the new government the charters are being re-discussed and for the Flemish community it is likely this provision will be added for the coming term.

### **Social inclusivness**

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 4 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. ("Jaarverslag 2018" and "Cijferverslag 2018", 2019)

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 2017. This is partly due to new indicators assessing risks associated with the online environment. Several traditional risks remain too however, leaving Belgium with room for improvement. Below is a list of considerations the MPM risk assessment considers would benefit Belgian's media pluralism.

### Basic protections

- Amending the legal framework for restrictions to freedom of expression and decriminalizing defamation
- Maintaining the Independent Media Regulators' strong position. Relying on these institutions for extended responsibilities, without unduly compromising their capacities or resources.
- Improving transparency and efficiency of the process to obtain government-held information and of whistleblower protection

### Market plurality

- Developing social protections for journalists and editors-in-chief across all media formats
- Extending competences for the Independent Media Regulators 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 to monitor the fairness and legality of the above activities
- Establishing objective pre-defined economic criteria which account for possible distortions of market competition, on the basis of which the allocated funds for the PSM may be quantified

### Social inclusivity

- Maintaining access of different minority groups to PSM's
- 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. References

### Laws and regulations

- De gecoördineerde Grondwet, 1994.
- Strafwetboek, 1867.
- Decreet betreffende radio-omroep en televisie van 27 Maart 2009 (officieuze geconsolideerde tekst van het Mediadecreet), 2019.
- Décret coordonné de la communauté française sur les services de médias audiovisuels, 2009.
- Regulation (EU) 2015/ of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union, 2015.

### Reports and studies

- ICRI, JIBS, CEU, Ernst & Young, 2009. Independent Study on Indicators for Media Pluralism in the Member States - Towards a Risk-Based Approach. European Commission, Brussels, Belgium.
- Mededeling van de Raad van het BIPT van 13 februari 2017 met betrekking tot een overkoepelende analyse aangaande de postale behoeften in België, 2017. . BIPT.
- Newman, N., 2019. Reuters Institute Digital News Report 2019 156.
- Valcke, P., Groebel, J., Bittner, M., 2016. Media Ownership and Concentration in Belgium, in: Noam, E.M. (Ed.), Who Owns the World's Media? Media Concentration and Ownership around the World. Oxford University Press.

### Digital risk sources

- ECtHR, RTBF v. Belgium, 2011
- Prof. dr. Sarah Van Leuven, Director Research Centre for Journalism, UGent; Mailing interview conducted January 2020.
- Het profiel van de Belgische journalist in 2018 - Sarah Van Leuven (UGent) , Karin Raeymaeckers (UGent) , Manon Libert, Florence L - 2018
- 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> (accessed 11 March 2020)
- 29 MEI 2016. - Wet betreffende het verzamelen en het bewaren van de gegevens in de sector van de elektronische communicatie
- Data retention across the EU, July 2017, EU Agency for Fundamental Rights. Available at: <https://fra.europa.eu/en/publication/2017/data-retention-across-eu> (accessed 11 March 2020)
- Activiteiten Verslag 2018 - Vast Comité van Toezicht op de inlichtingen- en veiligheidsdiensten - 2019
- Decision BMA-2013-C/C-03, 25 October 2013
- DIAMOND Deliverable 7.13 “Online media pluralism indicators applied to Flemish online-only/digital native news outlets”, future publication, DIAMOND SBO. Available at: <https://soc.kuleuven.be/fsw/diamond/> (accessed 11 March 2020)
- Mediaconcentratie in Vlaanderen - Vlaamse Regulator voor de Media – 2019
- Controlecommissie betreffende de verkiezingsuitgaven en de boekhouding van de politieke partijen, 2019.
- Jaarverslag 2018 - Mensenrechten in ere herstellen - UNIA – 2019, p.35 and on and Cijfersverslag 2018 - UNIA



## ANNEXE I. COUNTRY TEAM

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## ANNEXE II. GROUP OF EXPERTS

The Group of Experts is composed of specialists with a substantial knowledge and experience in the field of media. The role of the Group of Experts was to review especially sensitive/subjective evaluations drafted by the Country Team in order to maximize the objectivity of the replies given, ensuring the accuracy of the final results.

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Leen	d'Haenens	Professor	IMS - KULeuven
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