

# MONITORING MEDIA PLURALISM IN THE DIGITAL ERA

## APPLICATION OF THE MEDIA PLURALISM MONITOR IN THE EUROPEAN UNION, ALBANIA, MONTENEGRO, REPUBLIC OF NORTH MACEDONIA, SERBIA & TURKEY IN THE YEAR 2022

Country report: Portugal

Francisco Rui Cádima, ICNOVA - Nova Institute of Communication (FCSH - Universidade Nova de Lisboa)

Carla Baptista, ICNOVA - Nova Institute of Communication (FCSH - Universidade Nova de Lisboa)

Marisa Torres da Silva, ICNOVA - Nova Institute of Communication (FCSH - Universidade Nova de Lisboa)

Patrícia Abreu, NOVA FCSH

Luís Oliveira Martins, ICNOVA - Nova Institute of Communication (FCSH - Universidade Nova de Lisboa)

**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 that is 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 that was carried out in 2022. 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 Portugal the CMPF partnered with Francisco Rui Cádima, Carla Baptista, Marisa Torres Da Silva and Luís Oliveira Martins (ICNOVA - Nova Institute of Communication (FCSH - Universidade Nova de Lisboa)), Patrícia Abreu (NOVA FCSH), 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 the media                           | Representation of minorities                      |
| Protection of right to information                              | Plurality of media providers                                 | Editorial autonomy  | Local/regional and community media                |
| Journalistic profession, standards and protection               | Plurality in digital markets                                 | Audiovisual media, online platforms and elections             | Gender equality in the media                      |
| Independence and effectiveness of the media authority           | Media viability  | State regulation of resources and support to the media sector | Media Literacy                                    |
| Universal reach of traditional media and access to the Internet | Editorial independence from commercial and owners' influence | Independence of PSM   | Protection against disinformation and hate 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 digitally specific risk scores, and the report contains a specific

*analysis of the risks that 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 the Indicators, scores of 0 are rated as 3%, while scores of 100 are rated as 97%, by default, in order to avoid an assessment that offers a total absence, or certainty, of risk.

## **Methodological Changes**

For every edition of the MPM, the CMPF updates and fine-tunes the questionnaire, based on the evaluation of the tool after its implementation, the results of previous data collection and the existence of newly available data. For the MPM 2023, no major changes were made to the questionnaire, except for the Indicators Transparency of Media Ownership, Plurality in Digital Markets and Editorial Independence from Commercial and Owners Influence (Market Plurality area), and Protection Against Disinformation and Hate Speech (Social Inclusiveness area). The results obtained for these indicators are therefore not strictly comparable with those results obtained in the previous edition of the MPM. The methodological changes are explained on the CMPF website at <http://cmpf.eui.eu/media-pluralism-monitor/>.

In the Market Plurality area, the names of three Indicators have changed. The former indicator on "News Media Concentration" is now named "Plurality of Media Providers"; "Online Platforms and Competition Enforcement" has been renamed as "Plurality in Digital Markets"; "Commercial & Owners' Influence Over Editorial Content" has been renamed as "Editorial Independence from Commercial and Owner Influence".

**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 who carried out the data collection and authored the report. Due to updates and refinements in the questionnaire, MPM2023 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 MPM2023, which is available on: <http://cmpf.eui.eu/media-pluralism-monitor/>.

## 2. Introduction

- **Country overview.** The current resident population in Portugal is 10,352,042 citizens, according to the latest estimates by the Statistical Office of Portugal (INE, 2021).
- **Languages.** The official language is Portuguese, and English is now a common language among the younger population.
- **Minorities.** From a cultural point of view, the country has great homogeneity. While there are officially no minorities, there are, however, ethnic and migrant communities that have been formed with some expression in Portugal. There is the traditional Roma community, the African communities from the former Portuguese colonies, namely Africa (Angola, Mozambique, Cape Verde and Guinea Bissau) and Brazil, and, more recently, communities from Nepal, Bangladesh, Pakistan, and even the Ukrainian community that grew considerably after the beginning of the Russian invasion. Approximately 10% of the population are foreign residents, with a significant proportion being Brazilians (30%).
- **Economic situation.** Portugal's GDP recorded an increase of 6.7% in 2022, the highest in the last 35 years, after an increase of 5.5% in 2021, numbers that are due to the increase in exports and the tourism sector. The Portuguese economy has reasonably resisted the pandemic and has performed well despite the high inflation resulting from the Russian invasion of Ukraine.
- **Political situation.** As already evidenced in the previous implementation, in January 2022 elections were held in Portugal. Socialists (Partido Socialista) of incumbent prime minister António Costa won a majority (41.5%) in the Assembly of the Republic, the second in the party's history, and will run the country till 2026. However, electoral results evidenced high abstention rates (42%). The last electoral round marked the emergence of the far-right in Parliament, now with 12 deputies from the Chega party. More recently, the current absolute majority of the Socialists has been having some mishaps, namely with the teachers' strikes and some unfavorable or critical indicators for the current rulers: Portugal has been listed for non-compliance with community funds and VAT regulations due to fraudulent activities (Moreira, 2023). On another level, the Portuguese are disillusioned with the functioning of democracy. According to the European Social Survey, several criteria have a negative evaluation, especially concerning justice and protection from poverty (Dinis and Rosa, 2023). It should be noted that, in the opinion of the Portuguese, it is precisely the resolution of the problems of poverty that must be resolved as a priority (61%), as well as support for the economy and job creation (60%), while freedom of expression and thought only gets 17%. (Parliament, 2022).
- **Media market.** The media sector remains critical, as it has always been, in fact, in Portugal. This has immediate implications for a crucial sector, namely the news industry and the precariousness of journalistic activity. Additionally, noteworthy is the poor performance of the media industry in general, especially in the current post-pandemic context, not forgetting the economic impacts of the Russian invasion of Ukraine. Despite everything, Portuguese public opinion considers that "the media is free to criticize the Government" (7.1/10 – European Social Survey).
- **Regulatory environment.** Generally speaking, the regulator (ERC) seeks to adequately fulfill its function, although struggling with a "congenital" funding deficit. However, last year, the government made a substantial transfer of six million Euros to address a critical situation that had arisen in recent years. Regarding the EU Directive on Copyright in the Digital Single Market it is expected that it will be transposed into Portuguese legislation later this year. Indeed, the government has just been authorized

by Parliament to do so, through Law No. 7/2023, of February 27.

- **Covid-19.** The impact of the pandemic, in particular on the media sector, was seen fundamentally in 2020. In 2021, the advertising sector experienced a 15% growth, indicating a recovery from previous setbacks, and growth is estimated at 8% in 2022. It should be remembered that in 2020 Portugal recorded a high recession of 8.3% due to the impact of Covid-19.

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

#### Portugal: Media Pluralism Risk Areas



In Portugal, the basic structure of **Fundamental Protection** guarantees a comfortable situation without severe risks to pluralism in the media, both in the general plan (**28%**) and in the more specific scope of the digital (**31%**). However, it is necessary to be alert to some situations where political guidelines and Portuguese legislation can and should build an optimized legal framework. We refer essentially to three points: i) the need for renewed, important guarantees for the media regulator, both in terms of **Budgetary independence** (the regularity and size of funding) and in the transparency and robustness of board appointments; ii) the need to modernize legislation that still criminalizes defamation in Portugal; iii) the need for the **Protection of whistleblowers** to be effective not only within the scope of company employees but in general terms, being imperative to guarantee broad and effective protection for all whistleblowers, in line with the best international practices. In the current post-pandemic crisis and the global impacts of the Russian invasion of Ukraine, particularly the framework for journalists' protection, precariousness, low wages, little transparency, and/or arbitrariness in media management have worsened in some cases. Ensuring independent journalism perhaps requires complementary measures to support the most affected sectors, namely regional and local media, and the fight against misinformation. Portugal still lacks anti-SLAPP legislation (CASE, 2022) to deepen the protection of journalists. Public scrutiny and investigative journalism must also have more substantial public support. In this sense, the Union of Journalists and the Journalists Professional License Commission should intervene more decisively in approving the new Press Law scheduled for 2023.

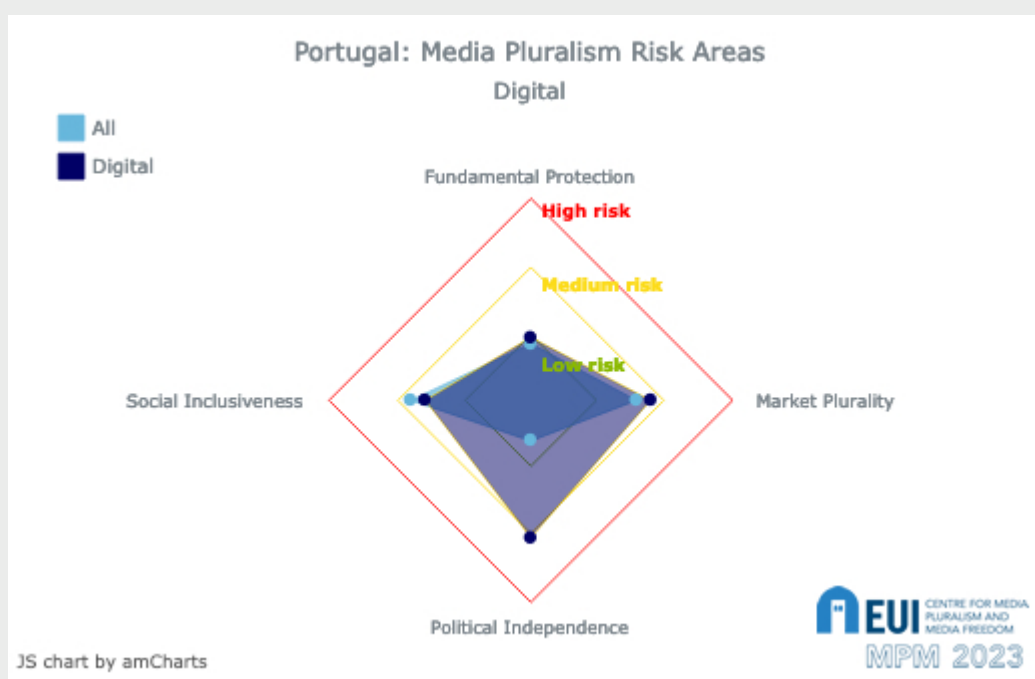
**Market Plurality (52%)** presents a medium risk to media pluralism, as it did in the previous year. The main risks in this area are related to the **Plurality of media providers** and **Plurality in digital markets**, as five players control the media business: Impresa, Cofina, Media Capital, Global Media, and RTP (state-owned). In the digital environment, large platforms have big market shares in advertising. The regulatory framework in Portugal does not prevent market concentration, be it within traditional or digital media, which is cause for concern. In addition, despite the regulation that foresees transparent information from media outlets, there have been some exceptions. On what concerns **Media viability**, the risk is medium as well. Although there seems to be a slight increase in radio and print media advertising revenues, the sector still struggles, especially due to inflation. The indicators **Transparency of media ownership** and **Editorial independence from commercial and owner influence** demonstrate low-risk scores.



**Political Independence** presents medium risk (20%), similar to 2022. The legal framework prohibits politically affiliated persons and entities from pursuing media business, and there are legal obligations regarding transparency of the ownership, management, and financing imposed on all media providers. The law prevents political propaganda through commercial advertising on radio and television during electoral campaigns. The challenge is to make this framework work effectively in increasingly complex scenarios. The consensus about the need for political pluralism during elections should be extended outside electoral periods and include private media and political commentary programs, which are not regulated regarding this principle. Strengthening editorial autonomy implies protecting the journalistic profession from job precarity, low wages, and the fragility of the legacy press and most regional and local news projects. Portugal does not have a consolidated public policy to support the media. Not only the fund opportunities are limited and lack a diversity of approaches, but delays in the delivery of the funding are causing disruptions in the process. Public service media needs to be reconfigured and refunded to meet the challenges of the multiplatform scenario. RTP and Lusa operate in a digital market and supply multimedia services implying investments in technology and human resources. The risk assessment for **Political Independence** in the digital environment is 68%, causing concern. This deterioration expresses the risks of a deregulated and fragmented digital media landscape. The current regulatory framework is ineffective in encompassing disinformation practices, including manipulating online visibility and political representativeness perceptions. A legislative revision is urgent to separate news from strategic communication-oriented content, including political advocacy.

The **Social Inclusiveness (59%)** area presents a medium risk, as it did in the previous year. Its score is affected by the high, and medium-high risk of the indicators **Representation of minorities in the media** and **Gender equality in the media**. Minorities and women are under-represented in the Portuguese media, as highlighted in the 2022 MPM report. Also, the problematic financial scenario for local journalism and the lack of systematic monitoring of online hate speech pose risks to media pluralism and social inclusiveness.

### Focus on the digital environment



Regarding **Fundamental Protection** in a digital environment, the percentage rises from 29,3% last year to **31%**. The overall picture remains clearly defined in law and proportionate. Legal mechanisms for the defense and Protection of Copyright and Related Rights in a digital environment are well implemented. Cyberattacks on media outlets' websites and law enforcement concerning authorities' illegal monitoring of journalists are still an object of attention. Regulatory safeguards regarding net neutrality are mostly implemented, but there are still some problems in terms of Internet access rights and other aspects related to zero-rating and similar offers.

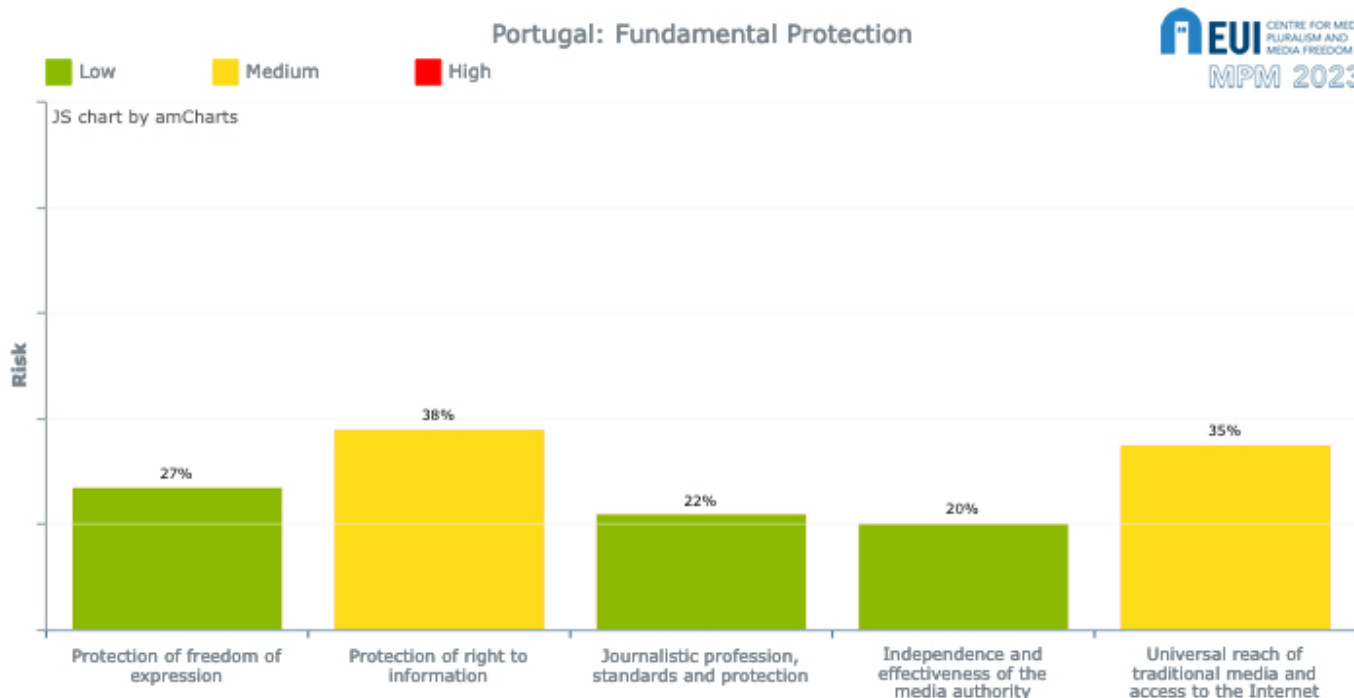
The **Market Plurality** area shows medium risk in the digital environment (**59%**). Some aspects that deserve attention have been identified. On the one hand, information about online media markets is not easily accessible; on the other hand, the laws regulating ownership are insufficient to effectively control digital expansion. The EU Directive on Copyright in the Digital Single Market has not yet been transposed. The government had authorization for this transposition, although the sectoral associations have claimed that the Parliament should implement this.

**Political Independence** in the digital context (**68%**) is a straightforward subject of attention with some risks of a deregulated and fragmented digital media landscape, disinformation practices, and no control of political advertising on the internet. A legislative revision is also urgent to separate news from strategic communication-oriented content, including political advocacy.

Protection against disinformation is one of the points to overtake concerning the digital environment of **Social Inclusiveness (52%)**. There are already some initiatives to tackle disinformation and stimulate media literacy, but there have been no effective changes since last year in terms of monitoring and protection against online hate speech. Initiatives are still limited, lacking a severe joint effort between the government, civil society, and universities to improve the general environment regarding discourse and news in the public space online.

### 3.1. Fundamental Protection (28% - 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.



The overall situation in this area remains stable and, in general, positive. However, there are some signs of concern, as all indicators were low-risk last year. This year we have two indicators with medium risk: **Protection of the right to information**, with **38%** (25% last year), and **Universal reach of traditional media and access to information**, with **35%** (31% last year). In any case, in terms of **Fundamental Protection**, the situation remains at low risk, although there was a rise in the area, from 23% to **28%**. The remaining indicators show a more similar behavior in comparison with the previous year. In this way, the indicator **Protection of freedom of expression** scores 27%, **Journalistic profession, standards, and protection** stays at 22%, and **Independence and effectiveness of the media authority** comes with 20%.

It is essential to look more particularly at the most critical cases. Starting the analysis with the **Protection of freedom of expression (27%)**, there are, of course, full safeguards in the Constitution (2005) and unreserved ratifications of both the European Convention on Human Rights and the International Covenant on Civil and Political Rights. Nevertheless, regarding violations of freedom of expression, namely concerning the incrimination of defamation, Portuguese legislation should be amended, as it is easy to see through the database of Portuguese cases (ECHR, 2022). Defamation in Portugal continues to be a "crime" with a penal framework of imprisonment. In fact, Portugal continues to be among the member states that "have not repealed general criminal defamation and insult laws, despite broad international consensus among legal experts and press freedom advocates that criminal punishments for defamation represent a disproportionate restriction on free expression." (IPI, 2015).

The **Protection of the right to information (38%)** is explicitly recognized in the Portuguese Constitution

(Article 268) and clearly defined by international standards, with appeal mechanisms in place for denials to access information (Law no. 26/2016). Nonetheless, the procedures are misused. Authorizing access to information continues to be difficult, incomprehensible, or even arbitrary in many cases (CADA, 2021). Regarding the **Protection of whistleblowers**, there are well-founded complaints about the "low profile" of Portuguese legislation which transposed the EU Whistleblowing Directive. But this new legislation is only effective for cases within the companies themselves, leaving out all other cases. We agree with TPI (2021) and WIN (2021) that "It is necessary to ensure broad and effective protection for all whistleblowers, in accordance with international standards and best practices."

With regard to the variable **Journalistic profession, standards, and protection (22%)**, in the current context of the post-pandemic crisis, aggravated by the economic implications generated by the Russian invasion of Ukraine, the assessment of this topic could not be more favorable than that already made in the last two years. In terms of working conditions, there is still a critical situation. Professional journalists' associations (SJ - Journalists Union and CCPJ - Journalists' Professional License Committee) should intervene more decisively, eventually, in the context of approving the new Press Law scheduled for 2023. On the other hand, precariousness, low salaries, little transparency, and/or arbitrary media management persist. In some cases, there are irregularities in payments and/or job insecurity (there are numerous cases in question during 2022-23: TVI, SIC, A Bola, Global Media (JN, DN, TSF), Semanário Novo, and ex-group Impala). Attacks or threats to the safety of journalists cases caused by extremist groups and football hooligans have been on the rise (GPO, 2022; SJ, 2023). Portugal still needs an anti-SLAPP legislation (CASE, 2022) in order to deepen the protection of journalists.

The guarantees of independence and incompatibilities of the ERC board appointment procedures are explicit in the statutes (ERC, 2005). In any case, with regard to the **Independence and effectiveness of the media authority (20%)**, what is happening is a common understanding between the two major parties (socialists and social democrats) for the indication of the names to be voted in Parliament. The socialist party itself has announced that it intends to review the law on the appointment of the board of ERC (RTP, 2022). In order to reinforce the legitimacy and the independence of the Regulatory Council, some solutions should be discussed, such as, for instance: i) the participation in the board of personality(s) of great merit representing civil society; ii) or, as some constitutionalists also defend, through the shared appointment of the council between the President (PR) and the Government: iii) or, still, by appointment, by the PR, of the president of the regulatory entity, under the proposal of the Government, and subject to a parliamentary hearing. Looking at the budget now, it seems not fully adequate to perform ERC functions. The budget does not meet the institution's challenges (and it was partially retained by the government in 2018, 2019, and 2020). According to the ERC's accounts report (ERC 2022: 58), there was a positive overall balance (EUR 3 056 151), a value that contrasts with the negative balance recorded in 2020 (EUR -1 546 997). This is due to the fact that the Portuguese State directly transferred EUR 6 000 000 euros to the ERC account, not retaining funding as in previous years. However, note the contrast between these sums and those of the telecommunications regulator (ANACOM, 2022: 48), which in 2021 presented a positive balance of EUR 32 531 405 for a forecast budget in 2022 of EUR 105 114 843.

Considering the **Universal reach of traditional media and Internet access (35%)**, PSM's universal coverage is guaranteed by law in Portugal, with a penetration rate of 100% on all platforms. Something different happens with the Internet penetration rate, as we can see in the snippet.

## Focus on the digital environment

Regarding freedom of expression online, the overall picture remains clearly defined in law and proportionate, as with the measures of blocking, filtering, and removal of Internet content. Also, in terms of the pandemic, there were no restrictions on freedom of expression online (Cádima, F. R. and Ivone, F. (2021). There are duly self-regulated and regulated legal mechanisms for the defense and Protection of Copyright and Related Rights in a digital environment (Figueiredo, J. L., Rocha, S. e Dias, B., n.d). Regardless, there is still no total transparency on the part of public institutions and private operators in this matter; that is, there is still no extensive disclosure of all blockages, content removals, etc., within the framework of Portuguese legislation (IGAC, 2021). Furthermore, online platforms generally refrain from filtering and/or monitoring and/or blocking, and/or arbitrarily removing online content. Now, we have to pay attention to the application of the Portuguese Charter of Human Rights in the Digital Age, meanwhile purging (2022) the content of the sixth article, which was heavily criticized in 2021 due to its possible impact of censorship.

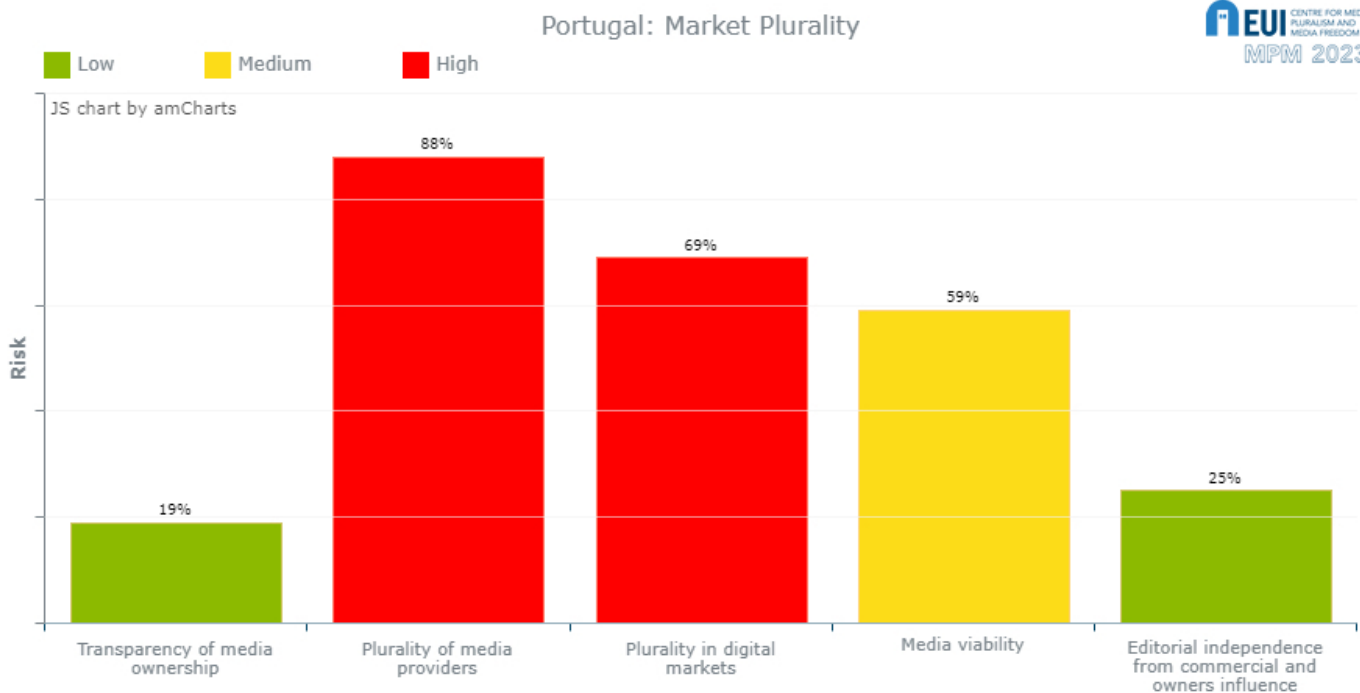
In 2022 there were cyberattacks on the websites of media outlets Cofina and Impresa groups (this one on the newspaper Expresso and SIC TV channels) by hackers and threats with ransom (Mapping Media Freedom, 2022). With regard to journalism data protection, the Directive (EU) 2016/680 was transposed into national legislation. However, the new regulatory framework (Law no. 59/2019) is not entirely explicit regarding situations such as law enforcement concerning illegal monitoring of journalists by authorities.

In terms of NGA (FTTH, FTTB, Cable Docsis 3.0, VDSL, and other superfast broadband, at least 30 Mbps download), Portugal presents a penetration of 90,5% of all households and the broadband subscription rate in the country is 84,1%. The average Internet connection speed is 92. Moreover, the percentage of market shares of the TOP 4 ISPs (MEO, NOS, Vodafone, and NOWO) is 98% (ANACOM, 2022a).

In particular to how Internet Service Providers manage data or 'traffic' carried on their networks, regulatory safeguards regarding net neutrality are mostly implemented, but there are some problems with zero-rating. Recently, ANACOM opened a Consultation on zero-rating and similar offers in Portugal in the context of the open Internet: "(...) Based on the monitoring carried out, several aspects related to zero-rating and similar offers have raised concerns to the extent that they may condition end-users freedom of choice, affecting the full exercise of their Internet access rights, as provided for in the Telecom Single Market Regulation. This Authority has also observed that, in recent years, there have been no relevant developments by providers in order to mitigate the potential impacts arising from this type of offers, in line with the recommendations set out by this Authority in the 2018 decision." (ANACOM, 2022b). More recently, ANACOM (2023) ordered operators to put an end, within 20 working days, to zero-rating and similar offers that discriminate, based on commercial matters, between traffic related to zero-rated applications and other traffic. For contracts currently in force, they must end these offers within a longer period of 90 working days.

### 3.2. Market Plurality (52% - medium risk)

The Market Plurality area considers the economic dimension of media pluralism, assessing the risks deriving from insufficient transparency in media ownership, the concentration of the market in terms of both production and distribution, the sustainability of media content production, and the influence of commercial interests and ownership on editorial content. The actors included in the assessment are media content providers, with indicators including Transparency of media ownership, Plurality of media providers, Media viability, Editorial independence from commercial and ownership influence, and digital intermediaries (with the indicator on Plurality in digital markets).



In 2023, the risk level of the Market Plurality area is **52%**. Even though it has slightly decreased in comparison with last year, it is still considered **Medium Risk**. Two indicators score high risk within this area: **Plurality of media providers (88%)** and **Plurality in digital markets (69%)**. **Media viability** scores **59%**, just below the high-risk mark. **Editorial independence from commercial and owners influence (25%)** and **Transparency of media ownership (19%)** do not appear problematic for the Portuguese media landscape.

The indicator **Transparency of media ownership** is **19%** (low risk). Law (78/2015) requires media companies to disclose their ownership structures. Most media groups publish transparent data on their direct and indirect owners, and the regulatory body (ERC) has access to this information. Also, ERC created the Portal da Transparência (Transparency Portal) in December 2019 to collect all information on media ownership (this goal was only partially achieved). Significant media groups like Impresa, Media Capital, Cofina, RTP, or Renascença provide sufficient and updated information on their beneficial and ultimate owners. However, not all entities provide a considerable level of transparency, which seems to be the principal challenge regarding this topic, year after year.

The indicator **Plurality of media providers** scores **88%** (high risk). The media market structure remains highly concentrated. Only four players control the private media business in Portugal: Impresa, Cofina, Media Capital, and Global Media. RTP (Rádio e Televisão de Portugal) is the State-Owned group. A few large conglomerates (that explore traditional and new media outlets) coexist with many small monomedia media firms. No general media law prevents market concentration (especially cross-media concentration of

ownership). The only restrictions for traditional news media in Portuguese law relate to the distribution of share capital and turnover. ERC - Entidade Reguladora para a Comunicação Social is the specific authority for media (Law 53/2005). The Autoridade da Concorrência (Competition Authority) also intervenes in the media sector as a monitoring system, protecting the competition environment and safekeeping the consumer's interests and market diversity. However, the law does not prevent cross-media concentration and does not foresee horizontal concentration within digital media. In the last few years, the laws that rule ownership have remained essentially the same. Within the digital realm, there are no updates, as the law is limited on what concerns the cross-media concentration, and it does not foresee horizontal concentration within media players (ERC, 2022d).

The indicator **Plurality in digital markets** scores **69%**: high risk. Firstly, it is estimated by some sources that Google and Facebook partake in around 70% of the online advertising revenue in Portugal (even though they do not share this information publicly). Regarding digital news content, the initiative Google News Showcase was implemented in Portugal at the end of 2021. However, it is limited to about 30 media outlets. The Directive (EU) 2019/790 – Digital Single Market from the European Parliament and of the Council of 17 April 2019 on copyright and related rights was approved but not transposed to the Portuguese Legislation. Its approval was delayed on November 2021 (Proposal of Legislation nº 114/XIV/3<sup>a</sup>) due to the government's fall, in consequence of the disapproval of the 2022 budget. The new procedure on the transposition was due by June 2022 (the initial deadline was June 2021). However, Portugal has not met the deadline. The European Commission has decided to refer Portugal, as well as other countries, to the Court of Justice of the European Union for failing to notify the Commission of transposition measures under the two Directives concerning copyright (the transposition would be authorized by the Portuguese President only on the 16th of March 2023). Nevertheless, on what concerns the taxation of digital services developed by the OECD, Portugal has implemented Digital Service Taxes on the scope of commercial audiovisual communication on video-sharing platforms and subscriptions for video-on-demand services. It holds a tax rate of 4.1% and has been effective since February 2021.

The indicator of **Media viability** reaches **59%**, which is considered medium risk. The revenue of media companies has shown a tendency to grow, but it does not cover the whole market. For instance, as of June 2022, Media Capital's TV revenues increased by 5%, and Cofina's TV revenues increased by 19,7%. However, Impresa's television revenues fell 3,7% while RTP's decreased by 1%. The radio sector shows a slight increase in advertising revenues, as does the Newspapers and Press sector. Although the tendency is to grow slowly and steadily, it has to be considered stationary in light of high inflation rates. Regarding innovative sources of revenue, the highlight is the investment in subscription and VOD platforms. RTP Play (free), Opto (subscription-based), and TVI Player (free) are some examples (OBERCOM, 2022). RTP has shown particular interest and investment in the production of web series. In the radio sector, there is an interest in the new podcasting platform (Popcasts) made by Renascença Multimédia (Rádio Renascença and RFM radios) both for their own podcasts as well as to attract other publishers. There appears to be a closer interconnection between traditional media formats, social networks, and streaming services (Reuters, 2022). Also, within the State Budget for 2023, the Government has announced the financial support upgrade of 12,5% for regional and local media, which has not happened since 2015, which is a positive note.

The indicator **Editorial independence from commercial and owners influence** reflects a low risk: **25%**. In Portugal, in general, appointments and dismissals of journalists, including editors-in-chief, are not dependent on the commercial interests of a media organization. The Journalist's Statute (Law 1/99) foresees it, although it is hard to say that these mechanisms are always effective as there have been

exceptions in the past. Media companies always separate the functions of commercial/advertising departments and their respective newsrooms. There is no significant permeability between these management structures.

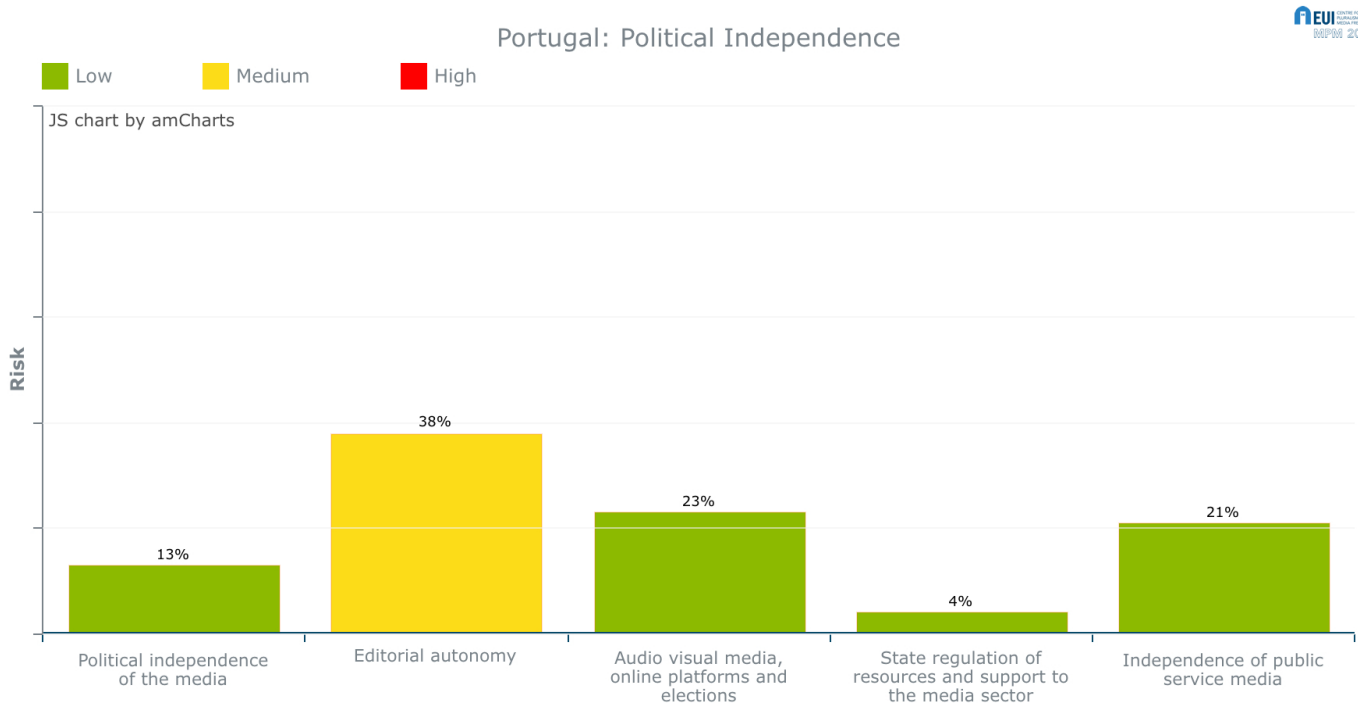
### **Focus on the digital environment**

The **Market Plurality** area shows a slightly higher risk (**59%**) in the digital environment compared to the overall risk (**52%**). Firstly, information about online media markets is not easily accessible. Secondly, there is also a stagnancy in Portuguese regulation: the laws regulating ownership of media groups remain the same, culminating in the absence of the digital markets' expansion within the regulatory framework. There is no law yet that takes into consideration digital markets or online media platforms. ERC and The Competition Authority are responsible for intervening in any economic transaction threatening fair competition and pluralism. However, as stated before, their sanctioning and enforcing powers are not always effective, especially in the digital markets. The online advertising market share is almost totally ruled by giant international platforms (Google and Facebook), which is the main threat regarding plurality in digital markets. Although the initiative Google News Showcase was implemented at the end of 2021, it has limitations. In addition, the EU Directive on Copyright in the Digital Single Market was not fulfilled this year, resulting in the referral of Portugal to the Court of Justice of the European Union. In general, the digital news businesses and companies are struggling to be profitable. On a more positive note, there has been a larger investment in subscription and VOD platforms from media companies, which can result in a closer connection between traditional media and digital services.



### 3.3. Political Independence (20% - 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.



The **Political Independence** area maintains the same low-level risk as in the 2022 report (20%).

The indicator **Political independence of the media** marks **13%** - low risk, 9 percentage points higher than in 2022. The legal framework and the journalistic culture standards stay firm in protecting leading media from political interference. The Television and Audiovisual Services on Demand Law (n. ° 74/2020 of November 19) prohibits parties and all political associations from developing or financing activities in these sectors. Another safeguard is the Law n. ° 95/2015 of August 17, imposing transparency of the ownership, management, and means of financing of the entities that carry out media activities. The challenge for maintaining media independence is to ensure the relevance of the information reported to the ERC (Media Regulatory Authority). The Transparency Platform, where this mandatory data is made public, is a useful tool but offers little detail, and many companies provide only general data. The appointment and dismissal of directors and editors-in-chief need ERC's approval. Still, this rule only applies to PSM, so eventual political motives directing these recruitments in the private media universe will not be investigated. Except during election campaign periods, no regulation mandates an equitable representation of the diversity of opinion in political commentary spaces, which have become an integral part of news programs and the main media arena to influence public opinion.

The **Editorial autonomy** indicator scores **38%** - medium risk, the same as in 2022. This is the most vulnerable area in political independence, and the reasons for concern remain. Beyond the generic guarantees of independence of journalists provided for in the Journalist Statute (Law n. ° 1/99 of January 13) and the monitoring that ERC does regarding the coordinating positions in the areas of Information and

Programming, validated by its Statutes (Law n.º 53/2005 of November 8), there are no reliable studies on the risks to this indicator. Editorial autonomy is threatened by the growing deterioration of the journalistic profession, especially in devaluated salaries, and the financial fragility of the legacy press and most regional and local news projects. Some attempts of interference by soccer clubs are resounding, namely seeking to determine the questions allowed to players and managers, suggesting substantial contamination between the commercial and branding interests of football clubs and the editorial agenda of the media. The universe of paid content is rampant, including political coverage, and has become a usual way of financing media companies, undermining the credibility of the information.

The **Audiovisual media, online platforms, and elections** indicators are at a low risk (**23%**). The main contributor to this favorable result is Law No. 72-A/2015 of July 23, which establishes the legal regime for news coverage during election periods and prevents political propaganda through commercial advertising on radio and television. Political pluralism is an obligation stipulated in various regulations recommending an equal range of all candidates during elections while maintaining editorial freedom. In the case of PSM, this obligation is reinforced through the public service concession contracts. ERC is mandated to monitor the diversity of political actors in the media, producing an annual report on compliance with political pluralism. These reports point to deficits in the visibility of parties with reduced parliamentary representation and regional party representations in the Azores and Madeira. The imbalances are more visible outside election campaign periods and political commentary programs. In the last elections held (presidential in January 2021 and legislative in January 2022), there was an understanding among the various television channels, public and private, to ensure the presence of all candidates in the electoral debates.

The indicator **State regulation of resources and support for the media sector** presents **4%** - low risk. In the 2022 report, the score was 33%. This better performance is related to the end of the Covid-19 pandemic and the policy errors that occurred with the distribution of the €15 million package in the advance purchase of institutional advertising approved in 2020, intended to alleviate the decreases suffered in advertising revenues. Nevertheless, Portugal does not have a consolidated public policy to support the media. The current subsidies remain postage payments (aka *porte pago*, called reading incentive since 2015) for local and regional press and funds for digitization, media literacy, professionalization, and content production, available through applications to competitive projects managed by the CCDRs (Commissions for Coordination of Regional Development). In March 2023, several associations representing the regional media (AIC, API, APR, and ARIC) criticized the government for delays in the publication of the dispatch on support for the sector. This requires an articulation between the ministries of Culture, Territorial Cohesion, and Finance, and the projects co-financed under the regional and local media incentive scheme for 2022 were still being held up.

The indicator **Independence of PSM governance and funding** increased at **21%**. The governance model of PSM (RTP and Lusa) and strong journalistic ethical standards have guaranteed independence. The increase in risk is related to the sustainability of the funding model and the lack of investment to meet the demands of multiplatform public service in an unfavorable economic environment. Both RTP and Lusa operate in a digital market and provide multimedia services not initially foreseen in the concession contracts and imply investments in technology and human resources. The increase in energy costs and the coverage of the war in Ukraine hurt budgets. RTP is financed by the CAV (Contribution to Audiovisual Media), and a €2.85 fee is paid on the electricity bill. The news agency Lusa depends on the approval of the budget law. The compensatory allowance for 2022 is 13.4 million euros, 2% more than in 2021. The inflation rate in February 2023 reached 8.2%, and Lusa is facing labor conflicts for being unable to match the 5% increase in salaries that the Government established for the public sector. The Minister of Culture has created a

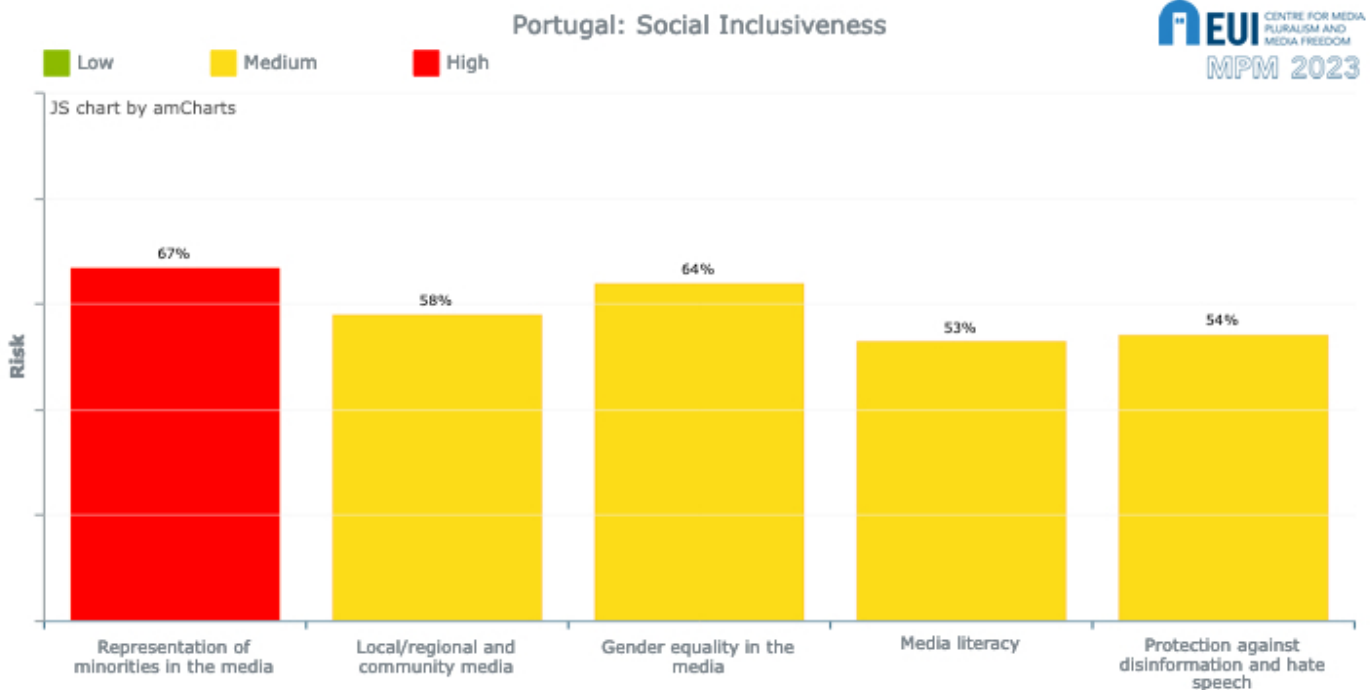
White Paper Commission that should present recommendations for the future of public service in April 2023, but there is widespread skepticism about the adequacy of current public policies for the media.

### **Focus on the digital environment**

The risk assessment for **Political Independence** in the digital environment increased to **68%**. This deterioration expresses the inattention to the risks of a deregulated and fragmented digital media landscape. Although media and digital platforms are subject to a ban on publishing political advertising, the current regulatory framework is ineffective in encompassing disinformation practices, including manipulating visibility and political representativeness on the internet. The Entity for Political Finance and Accounts oversees election spending and has neither the means nor the training to monitor political advertising on the Internet effectively. ERC applies the Press Law to digital journalistic media, but this is outdated 1999 legislation. A legislative revision is urgent to separate news from strategic communication-oriented content, including political advocacy.

### 3.4. Social Inclusiveness (59% - medium risk)

The Social Inclusiveness area focuses on the access to media by specific groups in society: minorities, local and regional communities, women and people with disabilities. It also examines the country's media literacy environment, including the digital skills of the overall population. Finally, it also includes new challenges arising from the uses of digital technologies, which are linked to the Protection against disinformation and hate speech.



The **Social Inclusiveness** area is at medium risk, with **59%**, the same score as in the 2022 MPM report.

The indicator **Representation of minorities in the media** presents a high risk (**67%**), with the same value as in last year's report. The year 2022 did not bring anything particularly new in this indicator, although there was a multiplication of journalistic works on minorities, with differentiated perspectives and target groups, and a greater diversification of opinion and commenters. However, minorities clearly miss a fair representation in terms of news media coverage and in terms of television programs. The most recent Regulation Report published by the regulatory entity (ERC), concerning 2021, states a low level of programs that promote cultural diversity and minorities' interests in the main public broadcasting television channel and the two leading commercial TV media (SIC and TVI) (ERC, 2022a). Concerning the sub-indicator on Media accessibility for people with disabilities, there is a well-developed and implemented legal framework and policy. According to the Media Regulatory Body's Regulation Report regarding 2021 (ERC, 2022a), the main open-signal TV channels offer accessibility for people with hearing impairments and blind people and have generally respected their obligations concerning accessibility standards. However, the leading public TV broadcaster (RTP) did not achieve the minimal accessibility standards regarding teletext subtitles in eight out of 12 weeks analyzed in 2021. Although RTP1 surpassed the minimum required concerning the use of sign language, RTP was condemned by ERC to pay a 50,000 euros fine (Lusa, 2023).

The indicator **Local/regional and community media** scores medium risk (**58%**), with a rise of 8 percentage points about the 2022 MPM Report. According to the report "News Deserts Europe 2022: Portugal report" (Jerónimo et al., 2022), "the reality of local journalism in the country is plagued by financial difficulties, given the changes in the market advertising and public media consumption." Plus, "more than half of the Portuguese municipalities are news deserts or are on the verge of becoming so." Besides, community

media are not legally recognized in Portugal as such, which limits the possibility of assessing its ways of functioning and impacts on its economic sustainability and independence. There is a notable absence of academic studies concerning community media, financial situation, editorial independence, and audiences' impact.

The indicator **Gender equity in the media** scores medium-high risk (**64%**), lowering in 1 point the risk assessment found in last year's report. Gender imbalance in leadership positions persists in management boards and executive positions in PSM or private media companies. A notable imbalance between the sexes in the representation of men and women in information persists regarding the actors in the news pieces broadcasted on prime-time television, visible specifically in the political area (ERC, 2022b). The Global Media Monitoring Project Report 2020 concerning Portugal found that news that challenges gender stereotypes represents only 2% of the news pieces analyzed (GMMP, 2021).

The indicator **Media literacy** is at medium risk (**53%**), with a rise of 11 points compared to the 2022 MPM report. The creation of a national strategy to promote media literacy is still absent, although there are improvements in the existing policy and a great diversity of initiatives within non-formal education. Media literacy initiatives targeting vulnerable groups are limited in the country and scarcer than the existing ones for other groups.

The indicator **Protection against disinformation and hate speech** presents a medium risk (**54%**), and its score cannot be compared to last year's report due to methodological changes (see Section 1.2). In political terms, disinformation is mainly produced and disseminated by politicians (against their opponents) and commentators using traditional media and social media. In the first months of the war in Ukraine, much disinformation related to the war events circulated in social media and had prime-time space on the national broadcast TV channels, but due to a broad pro-Ukraine consensus on the Portuguese society and institutions, pro-Russia disinformation had a low impact. International disinformation trends, such as issues about migrants, have little traction in Portugal. Hate speech is legally defined in the Penal Code (article 240), but the public and/or online expression of a racist ideology, for instance, is not criminalized (ECRI, 2018). The preparation of a preliminary draft of a government bill to amend article 240 was announced but not yet implemented.

### **Focus on the digital environment**

**Social Inclusiveness** in the digital environment presents a score of **52%**, 6 points higher than last year's report.

According to Eurostat, 55% of the population has basic or above basic overall digital skills. Regarding protection against disinformation, article 6 of the "Portuguese Letter of human rights in the digital age" (Carta Portuguesa de Direitos Humanos na Era Digital) is (very generically) centered on protecting Society against the diffusion of disinformation in reference to the Action Plan against Disinformation (EU). There are some initiatives to tackle disinformation and stimulate media literacy promoted by public entities. Moreover, the IBERIFIER project – Iberian Digital Media and Disinformation Observatory, the Portuguese and Spanish hub from EDMO – European Digital Media Observatory, produces an updated media map for both countries, reports on disinformation campaigns and impacts, and promotes media literacy initiatives for journalists, teachers, students, minorities and other vulnerable groups in Portugal and Spain, including Portuguese-speaking countries journalists

and communication students.

Concerning protection against online hate speech, there have been no effective changes since last year's report. Despite efforts concerning this dimension, systematic monitoring and reliable statistics on hate speech on the Internet and social media are still lacking. There has been an improvement in the fight against hate speech in Portugal, but initiatives are still limited, lacking a severe joint effort between the government, civil society, and universities. Modifications to penal laws and the creation of the Observatory on Hate Speech, Racism, and Xenophobia have been announced but not implemented yet. In November 2022, a series of investigative reporting by the Portuguese Consortium of Investigative Reporters (a collaboration between news organizations and academia) showed the use and spread of hate speech among 591 police workers in closed Facebook groups. The impact of this story has generated discussion around effective mechanisms to prevent, monitor and report these situations to competent authorities besides journalists.

## 4. Conclusions

As is clear from the analysis carried out, the **Fundamental Protection** area in Portugal does not present significant risks in its different dimensions. In a finer analysis and seeking to improve even more the general picture of this area, we believe there is room for improvement in some specific matters, such as:

- The ERC board appointment policy, i.e., to reinforce the legitimacy and the independence of the Regulatory Council, some solutions should be discussed, such as, for instance: i) the participation in the board of personality(s) of great merit representing civil society; ii) or, as some constitutionalists also defend, through the shared appointment of the council between the President (PR) and the Government: iii) or, still, by appointment, by the PR, of the president of the regulatory entity, under the proposal of the Government, and subject to a parliamentary hearing.
- Furthermore, more excellent budgetary stability for ERC, either going beyond the usual captivations or providing the entity with financial allocations appropriate to its performance and needs.
- Legislation on defamation needs to be decriminalized in Portugal - it remains a "crime" punishable by imprisonment.
- The legislation on whistleblowers also needs to be modernized in the light of the best European practices, in the sense of being of a broad spectrum and not just limited to whistleblowers within the companies themselves.

There are some risks in the **Market Plurality** area in the Portuguese media landscape. Our main recommendations in this area are the following:

- There is still a need for a general law that can prevent higher media concentration in the future.
- The digital markets must be considered within the regulatory framework, reflecting the digital media environment's challenges.
- In terms of regulating transparency, it is crucial to reinforce the authorities' ability to intervene, to avoid information failures.
- Economically, this year echoes some challenges for the media business sustainability, especially the impact of the high inflation rates that have spread around the European countries. Portugal has implemented Digital Service Taxes on the scope of commercial audiovisual communication on video-sharing platforms and subscriptions for video-on-demand services. However, the Directive (EU) 2019/790 on copyright and related rights in the Digital Single Market was approved but not transposed to the Portuguese Legislation until 16 March 2023. In the future, this should be monitored to ensure the protection of copyright on online content.

The **Political Independence** area performs well due to a sustained legal framework protecting press freedom and editorial autonomy. However, guaranteeing access to independent journalism requires more tough measures to support the sectors most affected by the pandemic, namely the regional and local media, and to continue to ensure that PSM can promote innovation and fight disinformation. Job precarity, low

wages, depleted newsrooms, and uncreative work routines are undermining journalism's ability to scrutinize political and financial powers through investigative reporting. We maintain the following recommendations:

- The State should provide a sustainable package of public support to the media, targeting the sectors that are still suffering from the pandemic sequels, namely regional and local media;
- The contribution of PSM to the quality of democracy should be recognized, and public funding should be adequate and timely delivered to allow the development of innovative and engaging news services reaching online audiences and fighting disinformation;
- Legislative reform is needed to face the reality of the digital media universe, increasingly subjected to political polarization and commercial monetization dynamics that are largely incompatible with the independence required for journalists;
- The professional journalism community should engage in earnest dialogue with the media regulators (CCPJ and ERC) and the sector representatives to strengthen ethical standards and denounce political and other forms of pressure on journalists;
- Digital platforms are part of journalism's troubles and should be integrated into the policy dialogue on media regulation. Ongoing projects and partnerships should be monitored for effectiveness and transparency.

Considering **Social Inclusiveness**, as minorities miss a fair representation, we, therefore, continue to recommend:

- Promoting policies focused on raising awareness of a more diverse representation in the media.
- The legal framework should look forward, value community media, and also provisions should be taken to protect the economic viability of local journalism and thus prevent the expansion of news deserts.
- A clear and noticeable imbalance in gender representation and leadership remain in Portuguese news media, which should be addressed through specific policies.
- Media literacy initiatives targeting vulnerable groups would need better support for promoting long-term strategies.
- Finally, we recommend effectively implementing long-announced measures to tackle and prevent online hate speech during the year 2023.



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## **Interviews (Social Inclusiveness)**

Ana Pinto Martinho and Miguel Crespo, researchers at MediaLab ISCTE-IUL and experts on disinformation. Carlos Duarte, assistant professor at the Faculdade de Ciências da Universidade de Lisboa and expert on accessibility.

Isabel Férin, associate professor at Universidade de Coimbra and expert on the relationship between media and ethnic minorities.

Maria José Brites, associate professor at Universidade Lusófona (Porto) and expert on media literacy.

Pedro Jerónimo, researcher at LABCOM/UBI and member of the expert committee concerning direct subsidies to regional media outlets.

## ANNEXE I. COUNTRY TEAM

| First name           | Last name               | Position                           | Institution  | MPM2023 CT Leader |
|----------------------|-------------------------|------------------------------------|--|-------------------|
| <i>Francisco Rui</i> | <i>Cádima</i>           | <i>PI - Principal Investigator</i> | <i>ICNOVA - Nova Institute of Communication (FCSH - Universidade Nova de Lisboa)</i> | X                 |
| <i>Carla</i>         | <i>Baptista</i>         | <i>Researcher; Teacher</i>         | <i>ICNOVA - Nova Institute of Communication (FCSH - Universidade Nova de Lisboa)</i> |                   |
| <i>Marisa</i>        | <i>Torres da Silva</i>  | <i>Researcher; Teacher</i>         | <i>ICNOVA - Nova Institute of Communication (FCSH - Universidade Nova de Lisboa)</i> |                   |
| <i>Patrícia</i>      | <i>Abreu</i>            | <i>PhD student</i>                 | <i>NOVA FCSH</i>   |                   |
| <i>Luís</i>          | <i>Oliveira Martins</i> | <i>Researcher; Teacher</i>         | <i>ICNOVA - Nova Institute of Communication (FCSH - Universidade Nova de Lisboa)</i> |                   |

## ANNEXE II. GROUP OF EXPERTS

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

| First name      | Last name            | Position                                     | Institution   |
|-----------------|----------------------|--|---|
| <i>Elsa</i>     | <i>Costa e Silva</i> | <i>Researcher; Teacher</i>                   | <i>Communication and Society Research Center</i>                      |
| <i>Catarina</i> | <i>Burnay</i>        | <i>Researcher; Teacher</i>                   | <i>CECC - Research Center for Communication and Culture</i>           |
| <i>João</i>     | <i>Palmeiro</i>      | <i>API President</i>                         | <i>API - Associação Portuguesa de Imprensa</i>                        |
| <i>Pedro</i>    | <i>Braumann</i>      | <i>Member of the Board</i>                   | <i>CPMCS - CONFEDERAÇÃO PORTUGUESA DE MEIOS DE COMUNICAÇÃO SOCIAL</i> |
| <i>Carla</i>    | <i>Martins</i>       | <i>Head of Media Transparency Unit - ERC</i> | <i>ERC</i>  |
| <i>Sofia</i>    | <i>Branco</i>        | <i>President</i>                             | <i>Sindicato dos Jornalistas - Union of Journalists</i>               |

|                  |               |                |                    |
|------------------|---------------|----------------|--------------------|
| <i>Margarida</i> | <i>Guerra</i> | <i>Partner</i> | <i>OhMyDigital</i> |
|------------------|---------------|----------------|--------------------|

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