



# 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: Germany

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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 Germany the CMPF partnered with Bernd Holznapel, Jan Kalbhenn (University of Münster, ITM), 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 Annexe 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

The Federal Republic of **Germany** consists of 16 federal states since the German reunification in 1990. Germany has a population of 82.8 million inhabitants and has a comparatively high population density.

German is the official language and is used in national media. In addition, a few minor languages are recognized. These include Danish, Sorbian, Frisian and Low German. Germany has an old history of immigration and it considers itself today a country of immigration. Over 22 percent of the population have a migration background. Immigrants from within the EU are mainly from Poland, Romania and Italy. Non-EU migration backgrounds are mainly Turkish and Syrian. Some historical minorities are granted special legislative recognition (e.g. legal protection, special election rules to guarantee representation in regional parliaments). These include approximately 70,000 Roma and Sinti, 60,000 Sorbs, 50,000 Danes and 60,000 Frisians.

With a GDP of approximately 3.677 trillion EUR, Germany is the largest economy in Europe and fourth largest globally; after the USA, China and Japan. In 2019, the German economy has consecutively grown for 10 years in a row. However, the economic momentum has slowed down. In 2019, the GDP increased only by 0.6 % after adjustments for inflation. The labor market continues to be robust, despite the visibility of the weakening economy (BMWI 2020).

Since 2005 the Christliche Demokratische Union (CDU; Christian Democratic Union) has lead the German government with Angela Merkel as chancellor. First in a so-called Grand Coalition with the Sozialdemokratische Partei Deutschland (SPD, Social Democrats), from 2009 to 2013 with the Liberal Party and since 2013 again with the Social Democrats. During this time, the right-wing populist party Alternative für Deutschland (AfD; Alternative for Germany) was able to move into many state parliaments and into the national parliament. The formerly large parties – CDU and SPD – have continuously lost votes for several years. Recently, the green party has been able to record large increases in regional elections and in national polls (including the European elections).

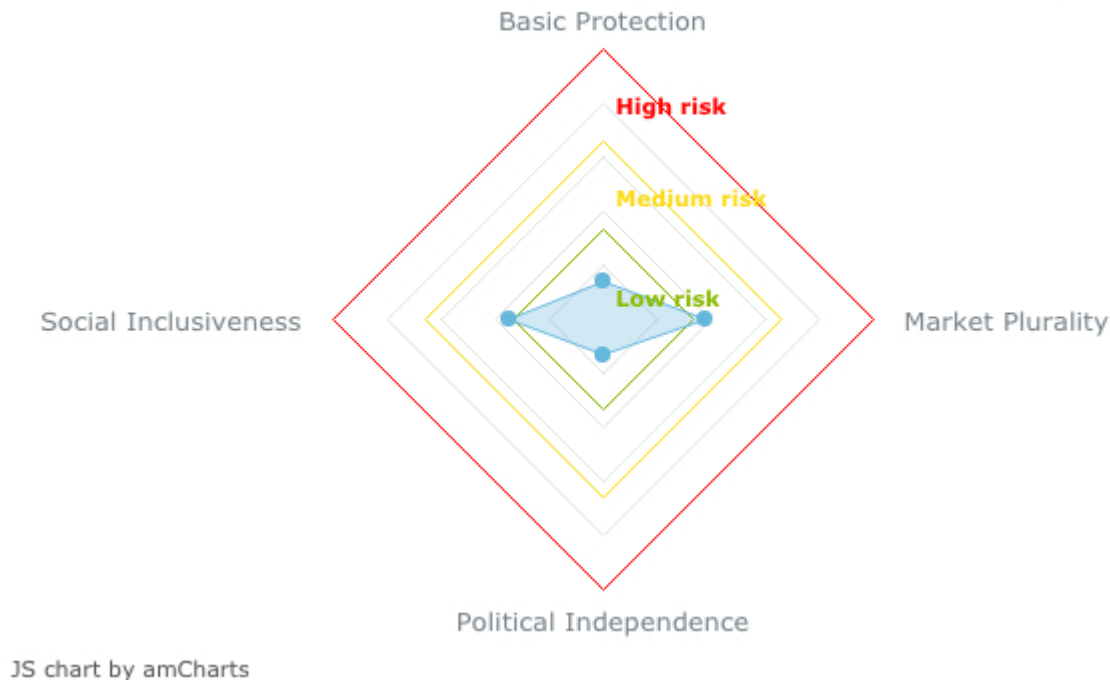
In 2018, the media industry has grown by 1.0 %, with companies generating total revenues of approximately 53 billion EUR. Growth has slowed in recent years. The market has continued to shift to digital media. In 2018, digital revenues of 15.3 billion EUR accounted for more than a quarter of total revenues. Live-streaming and video-on-demand (VoD) are rapidly growing (PwC 2019).

As a source of information on national political issues, German citizens mainly use televised news (62.8 %). Despite the digitization of the media landscape, slightly more citizens still use newspapers (14.25 %) and radio (9.9 %) as sources of information, in contrast to websites (9.23 %) and social media (3.28 %). For 14- to 29-years-olds non-linear offerings have a higher daily reach than linear TV (Frees et al 2019).

The German media system is characterised by the duality of public service media (PSM) and private broadcasting. In addition to nine state broadcasting stations, there is also a nationwide TV station, ZDF, and a nationwide radio station, Deutschlandradio. Supervision of private broadcasting is the responsibility of the state media authorities. The regulatory framework increasingly considers digital platforms. For example, the upcoming Interstate Media Treaty (Medienstaatsvertrag of 2020) mandates that so-called media intermediaries like Social Networks have to fulfil obligations regarding transparency, non-discrimination and the labelling of social bots. The Network enforcement act (Netzwerkdurchsetzungsgesetz of 2017) also takes aim at tightening the social networks' obligations to tackle hate speech online more effectively. The law for the protection of minors is also to be adjusted to protect against online harms more effectively. Other new legislation concerning the media comes from EU legislation (e.g. Copyright directive, AVMS-directive).

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

#### Germany: Media Pluralism Risk Areas



Taking into account all findings within the MPM 2018/2019, the risks for media pluralism in Germany are rather low. Nevertheless, some indicators show a medium risk. These risks need closer examination. Particularly those concerning the online-related sources of risks.

In the area of **Basic Protection**, all indicators show a low risk. The highest risk level here is in the indicator on the Universal reach of traditional media and access to the internet. This is mainly due to the high concentration of the Internet Service Providers.

In the area of **Market Plurality** a medium risk assessment is shown for the indicators of News Media Concentration and Online Platform Concentration. One of the reasons for this is the lack of impact of the current media concentration law, combined with rising concentration of power in some areas. The upcoming reform to the Act against Restraints of Competition wants to adapt competition law to the increasing digitization of the market and aims at helping competition enforcement to become more effective in regulating the platform economy. The decline in local news media outlets is one reason the indicator Media Viability has a medium risk assessment.

In the area of **Political Independence**, all indicators show a low risk. However, the indicator of Audio-visual media, online platforms and elections and the indicator on State regulation of resources and support of the media sector display close to the medium risks. The former is close to medium risk partly because there are no election campaign rules for the online sphere.

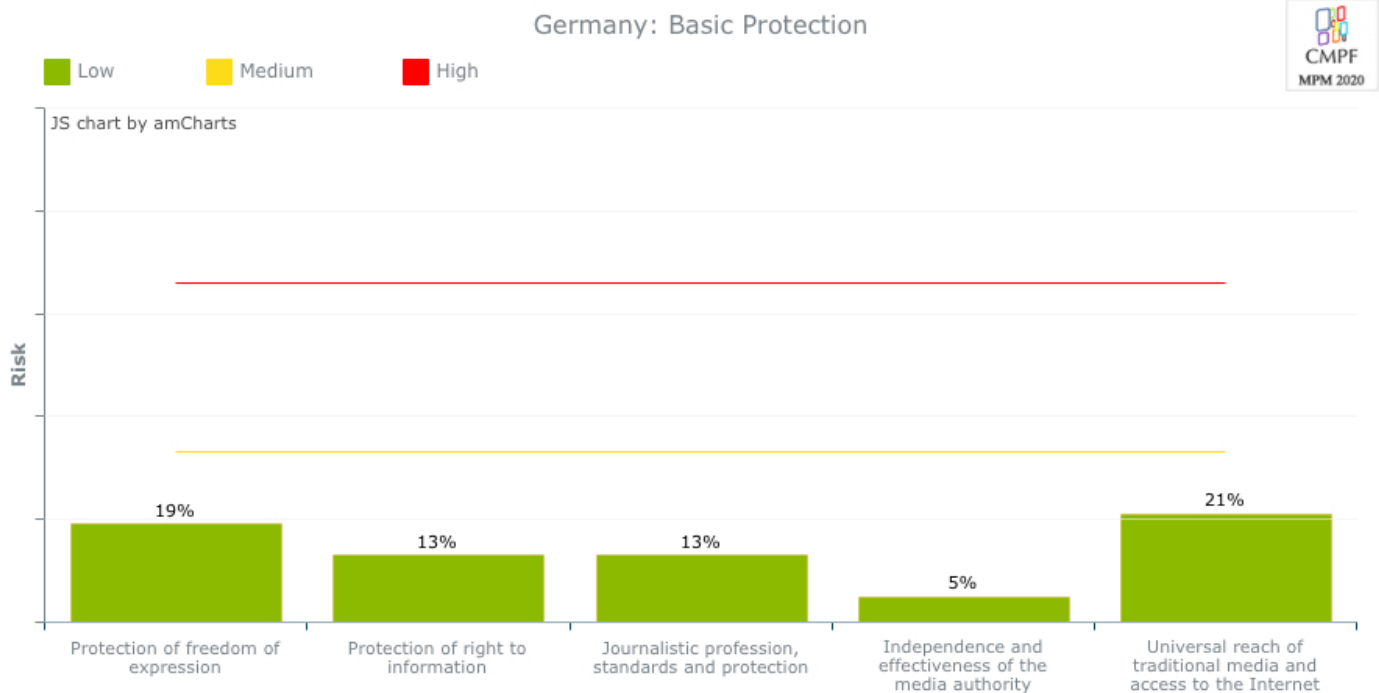
In the area of **Social Inclusiveness**, two indicators show a medium risk, and one is on the border of medium risk. Access to media for minorities is rated as a medium risk, so is Access to media for women, while Access to media for people with disabilities acquires 33% of risk, which is on the border to medium. Initiatives and legislative activities are already in place in all three areas. However, for example the number of women in management positions in media companies is still low.

The **online-related indicators** usually show higher risks. In some areas effective laws to tackle online harms are missing. This is true for example for online political advertising during electoral campaigns and for media concentration.



### 3.1. Basic Protection (14% - 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.



The **Basic Protection** in Germany is well developed. The freedom of expression and the right to information are guaranteed in the German Basic Law (the German constitution) and regulatory safeguards are implemented effectively. All five indicators show low risks.

Only a low risk to media pluralism (19%) can be identified in the indicator on **Protection of freedom of expression**. Article 5 (1) of the German Basic Law gives every person the right to freely “express and disseminate her or his opinions in speech, writing and pictures and to inform herself or himself without hindrance from generally accessible sources.” The same provision also guarantees freedom of the press and freedom of reporting by means of broadcasts and films. It states, that there shall be no censorship.

The German authorities do not carry out arbitrary censorship on the Internet. Public debates concerning the EU-Copyright Directive and possible violations of freedom of expression and censorship focused on upload-filters. Transposition into national law has to be in conformity with the Basic Law (Holznagel 2020). Another controversially debated law, the Network Enforcement Act (Netzwerkdurchsetzungsgesetz) which obliges social network platforms to delete “illegal content” within a legally defined time, has not proven to have an impact on the freedom of expression. In Germany defamation may be punished with imprisonment which is generally assessed as an unproportionate balance between the protection of freedom of expression and dignity, though it has to be noted that this occurs only very rarely.

The indicator on **Protection of right to information** also shows a low risk (13%). Art 5 (1) of the German Basic Law recognises the right to information. The Freedom of Information Act (Informationsfreiheitsgesetz of 2006 ) entitles every citizen to request information possessed by federal authorities. At the same time, it protects certain public and private interests. There are no reportings on systematic or arbitrary cases for refusing to grant information. Still, public authorities often take legal action before providing information. Between 2009 and 2017, the federal government spent

a total of 1.88 million EUR to fend off requests based on access of information laws (Reporter ohne Grenzen 2019). Reporters without borders complain that the right of access to information from the authorities is still incomplete. The federal states of Bavaria, Lower Saxony and Saxony do not have any legislation regarding access to information held by state authorities. Concerning the protection of whistleblowers, no special law exists whatsoever. While an EU Directive on whistleblowing is pending, only general labor law and media law protections are applicable. According to a survey, two thirds of German whistleblowers lost their jobs or retired after reporting on their employers (Zeit 2018).

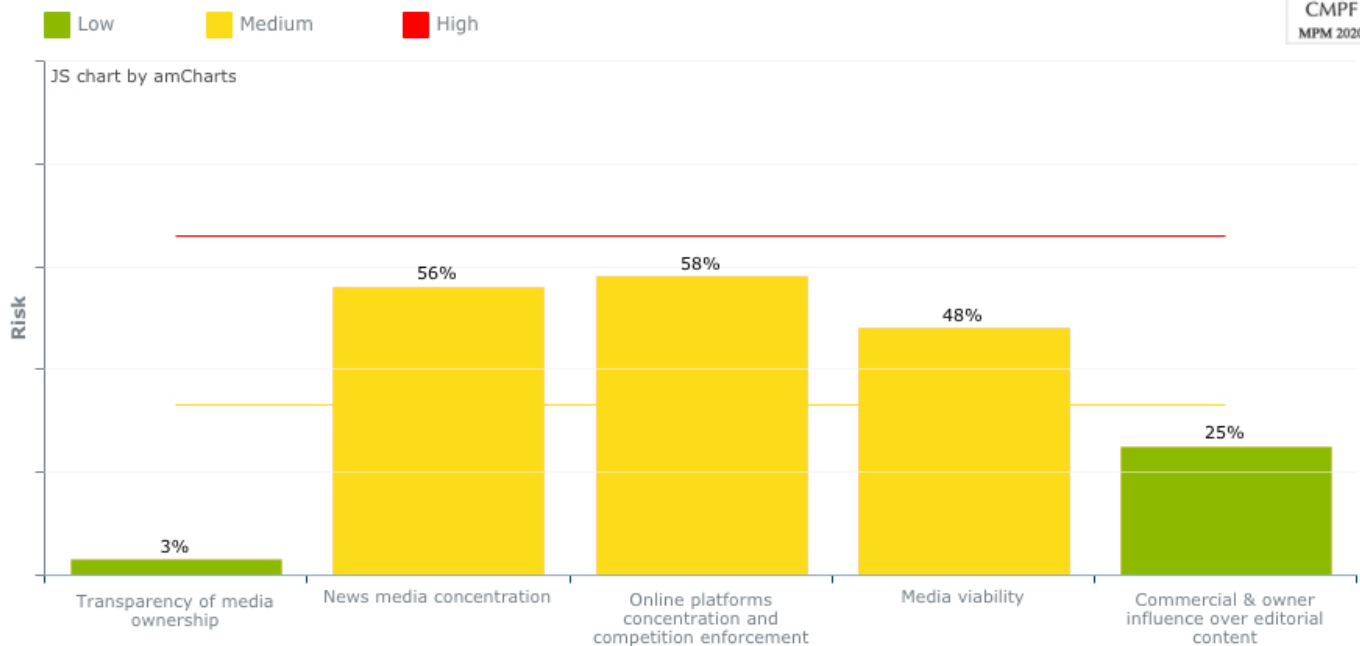
There are no legal requirements to practice journalism and the profession is open to everyone. Journalists have the right to protect their sources and to refuse to testify in criminal, civil and administrative cases. The indicator on physical safety shows a high risk. Since 2018, at least 22 violent attacks on journalists were reported (Reporter ohne Grenzen 2019). However, overall the indicator on **Journalistic profession, standards and protection** demonstrates a low risk (13%).

The indicator on **Independence and effectiveness of the media authority** scores the lowest risk (5%). The media authorities are independent public agencies, operating autonomously in accordance with applicable legislation. These authorities have a legal guarantee of independence from political and commercial interference. Their decisions may be challenged before administrative courts. However, sometimes the state parliaments play a role in filling the chief positions and at times political influence in this regard is visible (SR 2020).

**The universal reach of traditional media and access to the Internet** in Germany is at a low risk (21%). The universal coverage of the PSM is guaranteed by the constitution. The Federal Constitutional Court ruled that the personnel, organizational and financial preconditions of the PSM have to be secured. The whole population (over 99%) is covered by signals of all public TV and radio channels. The broadband coverage scores at low risk since 87.9 % of the population is covered by 30MBps or more. Still, some rural parts are excluded from broadband expansion (BMVI Atlas 2019).

### 3.2. Market Plurality (38% - 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.*



Of the five indicators in this area, three show a medium risk and two a very low risk.

The indicator on **Transparency of media ownership** scores low on the risk scale (3%). German law contains some specific provisions requiring the disclosure of ownership in the news media sector. Commercial broadcasters must report ownership information in order to apply for and hold a broadcasting license and they must report on plans affecting the shareholders' structure. Online media entities have to make their ownership information transparent through its imprint information on their websites. For the press these transparency obligations depend on the respective state press law. Political parties must disclose their involvement in media entities due to the Political Parties Act (Parteiengesetz of 1967).

The indicator on **News media concentration** scores at 56% (medium risk). In general, media legislation contains specific rules to prevent a high degree of horizontal concentration of ownership in the media sector. The core of the concentration law provisions is Section 26 of the Rundfunkstaatsvertrag (Interstate Broadcasting Treaty). It allows a company to organize an unlimited number of programs on television nationwide as long as it does not thereby acquire a dominant power of opinion. There is a specific judicial body (Kommission zur Ermittlung der Konzentration im Medienbereich KEK; Commission on Concentration in the Media) with enforcement powers in this sector. This law focuses on nationwide linear TV and does not adequately cover digital opinion power in practice (Hartung). All state media laws have provisions regarding cross-ownership of press and broadcasting companies to prevent double-monopolies. The audience concentration of the top 4 audiovisual media owners in Germany (ProSiebenSat1, Mediengruppe RTL, ARD, ZDF) is 88,3% (KEK 2019b). In 2018, 61.6% of the newspaper industry's total paid circulation was published by the top 10 publishing groups (Röper 2018).

The indicator on **Online Platform concentration and competition enforcement** shows a medium risk (58%). The way people in Germany access news online is balanced (direct access of new medium vs. side door access via aggregator). 47% of the people take the direct way by accessing the news content on the provider's homepage or typing in the news provider in a search engine. The gateway to news via social networks and aggregators accounts for 32%. In the group of the 18-24-year-olds the share of these algorithmic driven news gateway even scores at 48% (all numbers see: Hölig/Hasebrink, 2019). This has to be seen in connection with a high audience concentration of the top 4 online competitors. Google, Facebook, Whatsapp and YouTube account for 57% of this unique audience on online/mobile entities (Medienanstalten 2018). In 2019, the Federal Cartel Office initially classified Facebook as a dominant company in the social networks market and considered an abuse of conditions due to inappropriate data processing as given. Therefore, it prohibited Facebook from merging data from Facebook and Whatsapp (Bundeskartellamt 2019). However, this decision was overturned by the Higher Regional Court. The upcoming 10th amendment to the Gesetz

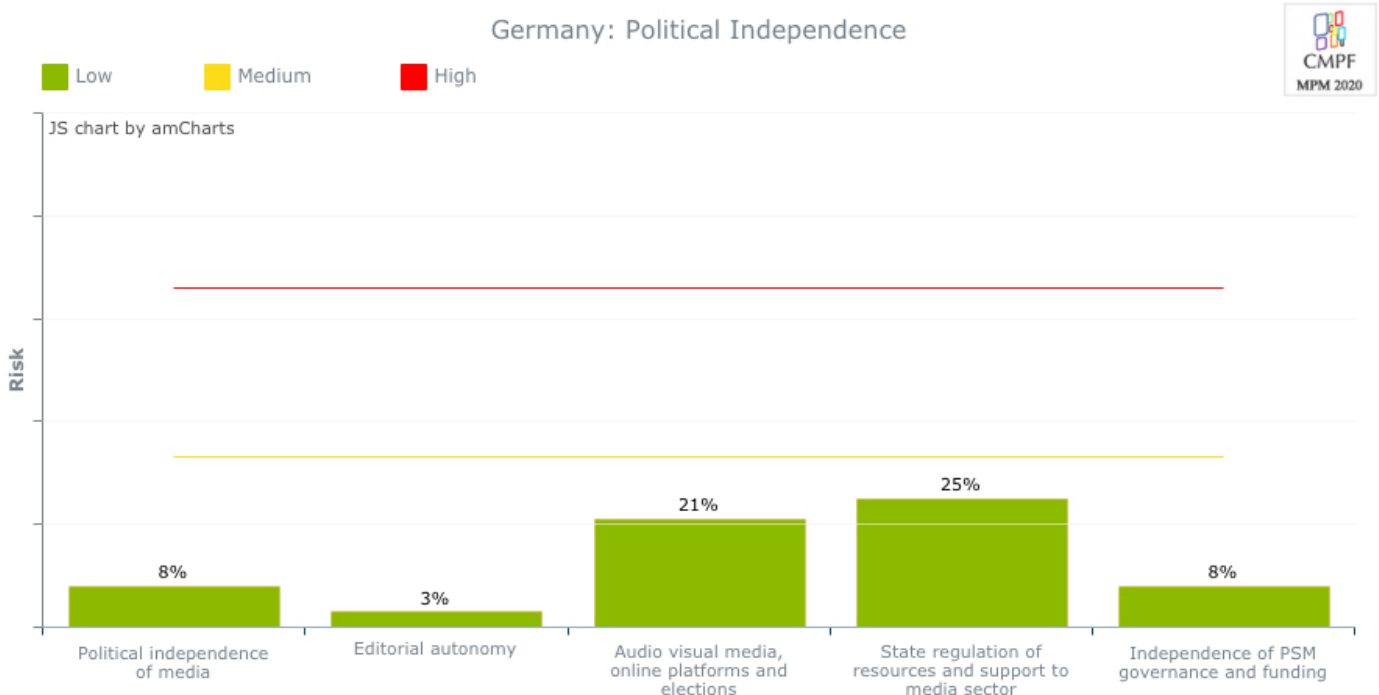
gegen Wettbewerbsbeschränkungen (Act against Restraints of Competition) based on the findings of the Commission “Competition Law 4.0” (Commission Competition Law 4.0 2019) wants to adapt competition law to the increasing digitization of the market and aims at helping competition enforcement to become more effective in regulating the platform economy. Regarding the effect of PSM activities on the media market, the Broadcasting Financial Needs Commission (KEF) ensures that PSM funding does not exceed what is necessary to provide the public service. In its latest report KEF demands (further) savings from the PSM institutions (KEF 2018).

The indicator on **Media viability** scores a medium risk (48%). By only assessing the revenues in the media sector in general, the media in Germany is financially viable. In almost all media sectors revenues increased. The growth rate of the revenue in the TV-market was 3.3% in 2018 and 0.8% in 2019. In the same time growth rates of the revenue development in internet video market scored 20.9% and 12.9% respectively. Only the newspaper segment and the local news segment decreased steadily over the last years (PwC 2019). In the field of journalism, the Labour Market Report 2019 states for 2018 an increase of 4% compared to 2017 (Arbeitsagentur 2019). These numbers are not further subdivided into specific sub-areas like radio, online, etc.

The indicator on **Commercial and ownership influence over editorial content** gets a low risk score (25%). Editorial decision-making is generally free of commercial or political influences. The German Press Council is monitoring the self-regulatory press-codex. It has instruments to address failures effectively of the press, also when a press outlet is influenced commercially. Point 1 of the press codex reads as follows: "Respect for the truth, respect for human dignity and truthful information to the public are top priorities of the press." Point 7 goes into detail of this aspect when it demands the separation of advertising and editorial work.

### 3.3. Political Independence (13% - 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.*



The indicator on **Political independence of media** scores a low risk (8%).

There are legal safeguards against the formal control of political parties over broadcasting outlets. For example, political parties are excluded from broadcasting licenses (Interstate Broadcasting Treaty). All media laws of the federal states contain similar provisions on the incompatibility of certain political positions and positions on broadcasting entities (e.g. board of directors). Following the ruling of the Federal Constitutional Court in 2014, the legal requirements for the composition of all public broadcasting bodies were reformed in accordance with the court's guidelines. The risk is low for the actual practice as well. There is no evidence on political control over news outlets, digital media etc. Political parties have to disclose their participation (Parteiengesetz).

The indicator on **Editorial autonomy** scores a low risk (3%). The Federal Constitutional Court ruling on the lack of political independence of the ZDF board led to reforms of PSM boards composition rules. There are no reports on recent cases of interference with editorial autonomy. The self-regulatory framework of the German Press Council demands independence from political interference and is effectively implemented by all major news media (Presserat).

The indicator on **Audio visual media, online platforms and elections** scores a low risk (21%). There are rules on political advertisements for broadcasters. They must give airtime according to the principle of gradual equal opportunity to all parties participating in an election. Airtime for political adverts is free of charge and additional airtime cannot be bought. Broadcasting political advertising in general is prohibited except during election periods. The editorial coverage of elections also follows the principle of gradual equal opportunity. Some German PSM have issued specific self-imposed guidelines concerning airtime and coverage during election periods (MDR). For online political advertising, there is no regulation that aims to ensure equal opportunities and transparency during an electoral campaign. Usually politicians and parties are not reporting on their spendings on online platforms at their own initiative. All parties use micro-targeting advertisements (Kolany-Reiser 2018).

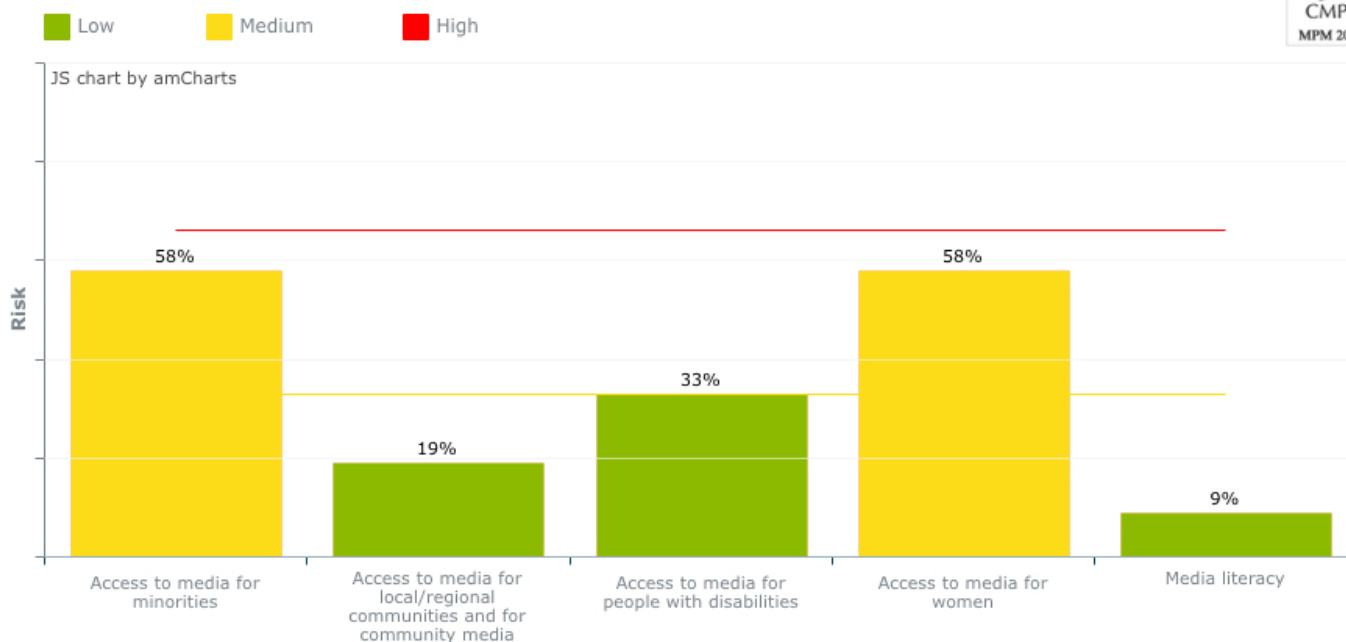
The indicator on **State regulation of resources and support to media sector** scores a medium risk (25%). There is state law on the allocation of frequencies with detailed rules on priority, procedural rules and legal protection. These rules are implemented effectively, and decisions can be reviewed and challenged in court. In Germany, so far there are no direct subsidies to the media sector (Wissenschaftlicher Dienst 2019). But recently the Bundestag (federal parliament) decided to support the house delivery of subscription newspapers and advertising journals with 40 million euros (Deutschlandradio 2019). Still there are indirect subsidies. For example, the tax law provides for a reduced VAT rate of 7 percent (instead of 19 percent) for press products. There is no reporting obligation on the ad spending of public authorities.

The indicator on **Independence of PSM governance and funding** scores a low risk (8%). The law provides fair and transparent appointment procedures for management and board functions in PSM, which aim at the independence from governmental and political influence. Each PSM has its own law and thereby its own rules on appointing management and board. But constitutional law only gives a narrow regulatory corridor.

The rules on the level of PSM funding aim at adequate funding. The license fee for PSM is determined by law and based on the recommendation of the Commission on the determination of the financial needs of public service broadcasters (KEF). There is no evidence for attempts to influence the appointment or dismissal of PSM management and board in 2018/2019.

### 3.4. Social Inclusiveness (35% - 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 for **Access to media for minorities** scores relatively high on the risk scale (58%), however still in the medium risk band. Promoting integration and social cohesion is one of the prime goals of German PSM. There is no practice of PSM giving airtime to outside third parties. Plurality of different groups is instead ensured through the internal boards of public service broadcasters. According to Judith Purkarthofer (expert interview), in practice, minorities, which are not recognised by law, have no systematic access to airtime on PSM channels. However, there are a couple of programs and cooperations that allow partial access for these groups. DW- Deutsche Welle, Germany's public international broadcaster has national news in 30 languages.

The indicator on **Access to media for local/regional communities and for community media** shows a low risk (19%). The interstate broadcasting treaty grants local media access to media platforms. There are no direct subsidies to local or regional media. Civic broadcasting, so-called Bürgerfunk, is implemented by law in four German federal states (Bremen, Lower Saxony, North Rhine-Westphalia and Thuringia). It is financed through the state media authority out of its share of the PSM license fees. There are around 180 community media outlets nationwide. There is no evidence of systematic political censorship, interference or manipulation of this type of media. Efforts are taken to support these media outlets in neutral and non-discriminatory ways.

The indicator on **Access to media for people with disabilities** scores a low risk (33%), bordering with medium. In the expert interview, Dr. Bosse argued that for public broadcasting, significantly higher requirements apply for the provision of accessible content. This is reflected in practice. Private media are lagging behind and often offer only subtitles. Bosse deems the requirements for PSM, which were further formulated in 2019 in the new Interstate Broadcasting Treaty, as good, whereas the voluntary commitments with regard to private companies are not sufficient. The amended Interstate Broadcasting Treaty contains revised rules to ensure access for people with disabilities. However, these rules only apply to the online offers of the PSM media. The German association of the deaf complain that the amendments to the Interstate Media Treaty are insufficient and do not address a general obligation to provide subtitles on TV programs. The blind and the deaf speak out for reduced broadcasting fees for people with these disabilities.

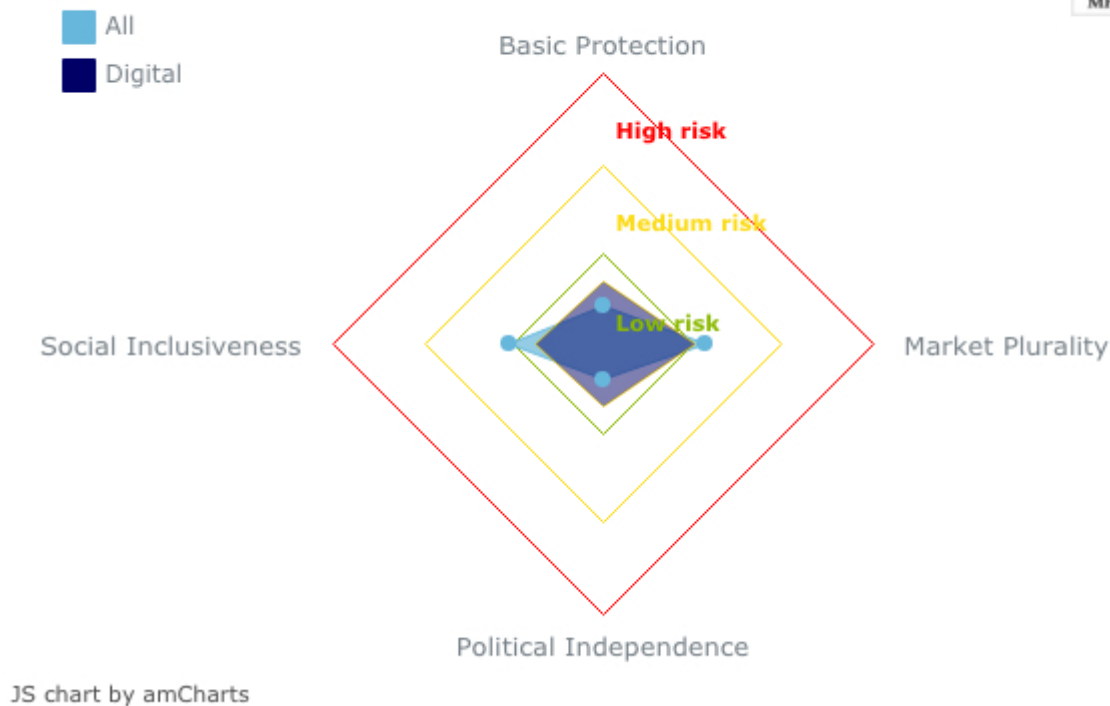
The indicator on **Access to media for women** scores a medium risk (58%). Data shows that women are underrepresented as experts or guests in news programs or political talkshows (Prommer, Linke 2019). The current ARD guidelines promise "systematic efforts" to integrate more female experts and guests into talkshows (ARD 2019). Numbers show that equality is not realised in all areas (ProQuote 2019): In the newspaper section the daily newspaper "taz" is the only outlet that achieved equal representation. According to the results of a recent study, some PSM like Deutsche Welle achieved a weighted share of women's power of 51.9 % while in contrast, the management levels of

smaller PSMs such as Radio Bremen (32.2 %) are still largely male. Evaluations of publicly available information on top management showed that women accounted for 21.4 % of the RTL media group and 19.8 % of the ProSiebenSat.1 (ProQuote 2018). Regional media treaties promote equality in programs.

The indicator on **Media literacy** scores a low risk (9%). According to the Interstate Broadcasting Treaty "media literacy for all generations and minorities" shall be fostered and "projects for promoting media literacy may receive financial support". Activities on media literacy are widespread in Germany. The regional media authorities are active in various areas for the promotion of media literacy. Hate speech is also a concern in the field of media literacy (Die Medienanstalten 2019a), but above all, this is addressed by the Network Enforcement Act from 2017. It provides that social networks quickly remove illegal content such as hate speech. It does not explicitly refer to the protection of ethnic and religious minorities. But a legislative amendment of the Act might change this. When put in place, networks also have to provide information on the extent to which groups of people are particularly frequently affected by hate speech (Roßmann 2020).

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

### Germany: Media Pluralism Risk Areas - Digital



**Pluralism in the online environment** tend to be at higher risks compared to the overall risk assessment. This results mainly from a lack of legislative efforts to adjust the law to tackle online harms effectively. In 2018, the German Federal Constitutional Court has summarized this as follows: “*the digitization of the media and in particular the network and platform economy of the Internet, including the social networks, favor concentration and monopolization tendencies among providers, distributors and brokers of content. If offerings are largely financed by advertising, they do not necessarily promote competition in journalism; on the Internet, too, the greater reach of interest to the advertising industry can only be achieved with mass-attractive programmes. In addition, there is the danger that - also with the aid of algorithms - content may be tailored to the interests and inclinations of users, which in turn leads to a strengthening of similar opinions*” (Bundesverfassungsgericht 2018).

#### Basic protection

The indicator for **freedom of expression online** shows low risk. The constitution makes no difference between online or offline speech. The debate in Germany focused on the Network Enforcement Act which obliges social networks to speedily delete illegal content. It was criticized that this legislation would lead to overblocking and chilling effects, violating freedom of speech online. However, these negative effects are not proven.

A planned legislative change focusses on the protection of ethnic and religious minorities. Networks then must provide information on the extent to which certain groups of people are frequently affected by hate speech. In the future, users should be able to take action against decisions made by social network providers more easily - for example, after their post has been deleted. (Roßmann 2020). The state does not filter or block or remove online content in an arbitrary or systematic way. Also, there is no indication that ISPs filter in an arbitrary way.

In general, individuals have **access to legal remedies** to address violations of rights, online and offline. Regarding violations online, enforcement deficits can be identified. In Bavaria a project focuses on this particular issue. There the judiciary and the media want to be able to more efficiently take actions against authors of hate speech on the internet. The aim is to be able to prosecute perpetrators more consistently under criminal law (Presseportal). In Germany there is also a strong debate on how the new **EU copyright directive** could harm freedom of speech (“Uploadfilter”). However, an implementation of the directive in conformity with the constitution is likely (Holznagel 2020).

The indicators on **Journalistic profession, standards and protection** and on **Journalism and data protection**



show low risk. Journalists note increasing threats to their **digital safety** by law enforcement and prosecution authorities (e.g. decrypting encrypted messages with whistleblowers, decrypt hardware security mechanisms to access journalists' hardware) (Reporter ohne Grenzen 2018).

Germany has legally resolved the tension between the Data Protection provisions of the GDPR and journalistic activities, which depends on processing personal data. GDPR offers an opening clause for this. This was done mostly in the framework of the federal press laws and in a way that complies with article 10 (2) of the European Convention on Human Rights.

Since **Internet access** is at a medium risk, with an average internet connection in the 25 percentiles and a market share of the Top 4 internet service providers of 84% indicates a rather high risk (Statista), the indicator of **Universal reach of traditional media and access to the Internet** shows mixed low risk overall.

### **Market plurality**

The indicators on the online dimension of Market Plurality indicate a medium risk. No major problems can be identified in the area of transparency. KEK (Commission on Media Concentration) has a publicly accessible data base on ownership structure of media outlets. It is kept up to date (KEK). The risks lie in the area of **news media concentration** which indicates medium risk. The media concentration law aims to prevent the predominance of opinion and to ensure diversity of opinion, but it is centered on the broadcasting sector. De facto, the existing law cannot be used to address a threatened power of opinion in the online sector (Kolany-Reiser/Heil/Orwat/Hoeren 2019). KEK, which is responsible for monitoring these rules, has been calling for an adjustment and proposes an overall media market model (Die Medienanstalten 2019c; KEK 2019a). There is no data available on audience share of digital native news media in Germany. Digital native news media is relatively weak in Germany since traditional news media remain strong (Nicholls et al 2019). The audience share of the Top 4 online news media in Germany is at 39%.

The indicator on **Online Platform Concentration** is at medium risk (**Gateway to news**). 33% of the participants of a recent study stated that they favor consuming news online by directly accessing the respective content on the provider's homepage. 14% enter the name of their preferred source in a search engine. Both direct ways together amount to 47%. The overall share of algorithmic and data-driven gateways to news outlets is 33% and 48% in the group of 18-24 year-olds (Hölig/Hasebrink, 2019). Google, Facebook, Whatsapp and YouTube account for 57% of unique audiences (Medienanstalten). In 2019, the Federal Cartel Office initially classified Facebook as a dominant company in the social networks market and considered an abuse of conditions due to inappropriate data processing as given. Therefore, it prohibited Facebook from merging data from Facebook and Whatsapp (Bundeskartellamt 2019). With the 10th amendment to GWB (Gesetz gegen Wettbewerbsbeschränkungen, Act against Restraints of Competition) the cartel authorities will be able to take into account factors that are of special importance in the digital environment (intermediate power, data economy) to foster **competition enforcement**. The amendment aims to make antitrust authorities able to assess the market position of companies within the framework of abuse control and merger control (BMWI 2019). Germany has no digital tax.

**Media viability** is at a medium risk. By assessing only **media revenue and employment trends in digital outlets**, overall expenditure for online advertising on news media increased by 7,8% in 2018 and by 6,8% in 2019 (PwC 2019). The highest growth rates of revenue are in the online streaming market. Revenues increased in 2018 by 20,9% and in 2019 by 12,9%. There is limited data for employment trends in the digital sector. The Federal Employment Agency reports data on journalism as a profession but does not further subdivide it into specific sub-areas (e.g. radio, online) (Arbeitsagentur 2019). Generally, the growth trend in employment in the media is positive. News media organizations in Germany develop **sources of revenue other than traditional revenue streams**. For example, the newspaper company Frankfurter Allgemeine Zeitung, one of the biggest national newspapers released several online applications (apps), each with a subscription payment model to unlock content: the apps curate articles on different topics (law topics, on tech topics and on the top stories of the day). The same is true for most of the other media companies (Lobigs/Neuberger 2018). Axel Springer already earns 84% of its revenue with its digital business (Axel Springer 2019). Almost all outlets started podcasts. **There are also regulatory incentives to strengthen media viability**. The traditional lower VAT tax rate for press products will apply also for electronic press products. Editorial decision-making is **free from commercial**

**and owner influence.** Rules regarding this issue apply equally online and offline. For example: the German Press Code supervised by the German Press Council is a self-regulatory instrument. It is also open to online news media. Several statutes demand content creators to flag sponsored content. The legal debate is on the question whether those statutes are applicable to marketing by social influencers.

### **Political Independence**

Political Independence in the online dimension is at a low risk. The major digital media outlets in Germany have developed from legacy media outlets. Original digital media outlets, on the other hand, are highly fragmented and serve small, very specific interests and groups. Political control in this environment is currently not reported. **Self-regulation** in this regard is assessed at a low risk since guidelines for dealing with social media exist on a larger scale.

In the online dimension the indicators on **audiovisual media, online platforms and elections** show almost all high risk. There are no **rules on political advertising online.** In Germany, there is no regulation that aims to ensure equal opportunities and transparency of online political advertising during electoral campaigns except the self-obligations of the Internet companies at EU level. There are no rules for political parties and candidates competing in elections to report on campaign spending on online platforms in a transparent manner. Regulations governing election advertising are based on the old world (Die Medienanstalten 2019b). Transparency of parties or individual politicians is not apparent. According to reports, all parties use micro-targeting advisements (Kolany-Reiser 2018).

The **Independence of PSM governance** and funding is at a low risk since the law provides that funding must adequately cover the online public service missions of the PSM without distorting competition with private media actors. The online mandate of the PSM is strictly formulated in accordance with the constitutional requirements. The financing of the online activities in turn follows the statutory financing procedure: The PSMs must register their requirements, which are then examined by KEF and submitted to the state parliaments for approval. This procedure ensures that the PSM including their digital activities are financed in accordance with their needs.

### **Social inclusiveness**

There are many **Media Literacy** projects concerning hate speech online (Die Medienanstalten 2019a). Nevertheless, in the expert interview Peter Nowotny said: "We have been much further along before and today, due to the www and the mixture of personal and public communication, we face challenges not yet understood by politics."

## 5. Conclusions

The **results of MPM 2018/2019** show that the risks for media pluralism in Germany are rather low. Nevertheless, some indicators show a medium risk. In many cases these risks concern online harms. There is legislation in place to mitigate these risks. Most prominently, the media law for the first time addresses so-called media-intermediaries (e.g. social networks) with obligations regarding transparency, non-discrimination and the labelling of social bots (Medienstaatsvertrag). Laws on hate speech, the protection of minors and competition law will be further adapted to digital challenges. However, there are still **online harms that effectively need to be tackled by legislation**.

The area of **basic protection** shows a very low risk in Germany. In order to safeguard the democratic discourse in the digital realm, threats from hate speech and disinformation must be dealt with carefully. Therefore:

- Authorities and courts need appropriate training and equipment to **prosecute hate speech online**.
- The competent authorities need to bundle power to speed up the **broadband expansion** especially in rural areas.
- The federal government must implement the **Copyright directive** in such a way that freedom of expression on online platforms is not affected.

The area of **market plurality** indicates a medium risk in some points. Therefore:

- The state governments need to update the **media concentration law** in order to (better) include e.g. social networks and video streaming platforms in the regulatory framework;
- The creation of a **new digital public service platform on the European Level** (public open space) could help to balancing the level playing field between platforms and legacy media;
- The **declining local diversity** in economically weak regions should be dealt with effectively in order to keep harm away from democracy.

The area of **social inclusiveness** indicates a medium risk in some points. The opportunities offered by digitization should also be used to give people with disabilities further access to media.

The area of **political independence** indicates a medium risk in some points. It is of importance to create **transparency and fairness in online election campaigns**.

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## ANNEXE I. COUNTRY TEAM

First name	Last name	Position	Institution	MPM2020 CT Leader
Bernd	Holznagel	Professor / Director of ITM	University of Münster, ITM	X
Jan	Kalbhenn	Managing Director of ITM and media lawyer	University of Münster, ITM	X

## 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.

First name	Last name	Position	Institution
Sarah	Hartmann	Media Law Scholar	University of Münster, ITM
Ina	Niemeyer	Youth Protection Officer	Deutsche Welle
Christian	Sprang	Head of Legal Department	German Publishers and Booksellers Association
Hannah	Klein	Head of Media Policy Lab	Medienanstalt Berlin Brandenburg (Media Authority)
Andrea	Hansen	Vice Chair	German Journalist Association North-Rhine Westfalia



