

# MONITORING MEDIA PLURALISM IN THE DIGITAL ERA

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

Country report: Germany

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**Research Project Report**

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# 1. About the project

## 1.1. Overview of the Project

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

## 1.2. Methodological note

### Authorship and review

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

*In Germany the CMPF partnered with Bernd Holznagel (University of Münster, ITM), Jan Christopher Kalbhenn (University of Münster), who conducted the data collection, scored and commented on the variables in the questionnaire and interviewed experts. The report was reviewed by the CMPF staff. Moreover, to ensure accurate and reliable findings, a group of national experts in each country reviewed the answers to particularly evaluative questions (see Annexe II for the list of experts). For a list of selected countries, the final country report was peer-reviewed by an independent country expert.*

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

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

Table 1: Areas and Indicators of the Media Pluralism Monitor

## The digital dimension

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

## The calculation of risk

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

*Scores between 0 and 33%: low risk*

*Scores between 34 to 66%: medium risk*

*Scores between 67 and 100%: high risk*

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

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

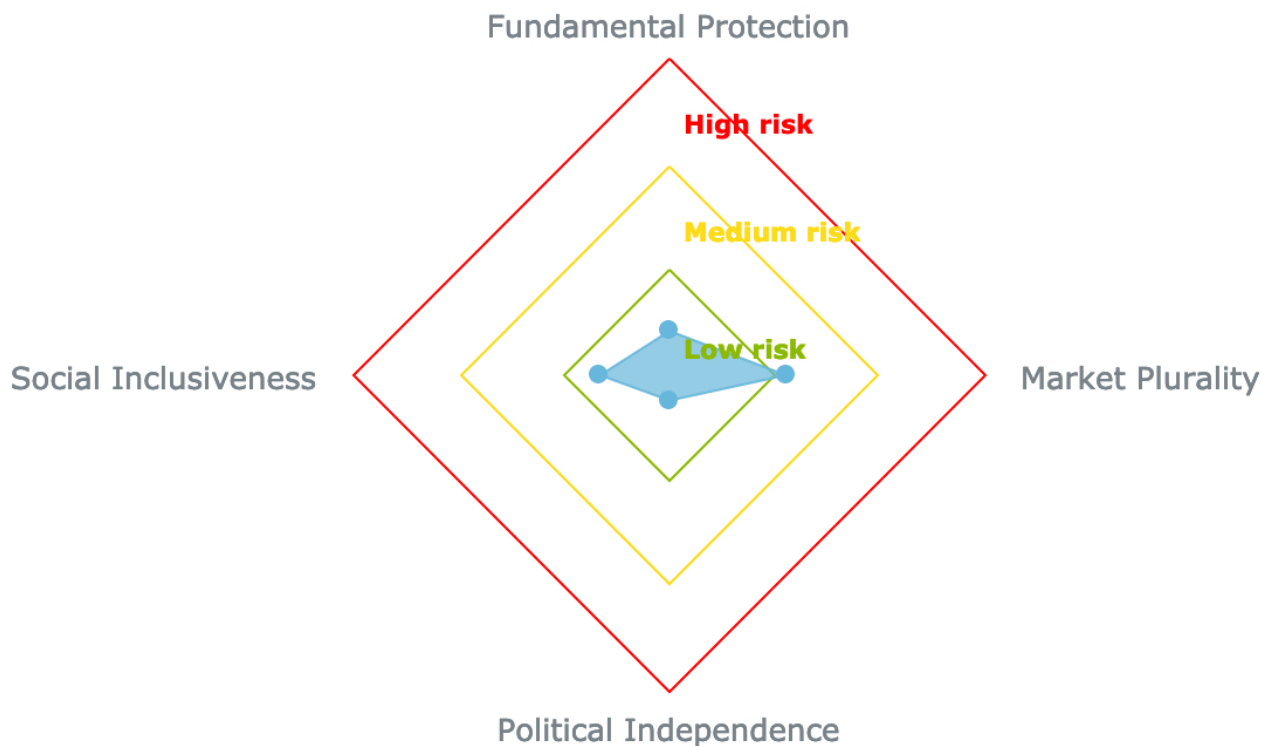
## 2. Introduction

- Since the German reunification in 1990, the Federal Republic of Germany has consisted of 16 federal states. Germany has a population of 83.1 million and has a comparatively high population density.
- German is the official language and is used in the national media. In addition, some smaller languages are recognised. These include Danish, Sorbian, Frisian and Low German.
- Germany has an old history of immigration and still sees itself as a country of immigration. Over 26% of the population have a migration background. Immigrants from EU countries come mainly from Poland, Romania and Italy. Non-EU migration backgrounds are mainly Turkish and Syrian and Russian. Some historical minorities are granted special legal recognition (e.g. legal protection, special electoral rules to ensure representation in regional parliaments). These include about 70.000 Roma and Sinti, 60.000 Sorbs and 50.000 Danes and Frisians.
- With a GDP of around EUR 3,332 trillion, Germany is the largest economy in Europe and the fourth largest in the world; after the USA, China and Japan. The Corona pandemic resulted in negative growth of -4.9 % compared to the previous year. The German state countered the economic threats of the Corona pandemic with state aid in many areas, and the labour market was stabilised with the instrument of "short-time allowance". Employers can reduce working hours, employees receive state compensation payments. The economic consequences will probably only become apparent in the coming months of 2021. Before the pandemic, in 2019, the German economy grew for 10 consecutive years.
- Since 2005, Germany has been governed by the Christian Democratic Union (CDU) under Chancellor Angela Merkel. Initially in a so-called "Grand Coalition" with the Social Democratic Party of Germany (SPD), since 2009 with the Liberals and since 2013 again with the Social Democrats. During this time, the right-wing populist party "Alternative for Germany" (AfD) managed to enter many state parliaments and the Bundestag. The formerly large mainstream parties CDU and SPD have been continuously losing votes for several years. Most recently, the Greens were able to make large gains in state elections and the European elections. 2021 is a "super election year" in Germany with state elections in Saxony-Anhalt, Lower Saxony, Berlin, Rhineland-Palatinate and Baden-Württemberg as well as the federal election in September. After 15 years, Angela Merkel will not run again. Thus, the balance of power in the Bundesrat may also shift, but this is usually not of great importance for media legislation.
- For the pandemic year 2020 a decline in turnover of almost 12% is feared (PwC). The market has continued to shift to digital media - also driven by the Corona measures. Live streaming and video-on-demand (VoD) offerings are growing rapidly. Before the pandemic the media industry grew by 3% in 2019, with companies generating a total turnover of around €61.7 billion.
- Among the population as a whole, linear TV remains the leader with 72% of daily video usage. Only 28% of video use is accounted for by non-linear services such as broadcaster media libraries and video streaming services. It is notable, however, that among 14 to 29 year olds the ratio is reversed: here, only 28% is accounted for by linear TV and 72% by video streaming services such as Netflix and Amazon (39%) and YouTube (19%). As their primary source of information on political topics, German adults aged 14 and over use public radio or TV (58%), newspapers (24%) and private radio/TV (8%). Video portals (4%) and social media (5%) follow. Among 14- to 29-year-olds, non-linear offerings have a higher daily reach than linear TV (Frees et al 2019).
- The German media system is characterised by the coexistence of public and private broadcasting. In addition to nine state broadcasting corporations, there is a nationwide television station, the ZDF, and a nationwide radio station, the Deutschlandradio. While public broadcasting is organised internally pluralistically to ensure diversity of opinion and is supervised by internal bodies, supervision of private broadcasting is the responsibility of the state media authorities. The press is organised externally

plural. The regulatory framework increasingly takes digital platforms into account. For example, the State Media Treaty (MStV 2020) stipulates that so-called “media intermediaries” such as social networks and search engines must fulfil obligations on transparency, non-discrimination and the labelling of social bots. Political advertisement must be labeled as such. The Network Enforcement Act of 2017 is soon to be amended (NetzDG 2017 and NetzDG 2020). It aims to tighten the obligations of social networks to combat hate speech on the internet more effectively. The Youth Protection Act is also to be adapted to better protect against online harms, as is competition law. Other new media laws come mainly from EU law (e.g. copyright, AVMS).

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

#### Germany: Media Pluralism Risk Areas



JS chart by amCharts

Taking into account all the findings in the MPM 2021, the risks to media pluralism in Germany are generally rather low. Nevertheless, some indicators point to a medium risk for media pluralism and thus cannot be disregarded without further considerations.

In the area of **Fundamental Protection**, all indicators show a low risk. The highest risk indicator here is "universal reach of traditional media and access to the Internet", which still only scores 21 percent. This is mainly due to the high market concentration of internet providers.

In the area of **Market Plurality**, a medium risk rating is shown for the indicators "News media concentration", "Online platforms concentration and competition enforcement" and "media viability". One of the reasons for this risk is the ineffectiveness of the current media concentration law, combined with an increasing concentration of market power in some areas. The decline in local offerings has contributed to the media viability indicator's medium risk rating.

In the area of **Political Independence**, all indicators have a low-risk rating. However, the indicators of "audio visual media, online platforms and elections" as well as "State regulation of resources and support to media sector" are somewhat closer to medium risk. This relatively higher risk score can be identified in the former case partly because there are no election-related rules for social media and other digital platforms.

In the area of **Social Inclusiveness**, most indicators show low risk and the average risk in this area scores 22 percent. "Access to media for minorities" is rated as low risk but tends towards medium risk (with a score

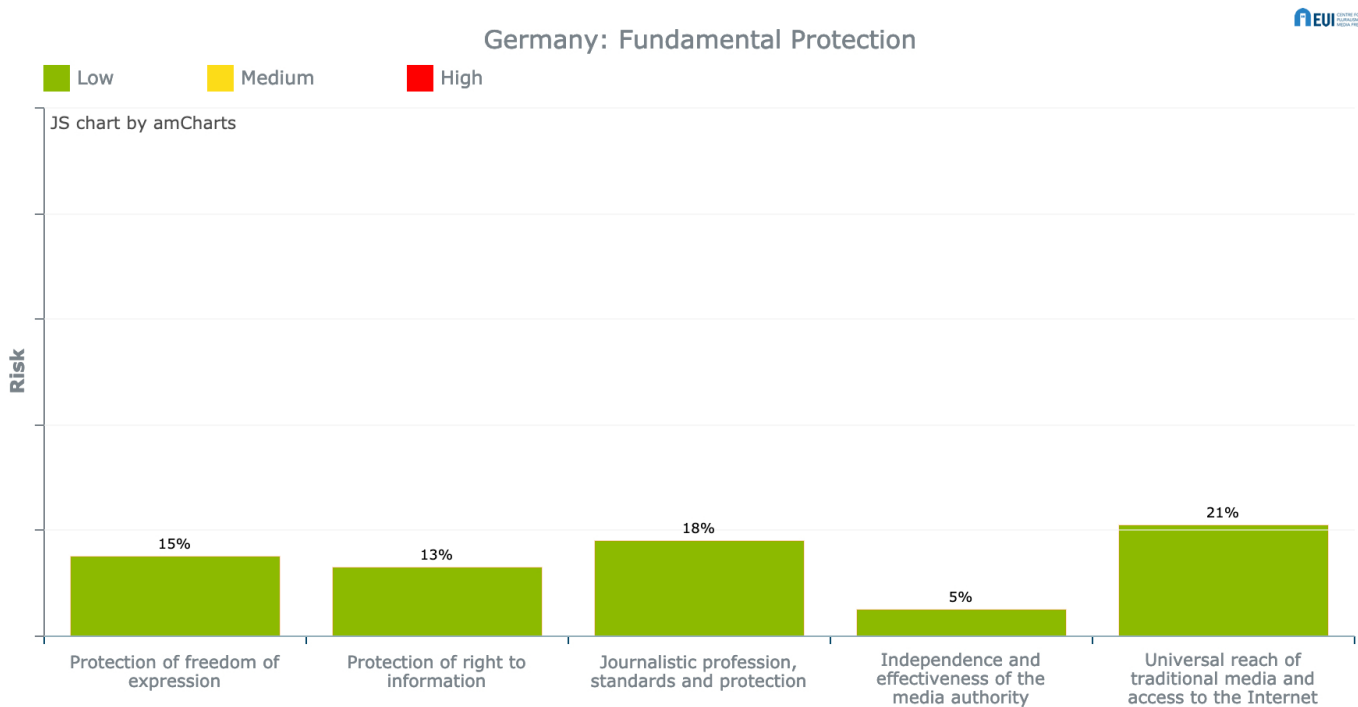


of 32 percent). “Access to media for women”, on the other hand scores 68 percent and shows a high risk. One of the reasons for this high risk is that the number of women in leadership positions in media companies is very low.

Media pluralism in the **online environment** tends to score higher risks. In some areas, there is a lack of effective legislation to address online harms. This applies, for example, to online political advertising during election campaigns and to the Media Concentration Law.

### 3.1. Fundamental Protection (14% - low risk)

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



**Fundamental Protection** of the media sector in Germany is well developed. The right to freedom of expression and the right to information are guaranteed in the Basic Law<sup>[1]</sup>, and the legal protections are effectively implemented. All five indicators show low risks.

According to the data collected, the score of the indicator on the **protection of freedom of expression** in Germany shows only a low risk to media pluralism (15%). Article 5 of the Basic Law<sup>[2]</sup> gives every person the right to "freely express and disseminate his or her opinion in speech, writing and pictures and to inform himself or herself without hindrance from generally accessible sources." The same provision also guarantees freedom of the press and freedom of reporting by broadcasting. It states that there shall be no censorship. In addition, Germany has ratified the International Covenant on Civil and Political Rights and the European Convention on Human Rights without making any reservation that would affect the protection of freedom of expression. The German state does not exercise arbitrary censorship on the internet. In the

public discussion about the EU Copyright Directive and possible violations of freedom of expression and censorship, upload filters were at the forefront. Implementation into German law is underway. Critics fear that automatic filtering systems will not be able to detect satire and other copyright exceptions covered by freedom of speech. Others point out that sufficient safeguards can be built into national law to achieve proportionate results to be in accordance with the Basic Law (Holznagel 2020). The Network Enforcement Act, which obliges social network platforms to delete "obviously illegal content" within a legally defined time, was initially said to have "chilling effects" and thus influence freedom of expression. This could not be proven so far (Eifert 2020). In Germany, defamation can be punished with imprisonment, which is assessed as a disproportionate balancing of the protection of freedom of expression and human dignity, but criminal law provides corresponding justifications.

The indicator on the **protection of the right to information** also shows a low risk (13%). Article 5 (1) of the Basic Law<sup>[9]</sup> recognises the right to information. The Freedom of Information Act (FOIA) of 2006<sup>[4]</sup> gives every citizen the right to request information from federal authorities. In addition, most federal states have corresponding laws (exceptions: Bavaria, Lower Saxony and Saxony). At the same time, it protects certain public and private interests. The right to information can be enforced in court. Systematic or arbitrary refusals to provide information have not yet been established by the courts. However, in terms of the FOIA application, there are still some deficiencies. The non-governmental organisation "Frag den Staat" can only recognise the paradigm shift from official secrecy to transparency in the reasoning of the law, but not in current administrative practice. However, there is a trend towards transparency laws that oblige the proactive publication of certain information in some federal states (example: Hamburg). In addition, there are numerous sector-specific transparency regulations, for example, in environmental law or energy law. With regard to the protection of whistleblowers, no specific law exists. The transposition of the EU Whistleblowers Protection Directive is in preparation. For the time being, the general protection provisions of the Labour Law apply.

The indicator on the **journalistic profession, standards and protection** shows a low risk (18%). The journalistic profession in Germany is a free and open to everyone. A permission to practice the profession is not required. Journalists enjoy some privileges. They have the right to protect their sources and to refuse to testify in criminal, civil and administrative proceedings. They have a special right to information under the Press Law, they have access rights to attend the public events, they are protected from searches and seizures. In return, however, they also have duties under the Press Law. First and foremost, they must comply with journalistic due diligence, which, with the State Media Treaty<sup>[5]</sup>, also applies to social networks, podcasts, etc. (Holznagel/Kalbhenn). However, the sub-indicator on physical safety shows a high risk. The comprehensive study "Hate and Attacks on Media Professionals" is based on an anonymous survey of 322 media professionals, in which almost 60% of the participating journalists reported having been attacked at least once in the last 12 months. Never before have journalists in Germany been violently attacked as frequently as in 2020. That is the finding of a new study by the European Center for Press Freedom and Freedom of Expression (ECPMF) in Leipzig. According to the study, the center recorded 69 physical attacks on media professionals in 2020, 71 percent occurred during demonstrations related to the coronavirus pandemic.

Judit Bayer and Bernd Holznagel (ITM) did a survey on SLAPPs (strategic lawsuit against public participation) which is currently under review. In Germany, it is relatively difficult for plaintiffs to use SLAPP tactics: Lawsuits that have no chance of success are usually dismissed by the courts in Germany. Nevertheless, legal threatening tactics against media often succeed: In a study, the Otto Brenner Foundation concluded that publishers in Germany are increasingly inclined to sign cease-and-desist letters

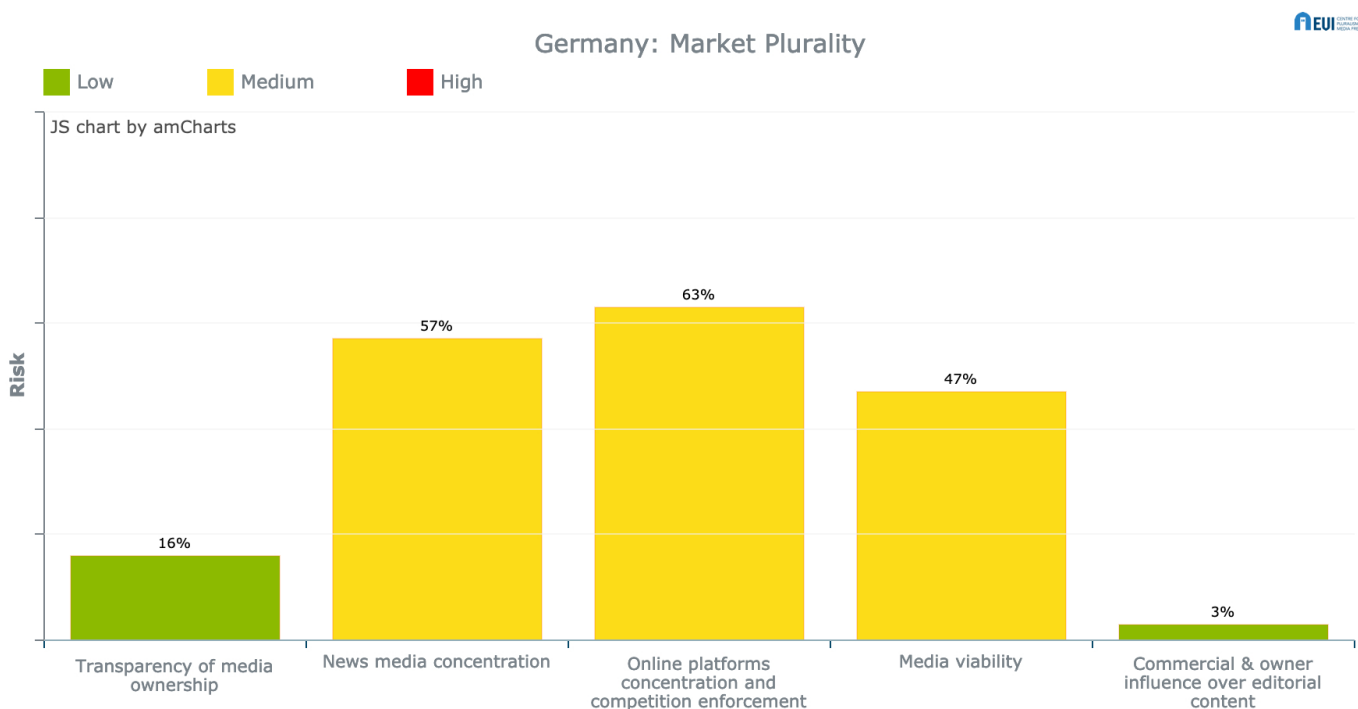
rather than fight the lawsuits. This can be a problem for freelancers and small entities rather than big media outlets with legal departments. There are only very few examples on SLAPP actions in Germany.

The indicator on the **independence and effectiveness of the media authority** demonstrates the lowest risk (5%). The media authorities are independent public institutions that operate autonomously in accordance with the applicable legislation. These authorities have a legal guarantee of independence from political and commercial interference. Their decisions can be challenged before administrative courts. However, state parliaments sometimes play a decisive role in filling the chief posts and sometimes political influence is visible in this respect. The most recent controversial case is the appointment of the director of the Saarland Media Authority in January 2020 (DLF 2020).

The **universal reach of traditional media and access to the Internet** indicator is low-risk in Germany (21%). The nationwide coverage of public service broadcasting is guaranteed by the Basic Law <sup>[6]</sup>. The Federal Constitutional Court has ruled that the personnel, organisational and financial requirements of public service broadcasting must be secured. The entire population (over 99%) is supplied by the signals of all public service TV and radio programmes. Broadband coverage shows a low risk, as 92.2% of the population is covered with 30 MBps or more. Nevertheless, broadband expansion has left some rural parts behind (BMVI Atlas 2020, 8). The four largest internet service providers share 88% of the market.

### 3.2. Market Plurality (37% - medium risk)

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



The risks to market plurality in Germany can be traced back to the dominance of digital platforms. Of the five indicators in this area, three show a medium risk and two low risk.

The indicator on **transparency of media ownership** shows a low risk (16%). German law contains specific provisions requiring the disclosure of ownership in the news media. Commercial broadcasters must disclose ownership information in order to apply for and maintain a broadcasting licence (§ 60 (2) MStV), and they must report on plans affecting the ownership structure (§ 60 (6) MStV). Online media companies must make a set of owner-related information transparent in the impressum on their websites (§ 18 MStV). For the press, these transparency obligations are based on the respective Land press law. Political parties must disclose their shareholdings in media companies on the basis of the Political Parties Act. There is no regulation on "ultimate ownership" in the media sector. The term does not exist in German media law. In practice, no problems with ultimate ownership have occurred so far. One reason might be that well-maintained public databases exist. For example there is an online database which contains detailed and up-to-date information on ownership in the media sector. It is organized by the state media authorities.

The indicator **on news media concentration** shows a medium risk (57%). This is because the State Media Treaty contains media-specific rules to prevent a high degree of horizontal ownership concentration in the media sector. The very title of Section 60 of the State Media Treaty ("Securing diversity of opinion in television") shows that media concentration law is stuck in the 1990s and focused on nationwide linear television (MStV 2020). A company is allowed to broadcast an unlimited number of programmes on nationwide television as long as it does not gain any power of forming opinion by doing so. Digital power of forming opinion is not adequately covered. There is a separate regulatory body (Kommission zur Ermittlung der Konzentration im Medienbereich, KEK) with enforcement powers in this area. All state media laws have provisions on cross-shareholdings of press and broadcasting companies to prevent double monopolies. The audience concentration of the top 4 audiovisual media owners in Germany (ProSiebenSat.1, Mediengruppe RTL, ARD, ZDF) is 89%. The market share of the Top4 newspaper owners (Springer, KKR, Media Union, Funke) is 60% and the market share of the Top4 online news media (Bertelsmann, Burda, Springer, United Internet) is 34%.

The indicator on **online platforms concentration and competition enforcement** shows a medium risk (63%). The main access to online news in Germany is equally divided in the total population between direct access to the news content on the homepage of the provider and access via social networks and aggregators. The upcoming 10th amendment of the Act against Restraints of Competition (GWB 2020) aims to adapt competition law to the increasing digitalisation of the market and to help competition enforcement in the platform economy to become more effective (Grünwald 2021). With regard to the impact of activities of public service broadcasters on the media market, the Commission for the Determination of Financial Requirements of Broadcasting Organisations (KEF) ensures that PSM funding does not exceed what is necessary for the provision of the public service remit.

The **media viability** indicator is rated medium risk (47%). The market revenues for 2020 are impacted by the Corona pandemic. Although revenues from advertising went down significantly, public support schemes and alternative sources mitigated the short-term Corona impact. However, it is questionable how sustainable the stabilization is. There are calls for further aid.

Revenues in the TV market are forecast to fall by 17%. In the radio sector, advertising revenues in the first months of 2020 are forecast to fall by 75-80% compared to the previous year, with local providers losing as

much as 90%. The newspaper market is forecast to drop 14% in 2020. But the media increasingly know how to make a profit in the digital sphere. Increases were recorded by digital providers: audio streaming (+21%) and podcast (+56%) and video streaming (+18%). In 2020, press publishers made around 702 million euros in revenue with their digital journalistic offerings, which is 176 million euros more than in the previous year.

Public financial support for private media came from different sources. North Rhine-Westphalia, for example, supported local radio stations with 700,000 euros, and the federal government initially launched an aid package for private radios with 20 million euros. For the first time in German history, state aid for the press has been approved (around 200 millions), although the project was at a point withdrawn. The plan was to make the money available to support print publishers' "digital transformation". At the same time, digital natives saw themselves at a disadvantage and threatened a constitutional complaint against possible funding in April 2021. The plan is remarkable, however, because there is no "direct" press funding in Germany to date.

An extremely important instrument for mitigating the Corona effects in the short to medium term is so-called short-time work. This instrument allows employers to employ fewer workers, and the wage losses on the employee side are largely borne by the state. This also explains why there have not been any significant layoffs to date. However, Corona has noticeably worsened the situation of freelancers which is shown by surveys.

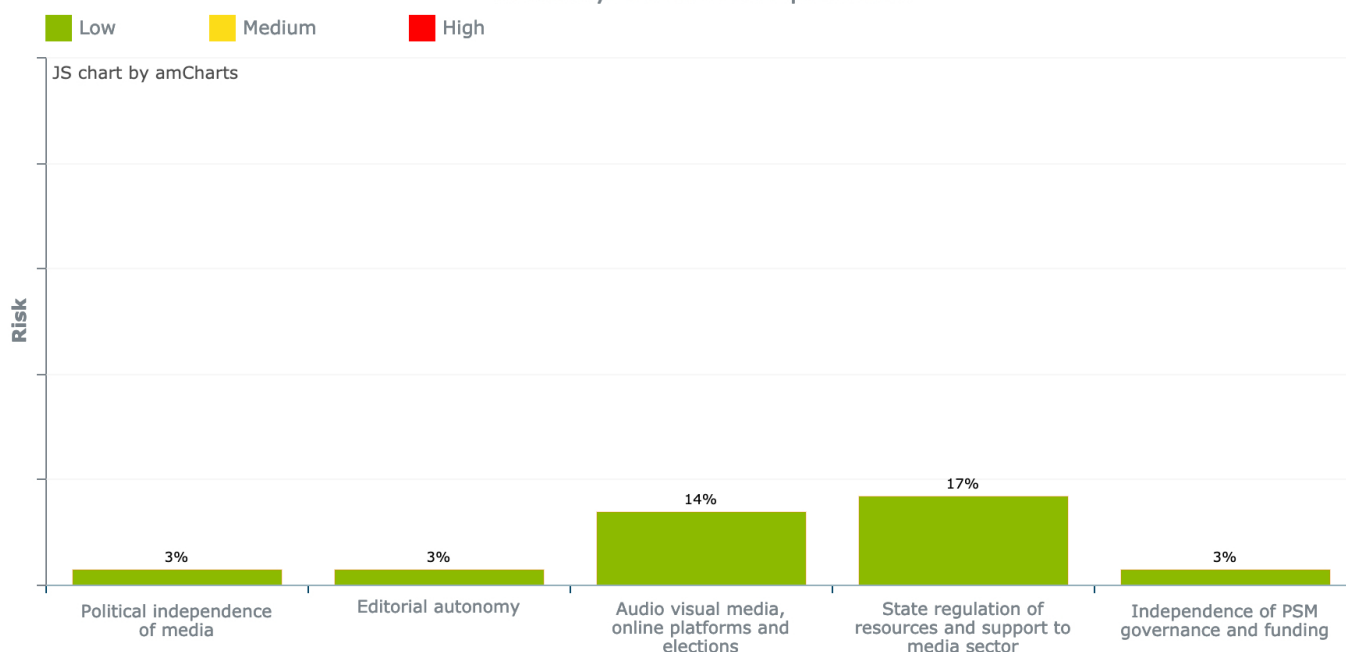
The indicator **commercial & owner influence over editorial content** has a low risk (3%). In Germany, editorial decisions are generally free from commercial or political influence. The German Press Council monitors compliance with the self-regulatory press code. It has instruments at its disposal to effectively counter failures of the press, including commercial influence. Clause 1 of the Press Code<sup>[7]</sup> reads as follows: "Respect for truth, respect for human dignity and truthful information of the public are the supreme imperatives of the press." It becomes more concrete in paragraph 7 of the Press Code, which prescribes the separation of advertising and editorial work.

The Federal Constitutional Court has consistently ruled that the legislature must ensure that " the overall range of domestic programs essentially corresponds to the existing diversity of opinion, that broadcasting is not at the mercy of one or a few social groups, and that the forces under consideration can have their say in the overall programming." This must be regulated by the legislature for public broadcasting, private broadcasting and the press. In the PSB sector, this is done through the legal mandate for "diversity of opinion," controlled by supervisory bodies in which social groups (clubs, unions, associations, etc.) send members. In the private sector, there is also an obligation to have "diversity of opinion" in the programs. This is monitored by the state media authorities; to ensure diversity of opinion, the state media authorities can enact a number of measures, such as installing a "program advisory board" at the respective station.

### **3.3. Political Independence (8% - low risk)**

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

## Germany: Political Independence



Only very low risks can be identified for the area of political independence.

The indicator on **political independence of media** shows a low risk (3%). There are legal safeguards against formal control of broadcast media by political parties. For example, political parties are excluded from the granting of broadcasting licences (MStV)<sup>[8]</sup>. All media laws of the Länder (federal states) contain similar provisions on the incompatibility of certain political positions and offices with broadcasting licences. Following the ruling of the Federal Constitutional Court (BVerfG) in 2014,<sup>[9]</sup> the legal requirements for the composition of all public broadcasting bodies were reformed so that a maximum of one-third of the office holders may be active in political parties. There is no evidence of political control over news channels, digital media, etc. Political parties must disclose their involvement in media (Political Parties Act).

The indicator on **editorial autonomy** shows a low risk (3%). There are no reports of current cases of interference with editorial autonomy. The self-regulatory framework of the German Press Council prescribes independence from political influence and is effectively implemented by all major news media. The high value of editorial independence is always emphasised by the German Press Council. Social media guidelines are in use at all major media houses; they describe the framework for journalists and employees on how far they can go in their social media activities. They aim primarily to limit liability and maintain the corporate ID.

The indicator on **audiovisual media, online platforms and elections** shows a low risk (14%). There are rules on political advertising for TV channels. The broadcasting of political advertising is generally prohibited, except during election campaigns. Six weeks prior to elections airtime must be bookable for all parties participating in an election, according to the principle of graduated equality of opportunity. Airtime is free and additional airtime cannot be bought. Editorial coverage of elections also follows the principle of graduated equality of opportunity. Some public broadcasters have issued specific, self-imposed guidelines regarding airtime and coverage during election periods. For online political advertising, there is no regulation to ensure equal opportunities and transparency in the election campaign. Generally, politicians and parties do not report their spending on online platforms on their own initiative.

The indicator on **state regulation of resources and support to the media sector** shows a medium risk (17%). There is a state law on the allocation of frequencies with detailed rules on priority, procedural rules and legal protection (RStV).<sup>[10]</sup> These rules are effectively implemented and decisions can be reviewed and challenged in court. In Germany, there are no direct subsidies for the media sector (Wissenschaftlicher Dienst 2019). However, in 2021 for the first time in Germany, there has been a discussion on a support package of around EUR 200 million to press publishers. This way, the German state would have directly supported commercial media for the first time. Up to now, the funding has been linked to the delivery of printed newspapers and magazines. Those who have a particularly high circulation, i.e. sell many print subscriptions, would have also received a particularly large amount of money. This, however, would have left digital publishers empty-handed, which is criticised. Partly due to this controversy, the project was initially withdrawn. There are also indirect subsidies in the country. For example, the tax law provides for a reduced VAT rate of 7% (instead of 19%) for press products. There is no reporting obligation on advertising expenditure by the public sector.

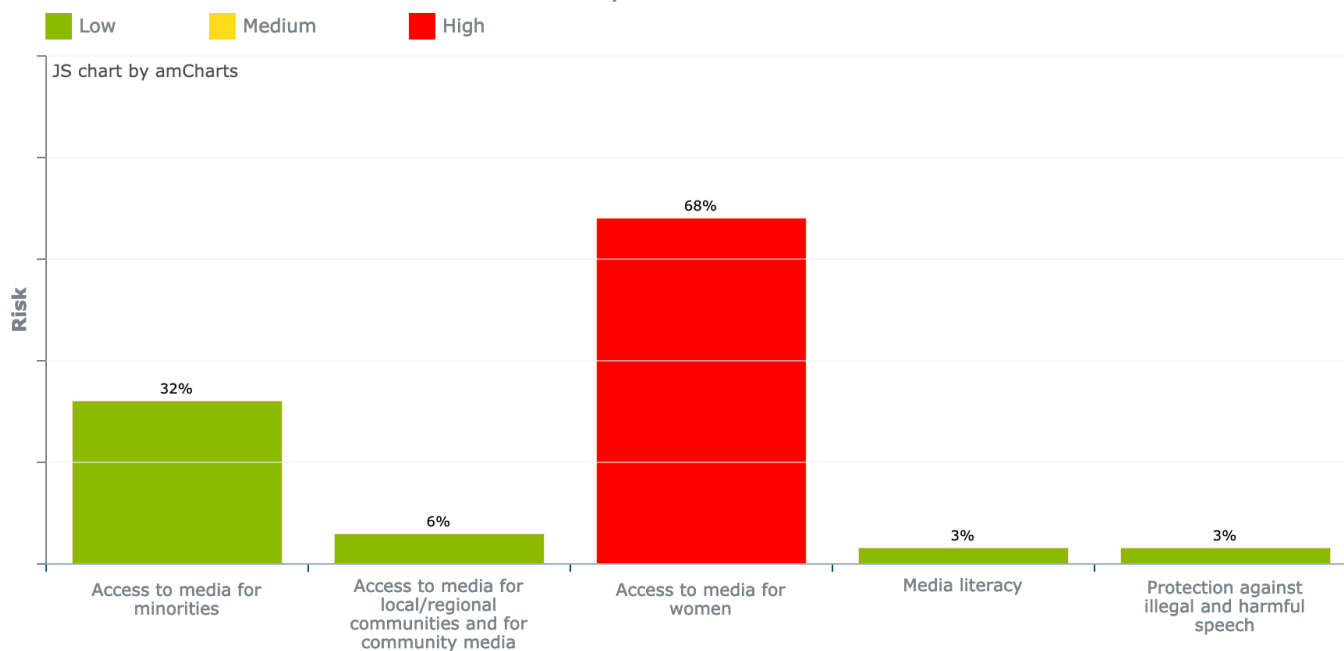
The indicator on **independence of PSM governance and funding** is rated as low risk (3%). The needs-based financing of public service broadcasting is constitutionally protected. The contribution for public service broadcasting is determined in a procedure prescribed by the Interstate Treaty on Broadcasting Financing. First, the broadcasters declare their needs, which are then reviewed by the independent expert body Commission for the Determination of the Financial Needs of Public Service Broadcasters (KEF), which then makes a proposal. The 16 state parliaments must unanimously decide on this proposal. In December 2020, the federal state of Saxony-Anhalt refused to approve an increase of 0.86 euros proposed by the KEF. The public broadcasters failed in the interim legal protection proceedings to assert their claim to funding in line with their needs. In the course of 2021, the Federal Constitutional Court will decide this issue in the main proceedings. The broadcasters' laws provide for fair and transparent appointment procedures for the broadcasters' directors and management. The rules aim at independence from state and political influence.

The broadcasting laws of the Länder (federal states) prescribe procedures for the appointment of directors of PSM. According to almost all state media laws, the directors of the PSM are elected by the media commissions, which in turn must be pluralistic and remote from the state. The commissions are responsible for designing an election procedure, this can be reviewed in the context of a lawsuit before the administrative courts. Dieter Dörr (2020), an expert in media law, assumes that the regulation in Saarland violates the principle of state neutrality, as the director is elected with a qualified majority of the Landtag, and not by a media authority. There are no indications of attempts to influence the appointment or dismissal of intendants or management in public service broadcasting in 2020. Studies confirm that public service offerings are credible and cover socially important issues.

### **3.4. Social Inclusiveness (22% - low risk)**

*The Social Inclusiveness area focuses on the access to media by specific groups in society: minorities, local and regional communities, women and people with disabilities. It also examines the country's media literacy environment, including the digital skills of the overall population. In addition, for the 2021 edition of the MPM, a new indicator has been added to the Social Inclusiveness area in order to assess new challenges raising from the uses of digital technologies: Protection against illegal and harmful speech. Due to this modification of the indicators, comparison with previous editions of the MPM should be handled with extreme care.*

## Germany: Social Inclusiveness



In the area of Social Inclusiveness, the picture is very mixed. In some indicators there are hardly any risks, while in others we can identify some problematic issues.

The indicator for **Access to media for minorities** shows a low risk (32%). Promoting inclusion and social cohesion is the mandate of public service broadcasting. There is no practice of public service broadcasting allocating airtime to external third parties. Instead, the participation of a plurality of groups, including those representing minorities, is ensured by the internal bodies of the public broadcasters (internal pluralism). According to Judith Purkarthofer, Junior Professor at the Universität Duisburg-Essen, minorities that are not recognised by law, in practice, do not have systematic access to airtime on public service broadcasting. However there are several programmes and forms of cooperation with the aim of bringing together groups of minorities and media. DW - Deutsche Welle, Germany's public international broadcaster has national news in 30 languages via social media and its website. Regarding the sub indicator on Access to media for people with disabilities, the new State Media Treaty <sup>[11]</sup> contains revised rules to ensure access for people with disabilities (Part 3, Para. 30(3)). Broadcasters and media libraries/streaming services are required to "steadily and progressively" expand accessible services. Higher requirements are placed on the telemedia of public service broadcasting (Part 1, §7).

The indicator for **Access to media for local/regional communities and for community media** shows a low risk (6%). The State Media Treaty provides that fees and tariffs must be designed in such a way that regional and local offerings can also be distributed on reasonable terms (§ 83 - State Media Treaty). For a long time, there were no direct subsidies for local or regional media, only indirect subsidies by promoting broadcasting technology. For example, during the Corona crisis, both local broadcasting and private radio stations were supported by the federal government to secure their technical costs in North Rhine-Westphalia. However, the State Media Authority in Berlin-Brandenburg is financially supporting local media content for the first time in order to ensure local media diversity, and to counteract local information deficits. The corresponding law was passed in 2020. The subsidy procedure is based on objective criteria. It is financed by the State Media Authority from its share of the broadcasting fee. Regarding, community media, so-called citizens' radio is enshrined in law in four federal states (Bremen, Lower Saxony, North Rhine-Westphalia and Thuringia) and in turn has, for example, access rights to local broadcasting (NRW). There is



no evidence of systematic political censorship, influence or manipulation of these media.

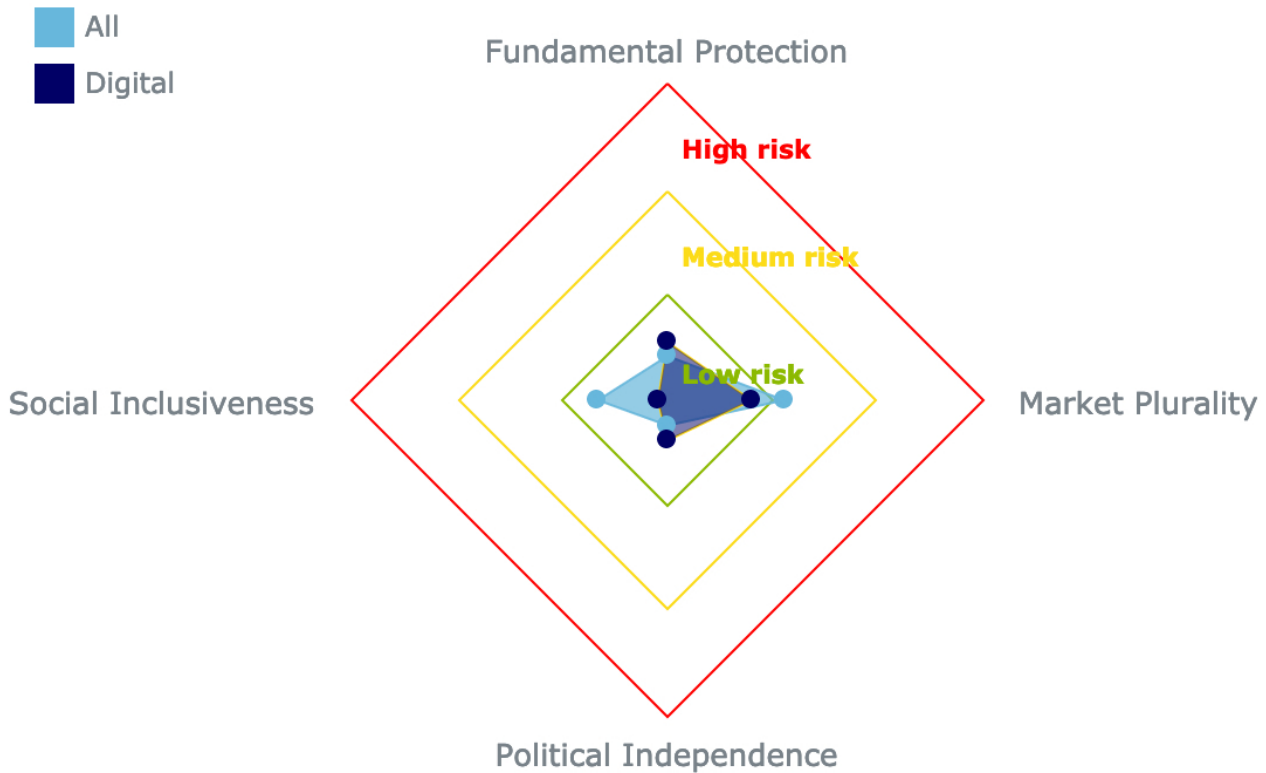
The indicator **Access to media for women** is rated as high risk (68%). This value results mainly from the fact that women are still significantly underrepresented in management positions. The figures show that equality has not been realised in all areas (ProQuote 2019): In the newspaper sector, the daily newspaper "taz" is the only paper that has achieved equal representation. Some public broadcasters such as Deutsche Welle achieve a weighted female representation of 51.9% according to the results of a recent study, but the management levels of smaller broadcasters such as Radio Bremen (32.2%) are still predominantly male. Three out of 13 director posts at public broadcasters are held by women. Evaluations of publicly available information on top management showed that in 2018, the proportion of women at the Mediengruppe RTL was 21.4 % and at ProSiebenSat.1 19.8 % (ProQuote 2018). A recent study examined the gender distribution of experts in Corona reporting. On TV, the share of female experts was 22%, in online reporting around 7%. Female doctors interviewed on TV accounted for 20%. Other data show that women are underrepresented as experts or guests on news programmes or political talk shows (Prommer, Linke 2019). The current ARD guidelines promise "systematic efforts" to integrate more female experts and guests in talk shows.

The indicator on **Media literacy** shows a low risk (3%). The promotion of media literacy is a statutory task of the state media authorities and is financed by the broadcasting contribution. According to the State Media Treaty, "media literacy for all generations and minorities" (Art. 30(3)) is to be promoted and "projects to promote media literacy can be financially supported" (Art. 112(1)). Media literacy activities are widespread in Germany. Hate speech is currently a major focus of these activities. The state media authorities also have several programmes on disinformation. In the expert interview Dr. Peter Nowotny of the Osnabrück University sees still development potential for promoting media literacy in schools. 70% of the population have at least basic digital knowledge <sup>[12]</sup>.

The indicator **Protection against illegal and harmful speech** shows a low risk (3%). This low value is explained by the fact that Germany has already enacted legal regulations for both problems. The Network Enforcement Act <sup>[13]</sup> aims to quickly remove disinformation and hate speech content from social networks. In practice, it focuses on hate speech. It requires social networks to quickly remove illegal content such as hate speech. It does not explicitly refer to the protection of ethnic and religious minorities. But an amendment to the law puts this in focus. Then, networks must also provide information on the extent to which groups of people are particularly frequently affected by hate speech (Kalbhenn/Hemmert-Halswick 2020). The new State Media Treaty of 2020 contains three new instruments aimed at disinformation. For example, journalistic due diligence obligations now also apply to influencers, YouTubers, podcasters, etc. In addition, it can be enforced with a new supervisory structure (§ 19 MStV). A labelling obligation for social bots on social networks is also new (§ 18 III MStV 3). Another labelling obligation concerns political advertising on the internet (§ 22 MStV). The new transparency and non-discrimination rules for recommendation algorithms of media intermediaries such as Facebook and GoogleSearch could also have a slowing down effect with regard to disinformation (§ 93 MStV). However, their effectiveness has not yet been proven, as the regulations have only been in force for a short time and still have to be concretised by statutes. The state media authorities have several programmes on disinformation in the area of media literacy. Public service broadcasting is also active in this area with fact checks and has the constitutional mandate to be a "counterweight" against such offerings on the internet.

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

### Germany: Media Pluralism Risk Areas - Digital



JS chart by amCharts

**Media pluralism in the online environment** faces higher risks compared to the overall risk assessment. This results primarily from a lack of legislative efforts to adapt the laws in such a way that online harms can be effectively combated. In 2018, the Federal Constitutional Court had summarised its view as follows: "The digitalisation of the media and in particular the focus on Internet networks and platforms, including social media, fosters tendencies of concentration and monopolisation in respect of content providers, disseminators and intermediaries. Where services are for the most part financed through advertising, they do not necessarily foster journalistic quality; even on the Internet, the large audiences sought by the advertising industry can only be reached by way of programmes that appeal to the masses. In addition, there is the danger that content can be deliberately tailored to users' interests and preferences, also by means of algorithms, which leads to the reinforcement of the same range of opinions. Such services do not aim to reflect diverse opinions; rather, they are tailored to one-sided interests or the rationale of a business model that aims to maximise the time users spend on a website, thus increasing the advertising value of the platform for its clients. In that respect, results shown by search engines are also pre-filtered, they are in part financed through advertising, and in part depend on the number of clicks. Furthermore, there is an increase in non-journalistic providers that do not prepare and refine information in a journalistic manner."

In 2020, the Interstate Media Treaty came into force. It replaces the 30-year-old Interstate Broadcasting Treaty and for the first time imposes obligations on digital gatekeepers such as search engines, app stores, smart speakers and social networks. In addition, it introduces journalistic due diligence obligations for all

distribution channels of information offerings (Instagram, YouTube, TikTok, etc.).

**Freedom of expression online** shows a low risk. The German constitution makes no distinction between online and offline expression. The debate in Germany focused for a long time on the Network Enforcement Act, which obliges social networks to quickly delete obviously illegal content. It was criticised that this legislation would lead to overblocking and would have a chilling effect, thus endangering freedom of expression on the internet. However, these negative effects have not been proven and the law has been evaluated positively (Eifert 2020). The amendment of the law puts an emphasis on the protection of ethnic and religious minorities. Networks will then also have to provide information on the extent to which these groups of people are particularly frequently affected by hate speech. In future, users should be able to take action more easily against decisions made by social network providers - for example, after their post has been deleted (Kalbhenn/Hemmert-Halswick 2020). The state does not filter, block or remove online content arbitrarily or systematically. Nor is there any evidence that ISPs filter arbitrarily. The Federal Constitutional Court has already indicated in summary proceedings (Bundesverfassungsgericht 2020) that it considers Facebook to be a dominant platform, and the main proceedings could shed light on what this means for fundamental rights like freedom of expression on these platforms.

In general, individuals have **access to legal remedies** to address rights violations, online and offline. With regard to rights violations on the internet, there are regular enforcement problems; with regard to hate speech, projects are underway to do so. In Bavaria and North Rhine-Westphalia, for example, the judiciary and the media want to take more efficient action against authors of hate speech on the internet. The aim is to be able to prosecute the perpetrators more consistently.

In Germany, too, there is fierce debate about how the new **EU Copyright Directive** could harm freedom of expression ("upload filters"). However, an implementation of the directive in conformity with the constitution is likely. The indicator on "Journalistic profession, standards and protection" in particular, its sub-indicator "Journalism and data protection" shows a low risk. Journalists, however, note an increasing threat to their **digital security** from hate speech.

Germany used - through national legislation - the exemption possibility for freedom of expression and journalistic activities provided for in the General Data Protection Regulation. This was mainly done within the framework of the federal press laws and in a way that is compatible with Article 10 (2) of the European Convention on Human Rights.

As **internet access** is at a medium risk, with an average internet connection in the 25th percentile and a market share of the top 4 internet service providers of 88% indicating a rather high risk, the indicator **Universal reach of traditional media and access to the internet** overall shows a medium risk. Broadband coverage shows a low risk, as 92.2% of the population is covered with 30 MBps or more. Nevertheless, broadband expansion has left some rural parts behind. This issue is more urgent due to pandemic homeschooling and home office.

The indicators on the online dimension of **market plurality** point to a medium risk. No major problems can be identified in the area of transparency. The KEK (Commission on Concentration in the Media) has a publicly accessible database on the ownership of media companies. It is kept up to date. The risks are in the indicator of **news media concentration**, which indicates a medium risk. The Media Concentration Act aims to prevent the domination of opinion power and to ensure diversity of opinion, but is tailored to the broadcasting sector of the 1990s. The KEK, which is responsible for monitoring these rules, calls for an

adjustment and proposes an "overall media market model". There is no uniform data on usage figures for "digital native" news media in Germany. Digital native news media are relatively weak in Germany, as traditional media brands remain strong.

The indicator on **online platform concentration** is medium risk. Half of the population that access information online says they consume online news primarily via algorithm-driven offerings. The proportion of algorithmic and data-driven access to news offerings is higher in the 18-24 age group (Hölig/Hasebrink, 2020). Google, Facebook, Whatsapp and YouTube account for 52% of unique audiences. In 2019, the German Federal Cartel Office initially classified Facebook as a dominant company in the social networking sector and considered an abuse of dominance through inappropriate data processing to be proven. Therefore, it prohibited Facebook from combining the data of Facebook and Whatsapp (Bundeskartellamt 2019, confirmed by the Federal Supreme Court). The 10th GWB amendment (Act against Restraints of Competition) will enable the cartel authorities to take factors that are of particular importance in the digital environment (intermediary power, data economy) into account in **competition enforcement** (GWB 2020; Grünwald 2021). The amendment is intended to enable the cartel authorities to assess the market position of companies in the context of abuse control and merger control. Germany does not have a "digital tax". The State Media Treaty responds to the power of digital platforms with transparency requirements and prohibitions on discrimination. A new design requirement is that media intermediaries such as Facebook and Google News must keep their relevance criteria and the functioning of their algorithms available. Journalistic-editorial content must not be discriminated.

**Media viability** is exposed to a medium risk. In many respects, however, 2020 is an exceptional year. The decline in advertising revenues is estimated at 13.8% for 2020 compared to 2019 (PwC 2020). In the meantime, the internet streaming market shows the highest growth rates in revenue development. Pay VoD providers grew by 28% in 2020 compared to the previous year (MP 2020). In principle, many media companies in Germany are succeeding in generating other **sources of revenue outside the traditional revenue streams**. For example, the Frankfurter Allgemeine Zeitung, one of the largest national newspapers, has launched several online applications (apps), each with a subscription payment model to unlock content. The publishing house Axel Springer states that it already generates 87% of its revenue with digital business, whereby these are then not only journalistic products but also so-called classified pages. Almost all publishers have launched podcasts. **There are also regulatory incentives to strengthen the profitability of media**. The traditionally lower VAT rate for press products will also apply to electronic press products. Editorial decisions are **free from commercial and ownership influence**. Rules in this regard apply equally online and offline. An example: The German Press Code, supervised by the German Press Council, is an instrument of self-regulation. It also applies to online news media. Several laws oblige content creators to **label sponsored content**. The federal government wants to support press publishers with 200 million euros for digitisation. Critically, small (already) digital publishers will then go away empty-handed.

The risk in the area of **political independence** in the online sector is low. The large digital media providers in Germany have developed from the old media outlets. The digital native media, 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 area is considered a low risk, as guidelines for dealing with social media exist in a wide range of outlets. However, the State Media Treaty has extended journalistic due diligence to this area and established a differentiated supervisory regime (Holznagel/Kalbhenn 2020).

In the online dimension, the variables in the indicator on **audiovisual media, online platforms and elections** almost all show high risk. The interstate treaty on media contains a new obligation to label

political advertising online. In Germany, apart from the voluntary commitments of internet companies at the EU level, there are no regulations to ensure equal opportunities and transparency of online political advertising in election campaigns. There are no rules for political parties, candidates and lists running in elections to transparently report on campaign spending on online platforms. There is no discernible transparency from parties or individual politicians. Reportedly, all parties use micro-targeting ads.

There is a low risk associated with the **independence of funding and governance of public service broadcasting**, as the law provides that funding adequately covers the public service online mandate without distorting competition with private media players. The online mandate of the public service broadcasters is formulated strictly in accordance with constitutional requirements. The financing of the online activities follows the financing procedure prescribed by law: The broadcasters must declare their needs, which are then reviewed by KEF and submitted to the state parliaments for approval. This procedure ensures that the public broadcasters, including their digital activities, are financed according to their needs.

There are a large number of **online media literacy** projects. Nevertheless, Dr. Peter Nowotny of the Universität Osnabrück said in the expert interview that he thinks that the speed of harmful changes in the mass media is significantly higher than the speed of counteractive measures of media literacy.

With the Interstate Media Treaty<sup>[14]</sup> and an amendment to the Network Enforcement Act<sup>[15]</sup>, there is a new set of legal instruments to **protect against hate speech and disinformation online**. The Network Enforcement Act aims to quickly remove disinformation and hate speech content from social networks. In practice, it focuses on hate speech. It requires social networks to quickly remove illegal content such as hate speech. It does not explicitly refer to the protection of ethnic and religious minorities. But an amendment to the law puts this in focus. Networks must also provide information on the extent to which groups of people are particularly frequently affected by hate speech (Kalbhenn/Hemmert-Halswick 2020). The new State Media Treaty of 2020 contains three new instruments aimed at disinformation. For example, journalistic due diligence obligations now also apply to influencers, YouTubers, podcasters, etc. In addition, it can be enforced with a new supervisory structure (§ 19 MStV). A labelling obligation for social bots on social networks is also new (§ 18 III MStV 3). Another labelling obligation concerns political advertising on the internet (§ 22 MStV). The new transparency and non-discrimination rules for recommendation algorithms of media intermediaries such as Facebook and GoogleSearch could also have a slowing down effect with regard to viral effects regarding disinformation (§ 93 MStV).

## 5. Conclusions

The **results of the MPM 2021** show rather low risks for media pluralism in Germany on average. The Corona pandemic led to massive drops in advertising revenues for large sections of the private media. These were mitigated, at least in the short to medium term, by government aid, the instrument of short-time work, and digital revenue sources. How sustainable this will be is difficult to forecast. Germany still benefits from strong public service broadcasting alongside the private media. However, the large digital communication platforms are still proving to be a threat to media diversity. They tap into advertising budgets, are gatekeepers for news and information and are channels for disinformation. Comparatively early on, German lawmakers began to introduce legal regulations to counter these risks. The State Media Treaty, for example, prescribes transparency and non-discrimination for media intermediaries (e.g. social networks, search engines) for the first time in order to protect media diversity. Journalistic due diligence obligations are extended to all distribution channels of information services (Instagram, YouTube, etc.). The Network Enforcement Act also receives an update and takes a look at community standards of platforms and automated deletions. The German NetzDG and the MStV anticipate many regulatory points of the draft Digital Services Act and can serve as a study project. However, there are still risks, especially in the online sphere, against which consistent legislation would have to be positioned.

To prevent (online) harms in the area of **fundamental protection**, we strongly recommend:

- Providing training and increasing funding for authorities and courts, so that **hate speech online** can be consistently prosecuted.
- **Broadband expansion** must be accelerated, especially in rural areas.

To prevent (online) harms in the area of **market plurality**, we strongly recommend:

- **Local media diversity** is decreasing and must be consistently counteracted, especially in economically weak regions.
- To ensure media pluralism, **further new design specifications („Designvorgaben“)** can be imposed on the major digital communications platforms. For example, that algorithms prioritise public service content.
- **Media concentration law** must be updated to include, for example, social networks and video streaming platforms in the regulatory framework.
- The effectiveness of the **new rules in competition law** relating to online platforms must be carefully evaluated.
- The creation of a **digital public service platform at European level** (Public Open Space) could help level the playing field between digital platforms and the media.

To prevent (online) harms in the area of **social inclusiveness**, we strongly recommend:

- The **integration mandate of public service broadcasting** must be consistently implemented in the digital sphere.
- The opportunities of digitisation must be used to **strengthen social inclusiveness and give minorities, women and people with disabilities further access to media**.

To prevent (online) harms in the area of **political independence**, we strongly recommend:

- Transparency and fairness in online election campaigns must be ensured as soon as possible,

especially on online communication platforms, such as social media

## 6. Notes

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- [3] Basic Law for the Federal Republic of Germany, <https://www.btg-bestellservice.de/pdf/80201000.pdf>
- [4] Federal Act Governing Access to Information held by the Federal Government (Freedom of Information Act), [http://www.gesetze-im-internet.de/englisch\\_ifg/index.html](http://www.gesetze-im-internet.de/englisch_ifg/index.html)
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## Annexe I. Country Team

First name	Last name	Position	Institution	MPM2021 CT Leader
<i>Bernd</i>	<i>Holznagel</i>	<i>Professor / Director of ITM</i>	<i>University of Münster, ITM</i>	X
<i>Jan Christopher</i>	<i>Kalbhenn</i>	<i>Lawyer/ Managing Director of ITM</i>	<i>University of Münster</i>	X

## Annexe II. Group of Experts

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

First name	Last name	Position	Institution
<i>Maren</i>	<i>Umer</i>	<i>Professor</i>	<i>Hochschule für Medien, Kommunikation und Wirtschaft, Köln</i>
<i>Judit</i>	<i>Bayer</i>	<i>Guest Professor and Schuhman Fellow</i>	<i>University of Münster</i>
<i>Thomas</i>	<i>Wierny</i>	<i>Advisor</i>	<i>Media Authority North-Rhine-Westphalia</i>
<i>Roman</i>	<i>Portack</i>	<i>CEO</i>	<i>German Press Council</i>
<i>Alicia</i>	<i>Damberg-Jänsch</i>	<i>Law Deapartment</i>	<i>Deutsche Welle</i>
<i>Ralf</i>	<i>Heimann</i>	<i>Editor in Chief</i>	<i>RUMS Local Media Platform</i>

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