

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 2021

Country report: Germany

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Research Project Report

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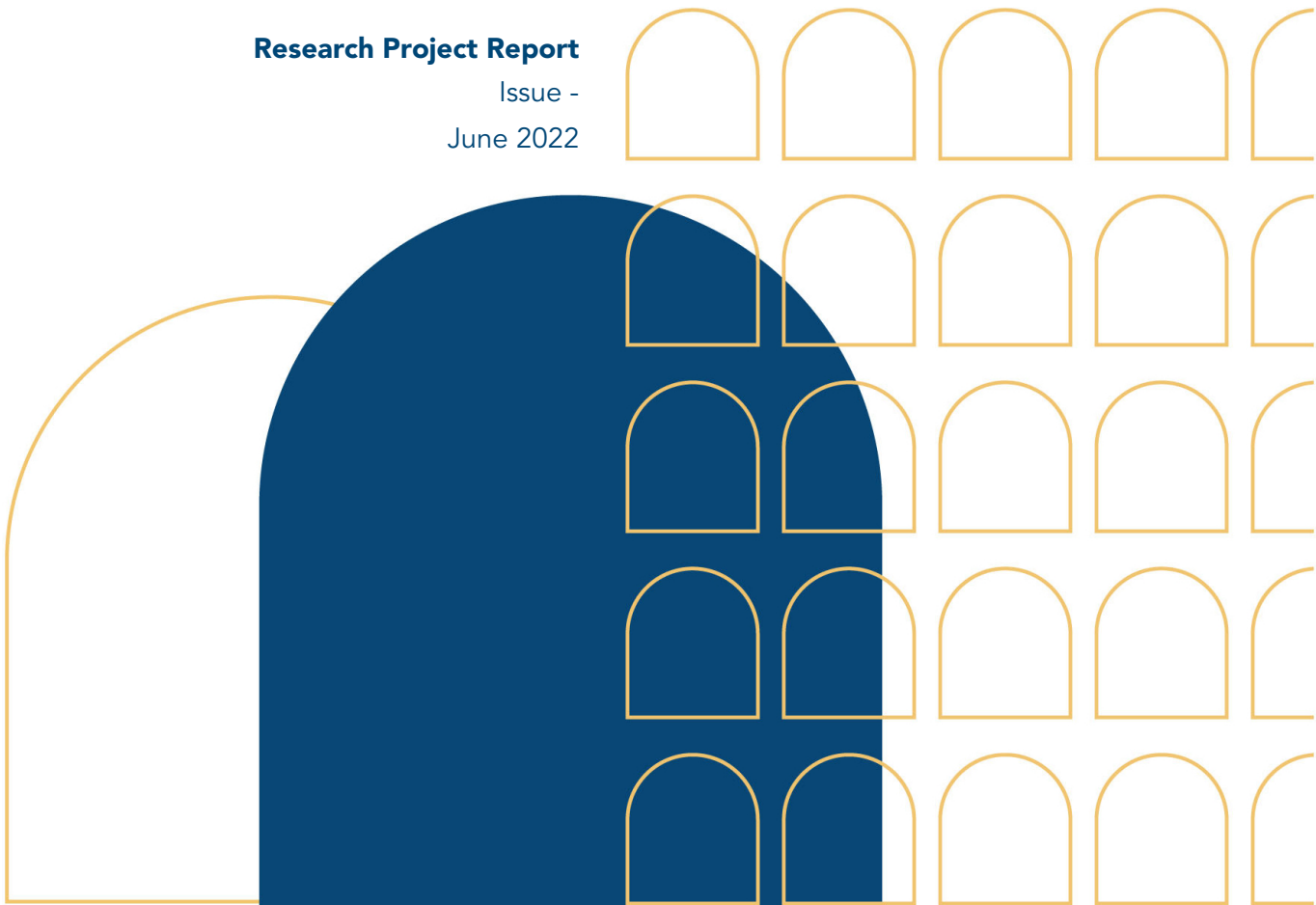


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1. About the project

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 2021. 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 notes

Authorship and review

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 is carried out centrally by the CMPF team. The research is based on a standardised questionnaire that was developed by the CMPF.

In Germany the CMPF partnered with Bernd Holznagel and Jan Christopher Kalbhenn (University of Münster, ITM), 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).

Fundamental Protection	Market Plurality	Political Independence	Social Inclusiveness
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 being intertwined with the traditional media and the 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 and 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, in order 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, MPM2022 scores may not be fully comparable with those in the previous editions of the MPM. For more details regarding the project, see the CMPF report on MPM2022, available on: <http://cmpf.eui.eu/media-pluralism-monitor/>.

2. Introduction

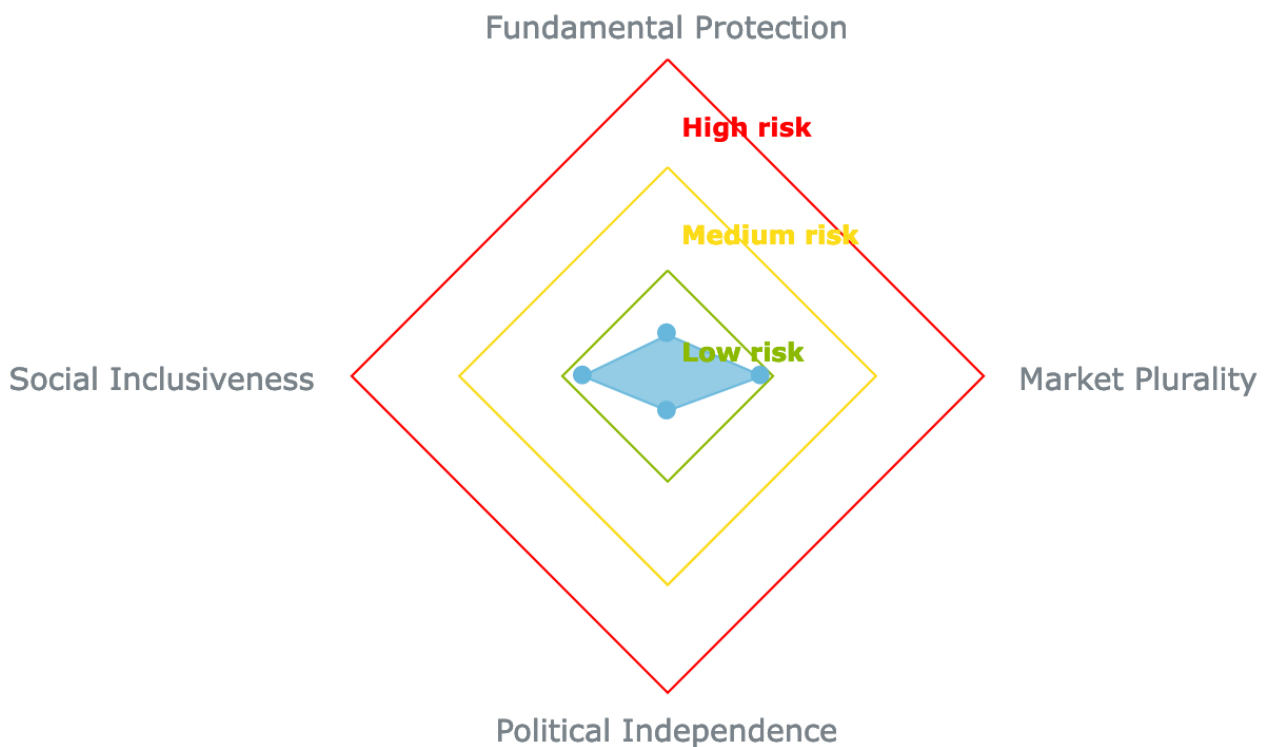
- **Country overview:** Since the German reunification in 1990, the Federal Republic of Germany has consisted of 16 federal states. Germany has a population of 83.1 million and has a comparatively high population density. The average age in Germany is at 44.6 years. The federal state is characterized by the fact that responsibilities for certain subject areas are divided between the federal government or the individual states. In many areas of state competence, this requires close cooperation between the federal government and the states or between the states themselves. During the COVID-19 pandemic, there were repeatedly divergent regulations on pandemic control in the individual federal states. For the states, media legislation is an important matter. Each state has its own state media law and press law. Uniform federal regulations can be found, for example, in the Interstate Media Treaty (here the states conclude a state treaty) and the Network Enforcement Act (federal law). With a gross domestic product of around 3,570 billion euros, Germany is the largest economy in Europe and the fourth largest worldwide; after the USA, China and Japan. Compared to the previous year, an increase of 2.9% was recorded. The German state countered the economic threats of the COVID-19 pandemic with state aid in many areas, and the labor market was stabilized with the instrument of "short-time allowance". Employers can reduce working hours, employees receive state compensation payments. There are tax breaks in many areas. Targeted subsidies are available above all in the cultural and event sector (Bundesregierung 2021). Government aid can be estimated at over 120 billion euros for the total period of the COVID-19 pandemic to date (Bundesfinanzministerium 2021). This includes the costs of vaccination campaigns, the provision of free rapid test stations or the purchase of medical masks.
- **Languages:** German is the official language and is used by the national media. In addition, some smaller languages are recognized. These include Danish, Sorbian, Frisian and Low German.
- **Minorities:** Germany has an ancient history of immigration and continues to consider itself a country of immigration today. Over 26 percent of the population has an immigrant background. Primarily do immigrants from EU countries come from Poland, Romania and Italy. Non-EU migration backgrounds are primarily Turkish, 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.
- **Political situation:** After 16 years of Germany being governed by Chancellor Angela Merkel (CDU), the SPD has become the strongest force in 2021 and now provides the Chancellor who is Olaf Scholz. He took office on December 8, 2021 as the ninth Chancellor of the Federal Republic of Germany. His party, the Social Democratic Party of Germany (SPD), formed a coalition with the Free Democratic Party (FDP) and Alliance 90/The Green Party (Bündnis 90/Die Grünen). The Christian Democratic Union (CDU), previously the strongest party for 16 years, now takes on the role of opposition.
- **Media market:** Germany has a large media market. As their primary source of information on political topics, German adults aged 14 and over use TV (55%), newspapers (30%), radio (46%) and the Internet (52%). Among 14- to 29-year-olds, non-linear offerings have a higher daily reach than linear TV (Die Medienanstalten 2021). In terms of daily video usage in relation to the total population, linear TV remains at the first place with 71 %. Only 30% of video usage is attributable to non-linear offerings such as station media libraries and video streaming services. It is notable, however, that the ratio is

reversed among 14- to 29-year-olds where linear TV accounts for only 31%, video streaming services such as Netflix and Amazon (50%) and YouTube (26%) account for 58% (Kupferschmitt/Müller 2021). In 2021 (excluding public broadcasting), revenues are expected to grow by EUR 922 million to a total of EUR 14.3 billion. This corresponds to growth of 6.9 percent. For audiovisual advertising revenues, forecasts for 2021 assume a total volume of EUR 6.04 billion (+ 6.5 %). Revenues in this area are slightly above the pre-crisis level (2019: EUR 6.02 billion). This is primarily due to growth in non-linear streaming revenues (VAUNET 2021).

- **Regulatory environment:** The German media system is characterized by the coexistence of public and private broadcasting (dual system). In addition to nine (regional) public broadcasters, there is one nationwide television station, ZDF, and a nationwide radio station, Deutschlandradio. While public broadcasting is organized internally and 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 organized on an externally pluralistic basis, although most newspapers are the only ones reporting about their country. In addition, the press and broadcasting control each other and expose misconduct in the sector. An example of this is the reporting from May 2022 by the daily newspaper Die Welt (Springer). It revealed that one of the co-editors of the Hamburg-based weekly Die Zeit had warned the Hamburg-based Warburg Bank against critical reporting on the bank's involvement in the so-called Cum-Ex scandal (illegal tax tricks). The co-editor denies having influenced the reporting. Important impulses for the further development of the media regulatory framework often come from the Federal Constitutional Court. The regulatory framework increasingly takes digital platforms into account. This is the case, among other things, because the AVMS Directive has been transposed into German law and because Germany has anticipated aspects of the EU legal acts currently under discussion (DSA/DMA) with its additional media law legislation. For example, the Interstate Media Treaty of 2020 stipulates that 'media intermediaries' such as social networks and search engines must fulfil obligations regarding transparency, non-discrimination and the labelling of social bots. Political advertising must be labelled as such (Holznagel/Kalbhenn 2021). The Network Enforcement Act was amended in 2020 and aims to tighten the obligations of social networks to more effectively combat hate speech on the Internet (Hemmert 2021). The Protection of Minors Act was also amended in 2021 to better protect against online harm. Within the framework of these three laws (Medienstaatsvertrag, Netzwerkdurchsetzungsgesetz, Jugendschutzgesetz) the AVMS Directive was transposed in 2020/2021. Also in 2021, the Copyright Directive was implemented. The planned Digital Services Act contains many elements from the Interstate Media Treaty and the Network Enforcement Act. According to that, many questions about primacy of application and supervision do arise.

3. Results of 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 2022, the risks to media pluralism in Germany are rather low. Nevertheless, some indicators point to a medium risk for media pluralism and thus cannot be disregarded.

The **Fundamental Protection** are scores **low risk, at 13%**. All indicators show a low risk. Compared to last year (14%), there has been little change in this area. The highest risk indicator here is *Journalistic profession, standards and protection*. This is because violence against journalists is on the rise - online and offline. The indicator 'Universal reach of traditional media and access to the internet' saw the greatest change.

The **Market Plularity** area is at the **upper level of low risk (30%)**. Compared to the previous year, this is an improvement of 7%. 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 is the lack of effect of the current media concentration law, combined with an increasing concentration of power in some areas. The decline in local offerings is one reason why the *Media viability* indicator has a medium risk rating. Risks in the area of 'Transparency of media ownership' are very low.

In the area of **Political Independence (11%)**, all indicators have a low risk rating. Compared to the previous year (8%), there are no significant changes to report. However, the area of *Audio visual media, online platforms and elections (20%)*, and the area of *State regulation of resources and support to media sector (25%)* have significantly higher risks than the other indicators (all 3%). The former is at higher risk in part because there are no rules for political advertising in the online sector, not even during campaigns. The

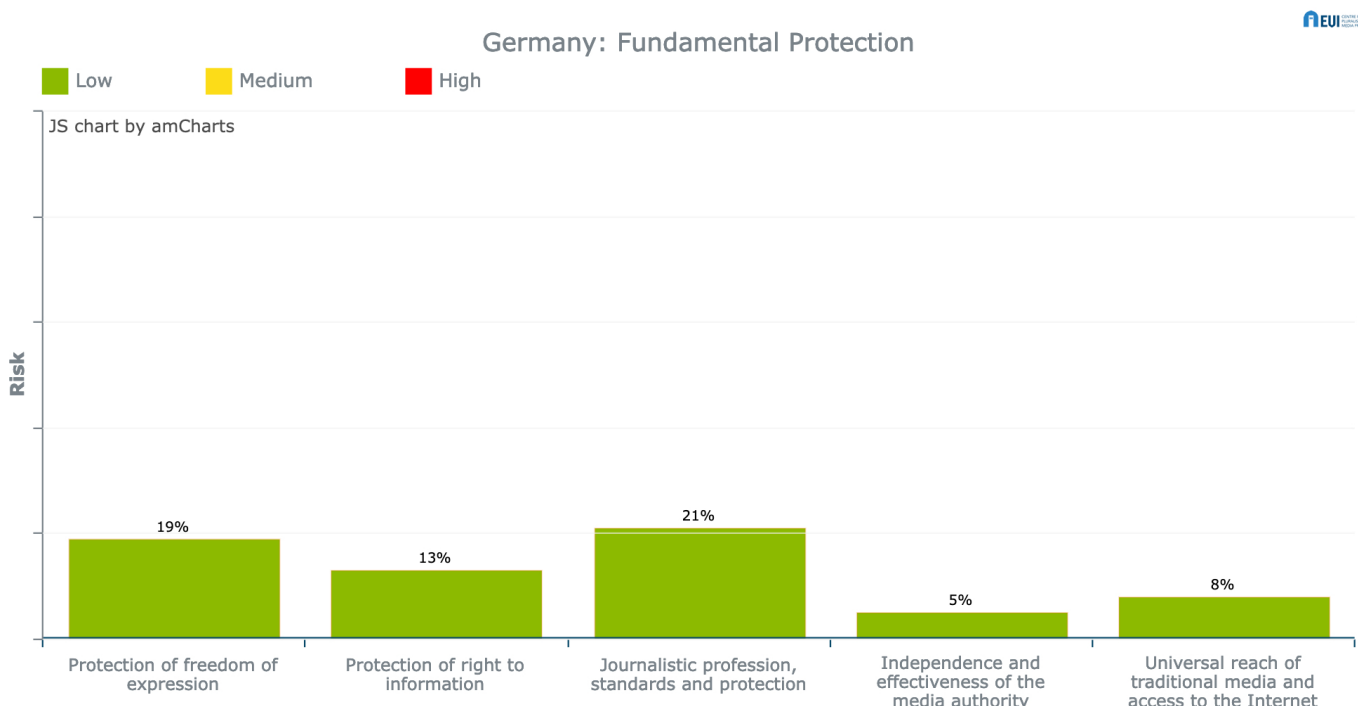
second indicator is higher because the public sector has no legal obligation to report on advertisement expenditure.

In the area of **Social Inclusiveness (27%)**, there was a slight increase in risk compared to the previous year (22%). Two indicators show a medium risk: *Access to media for minorities* presents the highest risk in the area (47%), followed by *Access to media for women (43%)*. In both areas, there are initiatives and legislative activities, but it has been difficult to measure their impact so far. For example, although the number of women occupying management positions in media companies remains low, it has increased since last year. This positive trend explains why the risk level for the indicator *Access to media for women* has significantly decreased (from 68% to 43%) and shifted from the high risk range to medium.

In particular, the indicators on **Risks in the digital sphere** mostly show higher risks. There is a lack of effective legal precautions against online risks. This applies, for example, to online political advertising during election campaigns and to the Media Concentration Act.

3.1. Fundamental Protection (13% - 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 the competence to regulate the media sector, and the reach of traditional media and access to the Internet.



Fundamental Protection in Germany is well developed. Freedom of expression and the right to information are guaranteed in the Constitution, and legal protections are effectively implemented. All five indicators show low risks with an overall risk of 13% compared to 14% in the previous year.

According to the evidence gathered, Germany's guarantee of **Freedom of speech** poses just a minimal threat to media plurality (19 %). This is a modest increase over the previous year (15 %). Germany accepted both the International Covenant on Civil and Political Rights^[1] and the European Convention on

Human Rights^[2] without making any reservation regarding the guarantee of freedom of expression. The German government does not censor the Internet arbitrarily. Article 5 of the Constitution^[3] guarantees that every individual has the right to freely express and disseminate their opinions in voice, writing, and images, as well as to obtain information from generally accessible sources. The same provision also ensures press freedom, as well as freedom of radio and cinema reporting. The Act to Combat Right-Wing Extremism and Hate Crime^[4] intends to make it easier to punish hate crimes committed by right-wing extremists, particularly those committed online (Bredler/Markard 2021; Schemmel/Steinl 2021). Certain offenses have been adapted to the use in Internet communication. Meanwhile, the NetzDG^[5] has been called "state-of-the-art" platform regulation (Cornils 2021). It was revised in 2020 and among others a procedural requirement for deletions was incorporated (Hemmert 2021). Numerous provisions of the NetzDG have been included to the Digital Services Act (Kalbhenn/Hemmert-Halswick 2021).

Additionally, the signal for the **Right to information** protection indicates a minimal danger (13 %). 2021 did not bring much new in this area. Germany has so far failed to implement the EU directive.^[6] The implementation deadline expired on December 17, 2021. The EU Commission has initiated infringement proceedings. In general, every citizen has the right under the 2006 Freedom of Information Act (IFG)^[7] to request information from government authorities. Additionally, the majority of federal states have comparable legislation stating that individuals have the right to request and to get information (exceptions: Bavaria, Lower Saxony and Saxony). Simultaneously, it safeguards some public and private interests, which may justify information concealment. Without specific statutory control, the right to information can be enforced in court and can even be drawn from the constitution. The courts have not yet shown systematic or arbitrary refusals to provide information. However, there is a tendency towards transparency legislation that requires proactive disclosure of specific information (example: Hamburg). Additionally, several sector-specific transparency requirements exist, for instance, in environmental and energy law.

Overall, the indication for **Journalistic profession, standards and protection** indicates a minimal risk (21 %). The number of violent attacks against journalists has increased significantly in recent years. In 2020, 69 attacks were reported, while 95 were reported in 2021 (Europäisches Zentrum für Presse- und Medienrecht 2021). In one in two of the 95 events, insults were exchanged. 27 occasions, media professionals were assaulted physically. Nine of these instances included journalists who had significant injuries that need medical treatment or hospitalization. Demonstrations are especially perilous and account for around 80% of assaults. Regional variances are significant: the majority of journalist attacks happened in Berlin, whereas the second most hazardous region was Saxony. There were ten assaults in Bavaria (BR 24 2021). The Commission has issued a draft directive on SLAPP (Strategic Lawsuits against Public Participation). In our opinion, SLAPP in Germany is not a problem that requires a particular regulation. The number of potential SLAPP lawsuits is small and has been settled appropriately in court. According to a 2019 study, lawyers cannot prevent reporting by sending advance threatening letters (Gostomzyk/Moßbrucker 2019). Journalism is an open profession in Germany. There is no requirement for a license or comparable document. Journalists have certain privileges. They have the right to anonymity and the right to decline to testify in criminal, civil, or administrative processes. They have a particular right to information under press laws, are entitled to attend public events, and are immune from search and seizure. In exchange, they are subject to press law duties. To begin, they must adhere to journalistic due diligence, which, according to the Interstate Media Treaty^[8], also applies to social media, podcasts, and other forms of media (Section 19 MStV). However, the growing violence directed against journalists is concerning.

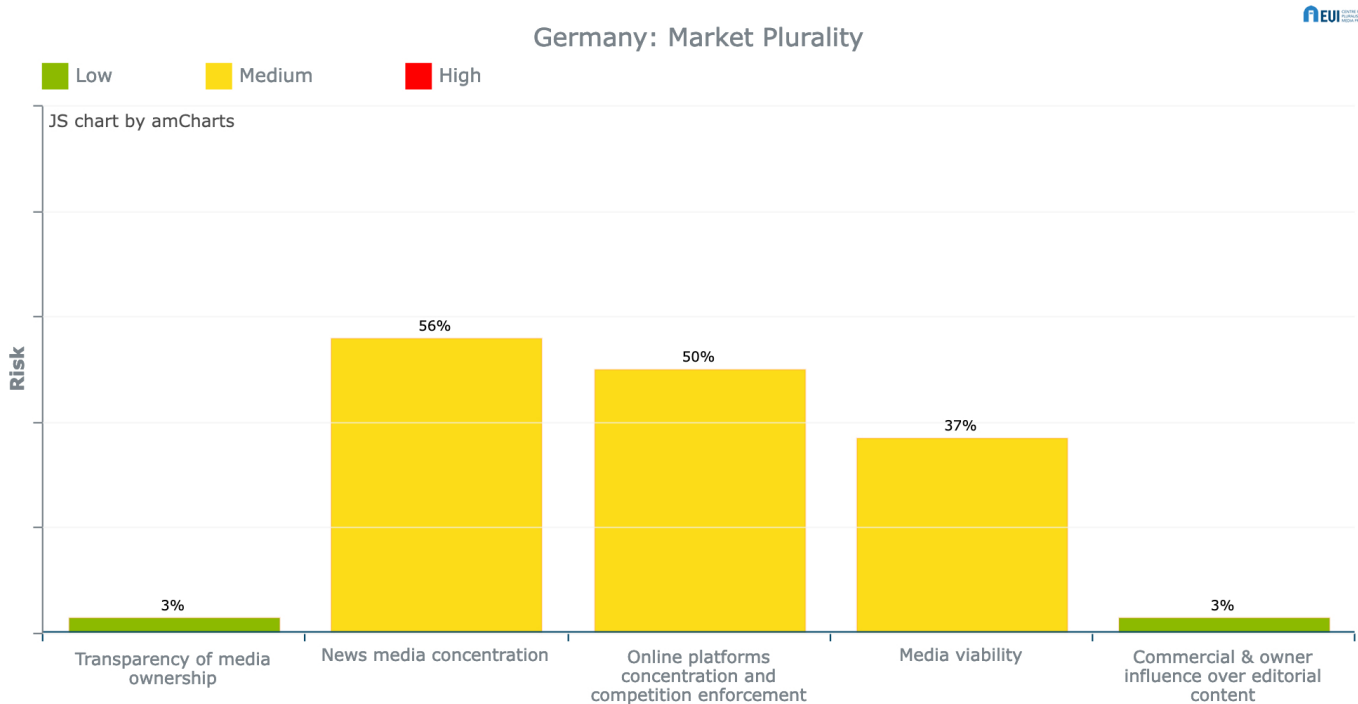
The indicator relating to the **Independence and effectiveness of the media authority** has the lowest risk (5 %). Directors are chosen by another independent body of the agency, the media commissions. Members

of the Media Commission represent the relevant federal state's society. It is comprised of representatives from all key social groups and institutions. The director cannot make critical decisions on their own. For example, the Media Commission must approve the award of broadcasting licenses. In NRW, the Media Commission is comprised of 41 members.^[9] These are essential representations of socially significant groups. The state legislature appoints eight members. There is one member that is not determined by another entity but appointed by the commission itself by cooptation. The Media Commission's members serve on an honorary basis. Ordinary members and their deputies serve five-year terms. The media authorities are self-governing governmental agencies. The Federal Constitutional Court ruled that they act independently and in compliance with existing law. These authorities are legally protected from political and commercial meddling. Their rulings are subject to review in administrative courts. State legislatures, on the other hand, may have a major influence in filling the director position.

In Germany, **Universal reach of traditional media and access** are widespread, posing little risk (8 %). This indicator has been static over the years. Nothing has changed the last year. The Constitution guarantees public broadcasting's countrywide coverage. Still rural areas have been left behind by internet expansion (Bundesministerium für Digitales und Verkehr 2020). 87 percent of the market is controlled by the top four Internet service providers. The Federal Constitutional Court has declared that public broadcasting's personnel, organizational, and financial criteria must be met. The transmissions of all public television and radio stations cover the whole population (around 99 %). Broadband coverage demonstrates a low danger, with 94.7 percent of the population receiving at least 30 MBps.

3.2. Market Plurality (30% - low risk)

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



The risks to market plurality in Germany scores medium (30%) which can be traced back to the dominance of digital platforms. Compared to the previous year there is an improvement (37%). Of the five indicators in this area, three show a medium risk (News media concentration, Online platforms concentration and competition enforcement and Media viability) and two a very low risk (Transparency of media ownership and Commercial and owner influence over editorial content).

The indicator on **Transparency of ownership in the media** shows a low risk (3%). Transparency rules on ownership do exist throughout German law. They are particularly pronounced in the media sector, especially in the area of broadcasting. The Interstate Media Treaty ^[10] contains specific provisions requiring the disclosure of ownership. Commercial broadcasters must disclose ownership information in order to apply for and maintain a broadcasting license (Section 60(2) MStV), and they must report about plans that impact the ownership structure (Section 60(6) MStV). In addition to this information, media companies are also required to report changes, and the media regulatory authority is required to publish that information. Ownership structures Tenure in this area is overseen by the media authorities and made available in public databases. The data is updated regularly and is easy to find. Online-only media, which do not require a

license, are subject to lower requirements. It has to make less information transparent in the imprint information on their websites (Section 18 MStV). For the press, these transparency obligations are based on the respective state press law. Political parties must disclose their holdings in media companies on the basis of the Political Parties Act. They are prohibited from participating in broadcasting (Section 53 (3) MStV).

The indicator on **News media concentration** shows a medium risk (56%). This is because the Interstate Media Treaty does contain media-specific rules to prevent a high degree of horizontal ownership concentration in the media sector. The very title of Section 60 of the Interstate Media Treaty ("Securing Diversity of Opinion on Television") shows that media concentration law is stuck in the 1990s and focused on nationwide linear television. A company is allowed to broadcast an unlimited number of programs on nationwide television as long as it does not gain opinion power as a result. Digital opinion power is not adequately covered. There is a separate regulatory body (Commission for Determining Concentration in the Media, 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 and public broadcasters in Germany (ProSiebenSat.1, Mediengruppe RTL, ARD, ZDF) is 93%. the market share of the Top4 newspapers owners is 65%; the market share of the Top4 radio owners is 46% and the market share of the Top4 online news media is 14%.

The indicator on **Concentration of online platforms and enforcement of competition** shows a medium risk (50%). The online advertising revenue share of the Top3 (!) players is at 82%.^[12] This has to be seen in the context of a high audience concentration of the top 4 online competitors. Google, Facebook, WhatsApp and YouTube accounted for 72% of the unique audience on online/mobile entities in 2020. The amended^[13] GWB^[14] (Act against Restraints of Competition), which came into force in 2021, aims at allowing the Federal Cartel Office to intervene early and effectively against market-abusive behavior by large digital groups. In a two-stage procedure, the Bundeskartellamt can prohibit practices that threaten competition from companies that have an overriding importance for competition across markets (Section 19a GWB). Google has already been classified as market-dominant. However, this is only the first stage. This is why statements on the effectiveness of the new law cannot be made yet.

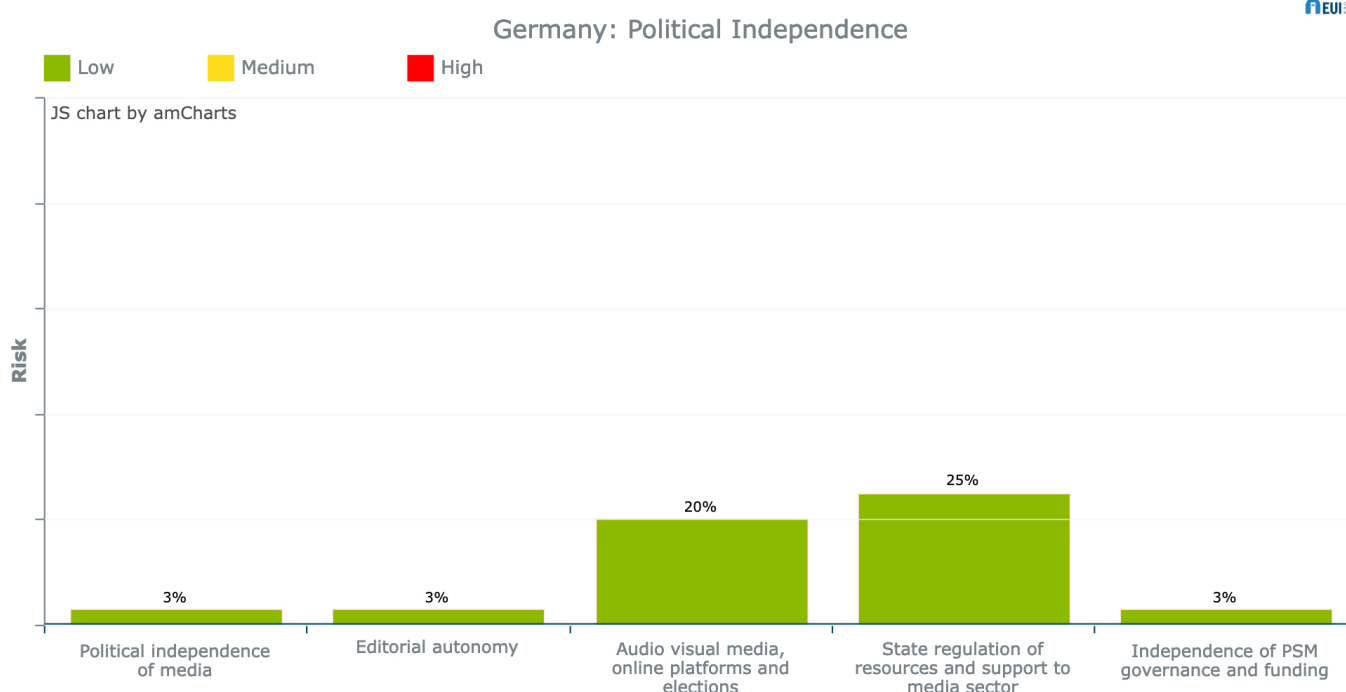
The indicator on **Media viability** is rated as medium risk (37%). The forecast for the audiovisual media market in Germany, revenues are expected to increase by a total of EUR 922 million, or 6.9%, to a total of EUR 14.3 billion in 2021 (VAUNET 2021). Compared to the GDP in Germany 2021 this is 2,7%. For the overall newspaper market, there was a decline of 14 % in 2020. According to a survey by the BDZV, publishers fear a further decline of 4 % in 2021. By contrast, publishers were confident that the digital part of the business will continue to grow strongly: They expected 17% higher circulation revenues from e-paper, 44% from paid content, and 6% more from advertising. (BDZV 2021). It is not apparent that analog media will regain the revenues of the pre-Corona era. In contrast, there is significant growth in the digital sector.

The indicator **Commercial influence on editorial content** shows a low risk (3%). In Germany, editorial decisions are generally free of commercial or political influence. The Julian Reichelt case caused a stir in October 2021. The publisher of the Ippen Media Group prevented the publication of a report by an investigative team that wanted to publish research on the then BILD editor-in-chief Julian Reichelt. The research involved allegations of an abuse of power in connection with relationships with female employees as well as drug use in the workplace. The tabloid BILD is the largest German newspaper and belongs to Axel Springer SE. Economic considerations may have played a role in the stopping of the publication (NYT 2021). However, this is an isolated case, albeit a very notable one. The German Press Council monitors

compliance with the self-regulating press code. It has instruments at its disposal for effectively countering failures on the part of the press, even in cases of commercial influence. Section 1 of the Press Code ^[15] reads as follows: "Respect for the truth, respect for human dignity and truthful information of the public are the supreme imperatives of the press." Section 7 of the Press Code is more specific, prescribing the separation of advertising and editorial work.

3.3. Political Independence (11% - 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 the public service media. Furthermore, the area is concerned with the existence and effectiveness of (self)regulation in ensuring editorial independence and the availability of plural political information and viewpoints, in particular during electoral periods.



Only very low risks can be identified for the Political Independence area. However, the indicator on Audio visual media, online platforms and elections (20%), and the one on State regulation of resources and support to media sector (25%) have significantly higher risks than the other indicators (all 3%).

The indicator on the **Political independence of the media** shows a very low risk (3%). Legal requirements are intended to protect broadcasting against political control of any kind, and they are proving effective. For example, political parties are excluded from the granting of broadcasting licenses (Interstate Media Treaty) ^[16]. All media laws in the federal states contain similar provisions on the incompatibility of certain political positions and offices with broadcasting licenses. Following the ruling of the Federal Constitutional Court in 2014, 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 (Political Parties Act) ^[17]. Nothing conspicuous could be observed in 2021.

The indicator on **Editorial independence** shows a very low risk (3%). There were no reports of cases of interference with editorial autonomy in 2021. The self-regulatory framework of the German Press Council (Pressekodex) states independence from political interference and is effectively implemented by all major news media. No. 6 of the Pressekodex ensures that Journalists and publishers shall not engage in activities that could call into question the credibility of the press. And if a journalist or publisher exercises a function in addition to their journalistic activity, for example in a government, a public authority or in a business enterprise, all parties involved must ensure strict separation of these functions. The broadcasting laws of the federal states prescribe procedures for appointing directors.^[18]

The indicator on **Audiovisual media, online platforms and elections** shows a low risk (20 %). In the year of the 2021 federal election, there were no complaints from the parties that reporting was not balanced. There are rules on political advertising for TV stations. The broadcasting of political advertising is generally prohibited, except during election campaigns.^[19] Then there must be airtime for all parties participating in an election, according to the principle of graduated equality of opportunity. Airtime is free and additional airtime cannot be purchased. Editorial coverage of elections also follows the principle of graduated equality of opportunity. Some public broadcasters have issued special, self-imposed guidelines regarding airtime and coverage in election periods. There are no regulations for online political advertising to ensure equal opportunities and transparency in election campaigns. In rare cases, politicians and parties report their spending on online platforms on their own initiative. This may increasingly become a risk to equal opportunity.

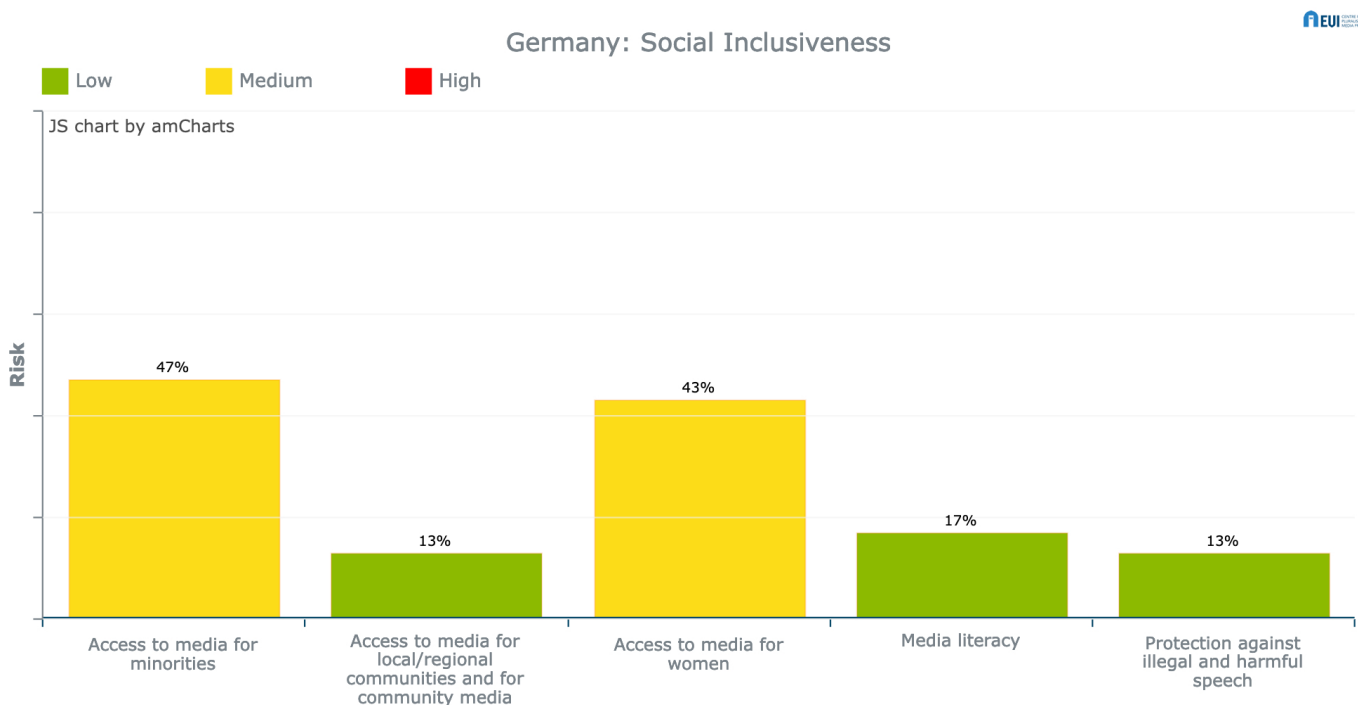
The indicator on **State regulation of resources and support for the media sector** shows a low risk (25 %). There is a state law on the allocation of frequencies with detailed rules on priority, procedural rules and legal protection. These rules are effectively implemented, and decisions can be reviewed and challenged in court. In Germany, there are no direct subsidies for the media sector (Cornils et al 2021). The Federal Ministry of Economics withdrew a draft state press subsidy of 220 million euros in April 2021 (Süddeutsche Zeitung 2021). This would have been the first time that the German state directly supported the press. The subsidy was to be linked to the delivery of printed newspapers and magazines. Digital publishers saw themselves disadvantaged by this. As part of the Corona subsidy for the cultural sector (Neustart Kultur), money was also passed on to private (local) radio. Furthermore, there are indirect subsidies. For example, tax law provides for a reduced VAT rate of 7 percent (instead of 19 percent) for press products. There is no obligation to report on advertising expenditure by the public sector.

The indicator on the **Independence of PSM governance and funding** is rated as low risk (3 %). There is a reform law for the public service broadcaster on the way.^[20] However, it will not tackle the issue of independence of financing but the mission itself. But there was a landmark ruling of the Federal Constitutional Court in this regard. In December 2020, the state of Saxony-Anhalt refused to approve a EUR 0.86 increase proposed by KEF. The public broadcasters failed in the preliminary injunction proceedings to assert their claim to funding in line with requirements. In its ruling of July 20, 2021, the Federal Constitutional Court ruled in favor of the broadcasters. The state's financial guarantee obligation under Article 5 (1) sentence 2 of the Basic Law^[21] is incumbent on the Länder as a federal community of responsibility, with each Land sharing responsibility. In the current system of broadcasting financing, it is not sufficient for a single Land to refuse to increase the broadcasting contribution - moreover, without a viable justification. The laws governing the broadcasters provide for fair and transparent appointment procedures for the directors and management of the broadcasters. The directors of the PSBs are elected by the broadcasting councils. These bodies are supervisory bodies of regulated self-regulation. Their members are not elected by the state. According to the ZDF ruling of the Federal Constitutional Court in 2014, a

maximum of one-third may be appointed by the political sphere. The remaining members are appointed from 'socially relevant groups'. An additional safeguard is incompatibility rules. The contribution for public broadcasting is determined in a procedure specified by the Interstate Broadcasting Financing Treaty.^[21] First, the broadcasters declare their needs, which are then reviewed by the independent expert body, the Commission for Determining the Financial Needs of Public Service Broadcasters (KEF), which then makes a proposal. The 16 state parliaments must vote unanimously on this proposal. There are no indications of attempts to influence the appointment or dismissal of intendants or management in public broadcasting in 2020 (Infratest 2021).

3.4. Social Inclusiveness (27% - 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. Finally, it also includes new challenges arising from the uses of digital technologies, which are linked to the Protection against illegal and harmful speech.



The results in the area of Social Inclusiveness are mixed (27% overall). This is a slight increase compared to the previous report (22%). On the one hand, some indicators hardly show any risks: **Access to media for local/regional communities and for community media (13%)**, **Media literacy (17%)**, and **Protection against illegal and harmful speech (13%)**. On the other hand, **Access to media for minorities** and **Access to media for women** both score within the medium risk range, with respectively 47% and 43% .

The indicator for **Access to media for minorities** shows a medium risk (47%). The Fifth Report of the Federal Republic of Germany in accordance with Article 25(2) of the Council of Europe Framework Convention for the Protection of National Minorities^[23] shows that, in some federal states, minority language groups have not applied for frequencies, licenses or other means of access to broadcasting. According to expert Prof. Dr. Judit Purkathofer^[25], such a problem should be investigated as it could indicate problems regarding to the lack of sustainable funding and/or adequate structure. Promoting integration and social cohesion is the mission of public service broadcasting. There is no practice of public service broadcasting

awarding airtime to external third parties. Instead, the plurality of different groups is ensured by the internal bodies of public broadcasters (internal pluralism). According to the expert interview with Prof. Dr. Judith Purkarthofer,^[24] minorities that are not recognized by law do not, in practice, have systematic access to airtime on public broadcasting, but there are programs and collaborations to do so. DW - Deutsche Welle, Germany's public broadcaster abroad offers national news in 30 languages via social media and websites.

As far as access to media for people with disabilities is concerned, the new Interstate Media Treaty^[26] includes revised rules to ensure access for people with disabilities (Part 3, Para. 30(3)). These go back in part to the transformation of the AVMD directive into German law. Pursuant to Section 7 Para. 1, the broadcasters shall, beyond their existing commitment, include accessible services within the limits of technical and their financial possibilities and shall steadily and gradually expand the scope of such services. Every three years, the measures must be reported to the Medienanstalten. There, broadcasters and media libraries/streaming services are required to "steadily and gradually" expand accessible offerings. More stringent requirements are imposed on the telemedia of public broadcasters. According to Section 30 Para 4, public broadcasters must offer their programs in electronic portals that are as accessible as possible and group their programs under electronic program guides.

The indicator for **Access to media for local/regional communities and for community media** shows a low risk (13 %). This is a slight increase compared to the previous year (6%). The Interstate Media Treaty stipulates that charges and rates must be set in such a way that regional and local offerings can also be distributed on reasonable terms (Section 83 para 2 of the Interstate Media Treaty). For a long time, there were no direct subsidies for local or regional media, only indirect subsidies through the support of broadcasting technology. During the COVID-19-crisis, for example, local broadcasting and private radio in North Rhine-Westphalia were supported by the federal government. To safeguard local media diversity, the state media authority in Berlin-Brandenburg is subsidizing local content for the first time, and aims to counteract local information deficits. The award procedure is based on objective criteria. It is financed by the state media authority from its share of the broadcasting contribution (the state media authorities are financed by the public broadcasting fees that every household has to pay, Section 112 of the Interstate Media Treaty stipulates tasks that may be paid for out of these funds). So-called citizens' broadcasting is enshrined in law in four German states (Bremen, Lower Saxony, North Rhine-Westphalia and Thuringia)^[27] and has access rights to local broadcasting (NRW), for example. There is no evidence of systematic political censorship, influence or manipulation of these media. A new regulation brought by the Interstate Media Treaty could have a positive impact on local media in the future. Section 84 para 4 and 5 privileges regional and local media in terms of access and discoverability on physical platforms and virtual platforms (such as Google Showcase). Google Showcase most recently was categorized as a "media platform" by the media authorities meaning they have to fulfil a range of obligations.^[28] For example these services need to make transparent the criteria they use when ranking news. They also must make 'public value' content easy to find. This also applies to local media.

The indicator **Access to media for women** is rated as medium risk (43 %). Efforts are underway in all areas, some of which are having an impact. Still women are significantly underrepresented in management positions (as in other sectors of the economy). The latest figures show that equality has not been realized in all areas (ProQuote 2019): In the newspaper sector, the daily newspaper "taz" is the only paper to have achieved equal representation. Some public broadcasters, such as Westdeutscher Rundfunk, achieve a balanced female representation of 50%, according to a survey conducted by the country team. By contrast, the management levels of smaller broadcasters such as Saarländischer Rundfunk (28.6%) are still predominantly male. On average, 39.6% of management positions are held by women. Four out of 12 director posts at public broadcasters are held by women. Evaluations of publicly available information on top management revealed that the proportion of women on the Executive Board in 2021 is 0% at Mediengruppe RTL and 25% at ProSiebenSat.1. A recent study examined the gender distribution of experts in Corona reporting. On TV, the proportion of female experts was 22%, while in online reporting it was around 7%. Female physicians interviewed on TV accounted for 20% (Prommer, Stüwe, Berggren 2020). Other data show that women are underrepresented as experts or guests on news programs or political talk shows (Prommer et al. 2019). Current ARD guidelines promise "systematic efforts" to include female experts and guests in talk shows more often (ZDF 2021).

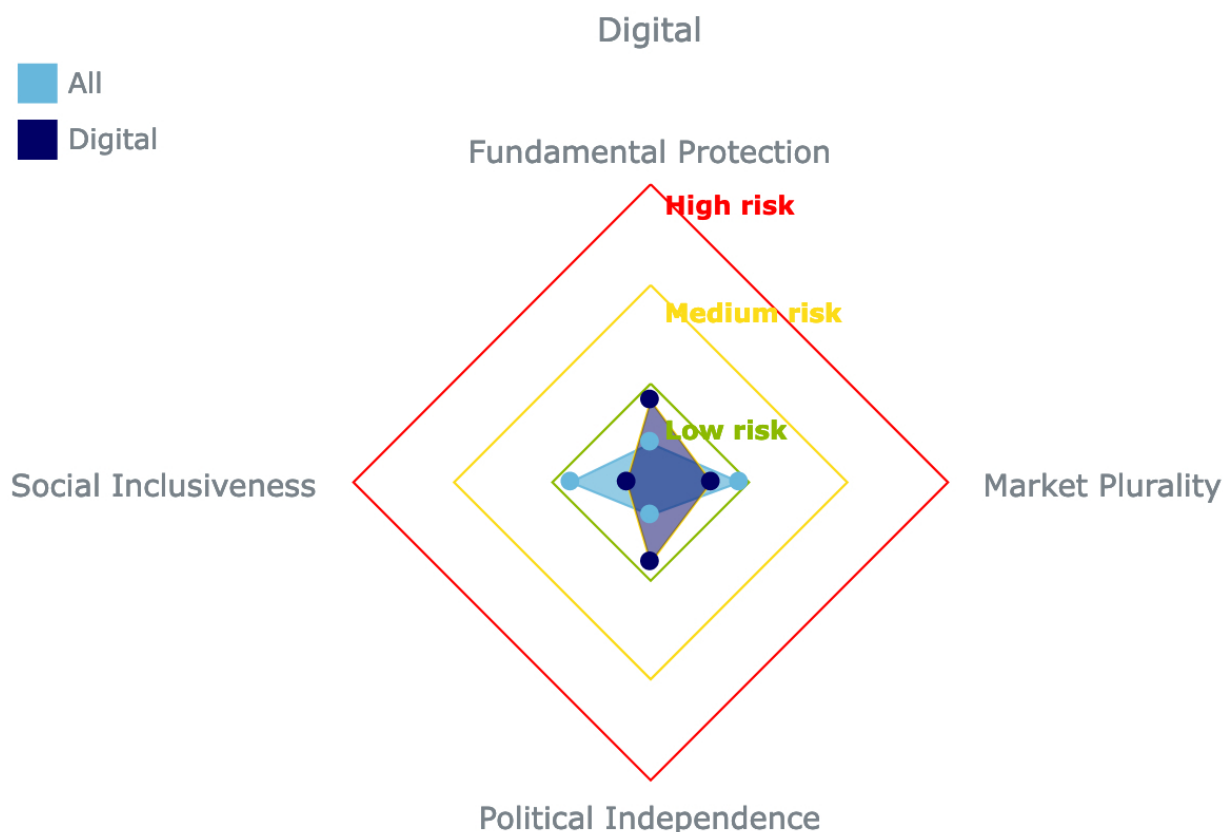
The indicator on **Media literacy** shows a low risk (17%). The promotion of media literacy is a statutory task of the state media authorities and is financed by the broadcasting contribution. According to the Interstate Media Treaty, "media literacy for all generations and minorities" (section 30 para 3) is to be promoted and "projects to promote media literacy can be supported financially" (section 112 para 1). Media literacy activities are widespread in Germany. At the moment, hate speech is a key topic. The state media authorities also have several programs on disinformation. Critical tones are sounded in the expert interview, however. Dr. Peter Nowotny^[29] says that people have been working in this area for a long time, but that he

does not see any concept for promoting media competence among the responsible politicians in the area of schools. 70% of the population have at least basic digital knowledge (Eurostat, 2019).

The indicator of **Protection against hate speech and disinformation** shows a low risk (13%). This low value can be explained by the fact that Germany has already enacted legal regulations for both problems. Disinformation is a problem which can be observed during the Covid pandemic. A considerable amount of disinformation circulates in Germany, especially via social media and messenger.^[30] This impacts human rights, as it leads to a growing number of citizens that do not want to be vaccinated (ca. 25%). In order to protect the healthcare system restrictions on human rights for other parts of the population are necessary. Also hate speech is a problem. Certain groups in the messenger 'Telegram' have also planned and called for acts of violence against politicians (e.g., against Saxony's Prime Minister Kretschmer). To fight disinformation, legislative measures have been implemented (Kalbhenn 2022). However, the extent to which the law can remedy these issues has yet to be proven. The Network Enforcement Act, last amended in 2021, aims to quickly remove disinformation and hate speech content from social networks. It imposes to quickly remove illegal content such as hate speech for social networks. It does not explicitly refer to the protection of ethnic and religious minorities (Kalbhenn/Hemmert-Halswick, 2020). But an amendment to the law puts that in focus.^[31] This law also transposed the requirements of the AVMS Directive into German law. Then networks will also have to provide information about the extent to which groups of people are particularly frequently affected by hate speech (Hemmert-Halswick 2021). The new Interstate Media Treaty of 2020 also contains three new instruments aimed at disinformation. For example, journalistic due diligence now also applies to influencers, YouTubers, podcasters, etc. In addition, it can be enforced with a new supervisory structure (Section 19 MStV). A labelling obligation for social bots on social networks is also new (§ 18 III MStV 3). Another labelling obligation relates to political advertising on the Internet (Section 22 MStV). The new transparency and non-discrimination rules for recommendation algorithms of media intermediaries such as Facebook and GoogleSearch could also have a pacifying effect with regard to disinformation (Section 93 MStV). However, the effectiveness has not yet been proven (Holznagel/Kalbhenn). The media authorities first had to substantiate the new laws through statutes. Some of these statutes that are crucial for applying the new rules have not been in force since the beginning of 2022. Also media authorities have several programs to educate about disinformation. They also conduct research in this area.. Public 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



JS chart by amCharts



Media pluralism in the digital sphere tends to pose higher risks compared to the overall risk assessment. This primarily results from a lack of legislative efforts to adapt the law in such a way that online harm can be effectively combated. The Federal Constitutional Court had summarized this as follows in its decision on public broadcasting on July 20, 2021: *"The digitization of the media and in particular the network and platform economy of the Internet, including social networks, favor - on the contrary - concentration and monopolization tendencies among content providers, distributors and intermediaries. If offerings are largely financed by advertising, they do not necessarily promote journalistic competition; even on the Internet, the greater reach that is of interest to the advertising industry can only be achieved with programs that appeal to the masses. In addition, what is problematic is that - also with the help of algorithms - content is specifically tailored to the interests and inclinations of users, which in turn leads to the reinforcement of like-minded opinions. Such offerings are not aimed at diversity of opinion, but are determined by one-sided interests or the economic rationality of a business model, namely to maximize the length of time users spend on the pages as far as possible and thereby increase the advertising value of the platform for customers. In this respect, results in search engines are also pre-filtered and partly financed by advertising, partly dependent on "click numbers". In addition, non-publicistic providers are increasingly appearing without journalistic intermediate preparation. All of this makes it more difficult to distinguish between facts and opinion, content and advertising, and leads to new uncertainties about the credibility of sources and evaluations. The individual user must take over the processing and mass media evaluation that traditionally takes place through the filter of professional selections and responsible journalistic action. In view of this development, the importance of the task incumbent upon public broadcasting, which is financed by contributions, is growing: to provide authentic, carefully researched information that distinguishes between facts and opinions, does not present reality in a distorted way, and does not place the sensational in the foreground,*

but rather to form a counterweight that ensures diversity and offers guidance. This is especially true in times of increased complex information on the one hand and of one-sided representations, filter bubbles, fake news, deep fakes on the other".^[33]

German media laws have been adapted to the digital challenges in recent years. 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, social networks. In addition, it introduces journalistic due diligence obligations for all distribution channels of information offerings (Instagram, YouTube, TikTok, etc.). In 2021, the Network Enforcement Act was amended and a new Youth Media Protection Act came into force.

Fundamental Protection (27%)

The indicator for **Freedom of expression** online shows a low risk. The constitution does not distinguish online and offline expression. For a long time, the debate in Germany focused on the Network Enforcement Act, which obliges social networks to quickly delete obviously illegal content. There was criticism that this legislation would lead to overblocking and chilling effects and thus endanger freedom of expression on the Internet. However, these negative effects have not been proven, and the law has been evaluated positively. The amendment to the law places 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 in particular are affected by hate speech. The state does not filter, block or remove online content arbitrarily or systematically. Nor is there any evidence that ISPs filter arbitrarily. The focus in 2021 was mostly on the networks' community standards. Most recently, the Federal Court of Justice confirmed that communications platforms can apply stricter standards for hate speech than criminal law. However, they must also safeguard user rights, for example through hearing procedures. The case, currently being heard by the Frankfurt Regional Court is whether content once identified as illegal (in this case memes) must be automatically deleted by the platform without renewed notification by users. There was also much discussion about how to deal with the messenger Telegram which leaves illegal content unmoderated on its platform. The Federal Minister of the Interior even discussed blocking this service.

In general, individuals have **Access to legal remedies** to take action against right violations, online and offline. Enforcement problems regularly arise with regard to rights violations on the Internet, and projects are underway to address this with regard to hate speech. Users whose posts are deleted by platforms on the basis of the Network Enforcement Act receive the protection of comprehensive procedural regulations with the amended Network Enforcement Act. The Federal Court of Justice now also requires this for deletions in accordance with community standards.

The new **EU Copyright Directive was transposed into German law in 2021**. However, the original debate about the extent to which "upload filters" could harm freedom of expression had already become less relevant, and the implementation of the directive is not suspected of violating Article 5 of the German Basic Law (Holznagel 2020). Now the newly founded collecting society (Corint Media 2021) for the ancillary copyright of press publishers is striving to enforce this. In December 2021, Corint had made a claim of EUR 190 million against Meta for the licensing of 260 press domains for the year 2022. However, Meta denies, unlike in other EU countries, that it has to obtain a license from Corint for the use of press publications (Corint Media 2021). The indicators on **Journalistic profession, standards and protection** and on **Journalism and data protection** show a low risk. However, journalists note an increasing threat to their **digital security** from hate speech. This is particularly true in the digital realm (Holznagel/Kalbhenn, Working

Paper 2021).

Germany made use - through national legislation - of 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 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 a medium risk, with an average Internet connection and a market share of the top 4 Internet service providers of 88% indicating a rather high risk, the **Universal Coverage of Traditional Media and Access to the Internet** indicator shows a medium risk overall. Broadband coverage shows a low risk, with 95% of the population^[34] covered by 30 Mbps or more. Nevertheless, broadband expansion has left some rural parts behind, which is even more urgent due to the pandemic of homeschooling and home office.

Market Plurality (20%)

The indicators for 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 (KEK). The risks are in the area of **News media concentration**, which indicates a medium risk. The Media Concentration Act aims to prevent the dominance of opinion power and to safeguard diversity of opinion, but it is tailored to the broadcasting sector. The CEC, which is responsible for monitoring these rules, is calling for an adjustment and proposing an "overall media market model." Such an amendment to media concentration law is also noted in the protocol to the Interstate Media Treaty and is on the political agenda. 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.

Google, Facebook, Whatsapp and YouTube account for 72% of unique audiences (Medienanstalten 2021). The 10th GWB amendment (Act against Restraints of Competition) will enable antitrust authorities to take factors that are of particular importance in the digital environment (intermediary power, data economy) into account in **Competition enforcement** (Grünwald 2021). The amendment is intended to enable the antitrust authorities to assess the market position of companies in the context of abuse control and merger control. The German Federal Cartel Office has issued a first decision based on the new law. Google was found to be of overriding market importance. This is the further starting point for taking action against conduct harmful to competition. Currently, the processing of personal data by Google is being examined, as well as the issue of Google News Showcase. In parallel, the authority is pursuing proceedings against Amazon, Apple and Meta.

Germany does not have a "digital tax." The indicator on **Online platform concentration** is medium risk. The majority of the total population indicates that it consumes online news primarily directly and not via algorithm-driven offerings. However, the proportion of algorithmic and data-driven access to news offerings is significantly higher in the 18-24 age group (Hölig/Hasebrink 2021).

The new ancillary copyright for press publishers is not yet being effectively enforced in Germany. For the German publishers, the collecting society Corint Media negotiates with the major digital platforms on corresponding license fees. For the use of press content such as headlines, short article excerpts and thumbnails in the search engine, Corint Media is demanding a license fee of 420 million euros for the year

2022 for currently around 200 rightsholders. This offer was submitted to Google on 15.10.2021 and no decision has yet been made (<https://www.corint-media.com/corint-media-legt-google-lizenzvertrag-für-nutzung-des-presseleistungsschutzrechts-vor/>). At the beginning of December, Corint Media made a demand of 190 million euros for 2022 from Meta (Facebook) for the licensing of the use of currently around 260 press domains and called on Meta to enter into talks about this. Meta denied that it had to license uses of press publications from Corint Media. It said that there is a "fundamental misunderstanding" about how the service works. (<https://www.corint-media.com/facebook-lehnt-forderungen-von-corint-media-ab/>)

The Interstate 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 available their relevance criteria and explain their users in an easy way how their algorithms work. Journalistic editorial content must not be discriminated against. However, these new legal regulations have only been enforceable for a few weeks. First, the state media authorities had to issue statutes to flesh out the vague laws. Therefore, nothing can yet be said about the effectiveness of the new regulation.

The Viability of the media is exposed to a medium risk. Publishers, for example, are confident that their digital business will continue to grow strongly: They expected 17% higher circulation revenues from e-paper, 44% from paid content, and 6% more from advertising (BDZV 2021). Growth is being recorded by digital providers: Audio streaming (+21%) and podcast (+56%) and video streaming (+18%). For instream audio advertising, i.e., online advertising embedded in audio streams, VAUNET expects growth - on a significantly lower basis - of 16% or EUR 10 million to around EUR 75 million (VAUNET 2021). For the paid audio segment, growth of 191 million or 15% to around EUR 1.5 billion is expected (VAUNET 2021). 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 already stated in 2020 that it would generate 87% of its revenue from digital business, and then these are not only journalistic products, but also so-called classified pages (Axel Springer 2020). 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: Section 12 (2) no. 14 has already been added to the German Value-Added Tax Act (Umsatzsteuergesetz, UStG)^[35] with the Annual Tax Act 2019. According to this, the provision of e-books and comparable digital products is subject to the reduced tax rate of 7 percent. The aim of the regulation is to treat physical and electronic products equally. Until the end of 2019, only print products could be taxed at a reduced rate; corresponding products in electronic form are classified as electronic services, for which the application of the reduced tax rate was not possible until then. The provision of access to databases containing a variety of electronic books, newspapers or magazines, or parts thereof, has also been subject to the reduced tax rate since the end of 2019. The tax authorities in a letter dated December 17, 2021 explain under which conditions the reduction is to be applied. The explanations are contained in a new section 12.17 Digital Media (Section 12 (2) No. 14 UStG) of the Turnover Tax Application Decree (UStAE)^[36]. Editorial decisions are free from commercial and ownership influence. Rules in this regard apply equally online and offline. For example, the German Press Code, which is supervised by the German Press Council, is an instrument of self-regulation. It also applies to online news media. Several laws require content creators to **label sponsored content**.

Political Independence (28%)

In the online domain, there is little risk to **Political Independence**. Legacy media offerings have grown into the dominant digital media providers in Germany. On the other hand, the original digital media products are highly fragmented and cater to small, highly particular interests and groups. In this environment, there is no evidence of political control. As standards for dealing with social media exist on a larger scale, self-regulation in this area is deemed a low risk. The Interstate Media Treaty, on the other hand, has expanded journalistic due diligence to this field and created a distinct regulatory system (Holznagel/Kalbhenn 2021).

The indications on **Audiovisual media, online platforms and elections** virtually all show a significant danger in the online dimension. On the Internet, there are no rules for political advertising. Apart from voluntary agreements made by Internet corporations at the EU level, there are no regulations in Germany to ensure that online political advertising in election campaigns is treated equally and transparently. There are no provisions requiring political parties, candidates, or lists standing in elections to record campaign spending on online platforms in a transparent manner. Parties and individual politicians do not appear to be transparent. All parties, according to reports, deploy micro-targeting commercials.

The **Independence of PSM governance and funding** is unlikely to be jeopardized, given the law mandates that funding must be sufficient to meet the public broadcasters' online mission without distorting competition with private media companies. Public broadcasters' online missions are written in precise conformity with constitutional standards. The financing of online activities, on the other hand, follows the legal procedure: The broadcasters must declare their needs, which are then examined by KEF and presented for approval to the state legislatures. This mechanism ensures that public broadcasters are adequately funded, including for their digital activities. In the future, these digital activities may be increased to enable public service broadcasters to respond more flexibly to the challenges of digital transformation. The broadcasters should then for example be able to decide for themselves whether to convert linear programs into digital on-demand offerings. Broadcasters will be able to respond quickly to changing user preferences and relocate shows to the Internet. It should also be possible to add more content to the media libraries to make them more appealing. The mission and structure of public service broadcasters are the topics of a recent discussion and a draft law^[38] expecting to enter into force by next year (Kalbhenn 2022).

Social Inclusiveness (8%)

A great number of **media literacy** projects are geared toward the online realm. However, Dr. Peter Nowotny^[37] pointed out in the expert interview: "We were much further ahead in the past and are now facing challenges through the Internet and the mixing of personal and public communication that politicians have not yet understood."

There is a new set of legal measures to **protect against hate speech and disinformation online**, thanks to the Interstate Media Treaty (Sections 18 para 3, 19, 93, and 94) and to an amendment to the Network Enforcement Act. Three additional mechanisms directed at deception are included in the new Interstate Media Treaty of 2020. Influencers, YouTubers, podcasters, and others, for example, are now subject to journalistic due diligence. It can also be enforced by a new supervisory structure (Section 19 MStV).

In Germany, a significant amount of misinformation and hate speech is circulating, particularly via social media and messaging apps.^[32] Disinformation has already a big influence on fundamental rights for example in regard to the COVID-19-pandemic. There was considerable disinformation circulating about Corona vaccines and part of the population refuses to be vaccinated (about 25%). This necessitates limits on basic rights for other segments of the population (vaccinated) in order to relieve the healthcare system. Also hate

speech is a significant problem: Certain groups on the messenger 'Telegram' have also plotted and campaigned for violent attacks against politicians (for example, against Saxony's Prime Minister Kretschmer). The Network Enforcement Act intends to eliminate disinformation and hate speech content from social media platforms as rapidly as possible. It focuses on hate speech in practice. It allows social media platforms to promptly remove illegal content, such as hate speech, from their platforms. It does not mention ethnic and religious minorities being protected. However, a recent update to the statute brings this to light (Netzwerkdurchsetzungsgesetz Novelle 2020). According to the new Section 2 para 2 networks will also be required to disclose information on the extent to which hate speech affects specific categories of people (Hemmert-Halswick 2020). Other new rules tackling disinformation online are to be found in the Interstate Media Treaty. A need for social bots on social networks to be labelled is also new (18 III MStV 3). Another requirement for labeling is political advertising on the internet (Section 22 MStV). The new transparency and non-discrimination rules for recommendation algorithms at media intermediaries like Facebook and GoogleSearch might have a pacifying effect with regard to disinformation (Section 93 MStV) (Holznagel/Kalbhenn 2021).

5. Conclusions

On average, the results of MPM 2022 show rather low risks for media pluralism in Germany. Revenues at a large proportion of private media are at pre-crisis levels. This is not least due to digital revenue sources. Germany has a diverse media landscape with strong private media companies. In addition, media diversity benefits from strong public broadcasting. With the ruling of the Federal Constitutional Court in 2021 on the financing of broadcasters, the Court has defused the threat posed in federalism by the fact that decisions on the level of contributions required the approval of all state parliaments.

However, there are still risks, especially in the online area, against which consistent legislation would have to be positioned.

In the area of **Fundamental Protection**, a very low level of risk is registered. In this area, there has also been legislation in recent years to counteract digital harms to media pluralism. Journalistic due diligence is extended to all distribution channels of information services (Instagram, YouTube, etc.). The Network Enforcement Act has also been updated and is up to date. It also aims to bring more transparency regarding community standards of platforms and automated deletions. The NetzDG and MStV anticipate many regulatory points of the draft Digital Services Act and can serve as a study project. To further prevent (online) damage in the area of Fundamental Protection, we recommend:

- **Law enforcement agencies must be better equipped to consistently protect freedom of speech on the internet**
- **Fast internet must be further expanded to allow the structurally weak regions to participate in the information society**

Especially in the area of **Market Plurality** the large digital communications platforms are still considered a threat to media diversity. They take a large share of advertising budgets and they increasingly act as gatekeepers for news and information and are channels for disinformation. Private media companies, like public broadcasters, have fallen into a position of dependency. German lawmakers began early to introduce legal regulations to counter these risks. In order to prevent (online) damage in the area of Market Plurality and media concentration, we recommend the following:

- **Content from local media is difficult to find in the flood of information on social networks. It must therefore be made easy to find through rules for prioritizing public value content.**
- **Public service broadcasting must be further strengthened in the context of digital transformation to act as a counterweight and keep up with the needs of society. For example by acting more as an online platform and adopting democratic recommender systems within their services.**

The **Political Independence** area is only exposed to a low risk. The media are organized remotely from the state, as is supervision. There are mechanisms in place to protect against the influence of economic

interests. To prevent (online) damage in the area of Political Independence, we recommend:

- **Transparency and fairness in online election campaigns must be ensured, especially on social networks.**
- **Current media concentration law does not cover social networks and must be adapted to the new market conditions.**

In the area of **Social Inclusiveness**, minorities and women in particular are exposed to a higher risk. However, there is a positive trend here. Basically, the topics of social inclusiveness are classic topics of regulation of public broadcasting. The latter has an integration function under constitutional law. The reform of public broadcasting is on the agenda for 2022. According to current plans, the broadcasters are to implement a joint platform strategy and use "democratic algorithms". To prevent (online) damage in the area of Social Inclusiveness, we recommend:

- **Public service broadcasting must further develop its integrative potential in the digital sphere for example by offering more content accessible to people with disabilities.**
- **To improve access to media for women the media industry must become more family-friendly and promote more flexible working models.**

6. Notes

- [1] International Covenant on Civil and Political Rights, 1966, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>
- [2] European Convention in Human Rights, 1950, https://www.echr.coe.int/Documents/Convention_ENG.pdf.
- [3] Grundgesetz, 1949, <https://www.gesetze-im-internet.de/gg/BJNR000010949.html>.
- [4] Gesetzes zur Bekämpfung des Rechtsextremismus und der Hasskriminalität, 2021, <https://dserver.bundestag.de/btd/19/177/1917741.pdf>.
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Duisburg-Essen.

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- Maximilian Hemmert-Halswick, FH Westküste

who were available for expert interviews (in the areas of Access to media for minorities and media literacy, Hatespeech and Disinformation, freedom of information) and greatly helped the country team with their expertise.

ANNEXE I. COUNTRY TEAM

First name	Last name	Position	Institution	MPM2022 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, ITM</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 that make up the MPM2022. Consulting the point of view of recognized experts was aimed at maximizing the objectivity of the replies given to variables whose evaluation could be considered as being subjective, and, therefore, to ensure the accuracy of the final results of the MPM. However, it is important to highlight that the final country report does not necessarily reflect the individual views of the experts who participated. It only represents the views of the national country team that carried out the data collection and authored the report.

First name	Last name	Position	Institution
<i>Martin</i>	<i>Madej</i>	<i>Referent Digital and Media</i>	<i>Verbraucherzentrale Bundesverband</i>
<i>Nikolas</i>	<i>Prof. Dr. Guggenberger</i>	<i>Director</i>	<i>Information Society Project at Yale Law</i>
<i>Eva</i>	<i>Dr. Flecken</i>	<i>Director</i>	<i>Medienanstalt Berlin Brandenburg</i>
<i>Matthias</i>	<i>von Fintel</i>	<i>Team Leader in Journalists Union</i>	<i>DJU in ver.di</i>
<i>Daniela</i>	<i>Beaujean</i>	<i>Managing Director</i>	<i>VAUNET</i>
<i>Sabine</i>	<i>Frank</i>	<i>Head of Governmental Affairs and Public Policy</i>	<i>Google Germany</i>

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