Media Pluralism in Luxembourg

A Test Implementation of the Media Pluralism Monitor 2015

Authors:

Raphael Kies (University of Luxembourg)
Céline Schall (University of Luxembourg)
Kim Nommesch (Science Po Paris)

October 2015

The Centre for Media Pluralism and Media Freedom
is co-financed by the European Union

About the project

The Media Pluralism Monitor (MPM) is a research tool that was designed to identify potential risks to media pluralism in the Member States of the European Union. This narrative report has been produced within the framework of the second pilot test implementation of the MPM, which was carried out in 2015. The implementation was conducted in 19 EU Member States with the support of a grant awarded by the European Union to the Centre for Media Pluralism and Media Freedom (CMPF) at the European University Institute.

The Monitor's methodology is based on research carried out by national country teams in the 19 countries, except for Malta where data collection was carried out centrally by the CMPF team. The research is based on a standardised questionnaire and apposite guidelines that were developed by the CMPF. Moreover, to ensure accurate and reliable findings, a group of national experts in each country reviewed the answers to particularly sensitive questions (see Annexe I for the list of experts).

Risks to media pluralism are examined in four main thematic domains, which are considered to capture the main areas of risk for media pluralism and media freedom: Basic Protection, Market Plurality, Political Independence and Social Inclusiveness. The results are based on the assessment of a number of indicators for each thematic area. The Basic Protection domain consists of four indicators; Market Plurality has three, while Political Independence and Social Inclusiveness each contain six indicators.

Basic Protection	**Market Plurality**	**Political Independence**	**Social Inclusiveness**
Protection of freedom of expression	Transparency of media ownership	Political bias in the media	Access to media for different social and cultural groups, and local communities
Protection of right to information	Concentration of media ownership	Politicisation of control over media outlets	Availability of media platforms for community media
Journalistic profession, standards and protection	Concentration of cross-media ownership	Politicisation of control over media distribution networks	Access to media for the physically challenged people
Independence of national authority(ies)		State advertising	Centralisation of the media system
		Independence of PSM governance and funding	Universal coverage of the PSM and the Internet
		Independence of news agencies	Media literacy

The results for each domain and indicator are presented on a scale from negligible to 100%, a negligible risk being the lowest, and 100% risk being the highest score. Scores between negligible and 33% are considered low risk, 34 to 66% are medium risk, while those between 67 and 100% are high risk.

Table of contents

1. Introduction

According to MPM2015, Luxembourg presents low risk for the 'Basic Protection' and 'Political Independence' domains, respectively, a medium risk in terms of 'Social Inclusiveness' and high risk for the 'Market Plurality' domain. These mixed performances are mainly attributable to the small size of Luxembourg, its particular demographic structure (with a high percentage of non-Luxembourgish residents, who cannot be considered as "national minorities"), its prominent role in the international "market of concessions" and the lack of critical and independent reports on the national media legislation, market and practices. All in all, these special conditions explain that Luxembourg is a peculiar case where pragmatism defines the media and electronic communications policies. Pragmatism "justifies" the lack of human resources and the effectiveness of national authorities, the absence of an adequate national media offer (for the multilingual resident population), and the presence of a highly concentrated media market.

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

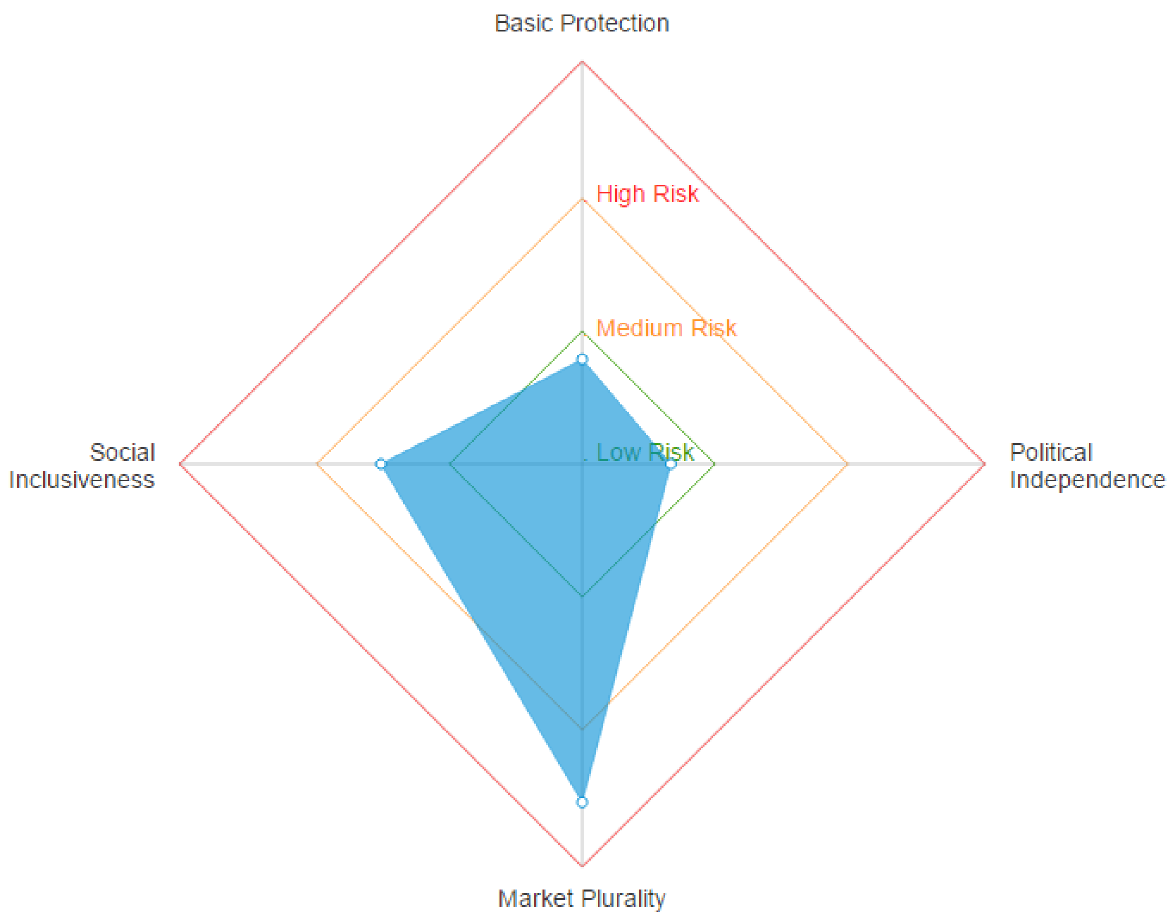

Figure 1 Media Pluralism Monitor 2015 - Luxembourg, Results by Risk Domain

2.1 Basic Protection (26% risk - low risk)

The Basic Protection indicators represent the regulatory backbone of the media sector in every contemporary democracy and they measure a number of potential areas of risk, including the existence and effectiveness of the implementation of regulatory safeguards for the freedom of expression and the right to information; the status of journalists in each country, including their protection and ability to work; as well as the independence and effectiveness of the national regulatory bodies, namely, media authorities, competition authorities and communications authorities.

Indicator	**Risk**
Protection of freedom of expression	2% risk (low)
Protection of right to information	75% risk (high)
Journalistic profession, standards and protection	25% risk (low)
Independence of national authority(ies)	3% risk (low)

The indicator: ‘Protection of freedom of expression’ (2%, low risk). The freedom of expression is explicitly recognised in the Constitution and it is protected by national law. Luxembourg has signed and ratified important international treaties relating to this matter. On a general basis, the risk of the violation of freedom of expression is low, and defamation is not decriminalised, but specific defences for defamation relating to the press are regarded as sufficient legal defences.

The indicator: ‘Protection of right to information’ (75%, high risk). The right to information is not mentioned in the Constitution and there is an overall lack of legislation relating to a fundamental and coherent right to information.

The indicator: ‘Journalistic profession, standards and protection’ (25%, low risk). In practice, the journalist profession is very open. Journalists are legally protected in cases of editorial change, and their sources are well protected. However, specific regulations preventing commercial influences on editorial content are missing. The journalists’ associations – which count ess than half of the journalists as their registered members – offer only limited protection in the case of threats against editorial independence or professional standards. In recent years, the protection of sources has worked fairly well and there have been no physical or digital threats against journalists. However, some declare that they feel increasingly put under pressure by advertisers, and they complain about their working conditions.

The indicator: ‘Independence of national authority(ies)’ (3%, low risk). [1]

[1] NB: It needs to be noted that this indicator has been found to be problematic in the 2015 implementation of the Media Pluralism Monitor. The indicator aimed to combine the risks to the independence and effectiveness of media authorities, competition authorities and communication authorities, but it was found to produce unreliable findings. In particular, despite significant problems with regard to the independence and effectiveness of some of the authorities in many of the countries, the indicator failed to pick up on such risks and tended to produce an overall low level of risk for all countries. This indicator will be revised in future versions of the MPM (note by CMPF).

ALIA (Autorité indépendante de l'audiovisuel) is the newly created independent media authority (2013) which unifies the formerly fragmented regulatory landscape. Its independence (including its selection procedures) is legally guaranteed, but the authors estimate that the selection procedures may become more transparent in practice. The procedures of financial allocations are transparent and objective. However, the annual budget appears largely to be insufficient, in terms of human resources, in order to correctly perform its (numerous) missions. ALIA is composed of 2.75 permanent employees, who are also responsible for monitoring around 50 audiovisual concessions in several countries.

The national competition authority is in charge of all of the activities of production, the distribution of goods and the delivery of services, including entities that are governed under public law, i.e., also media, but it seems to mainly react to complaints, rather than undertaking investigations on its own initiative. It has, for instance, not questioned the concentration of the national audiovisual market. The telecommunications authority is part of the regulatory institute; and, first and foremost, it issues regulations but is not competent in the media sector. As far as the decision practices of the three national authorities are concerned, sanctioning powers and appeal mechanisms are available. In practice, the authors estimate that there is no evidence that the government has arbitrarily overruled any decisions and that the authorities are transparent about their activities.

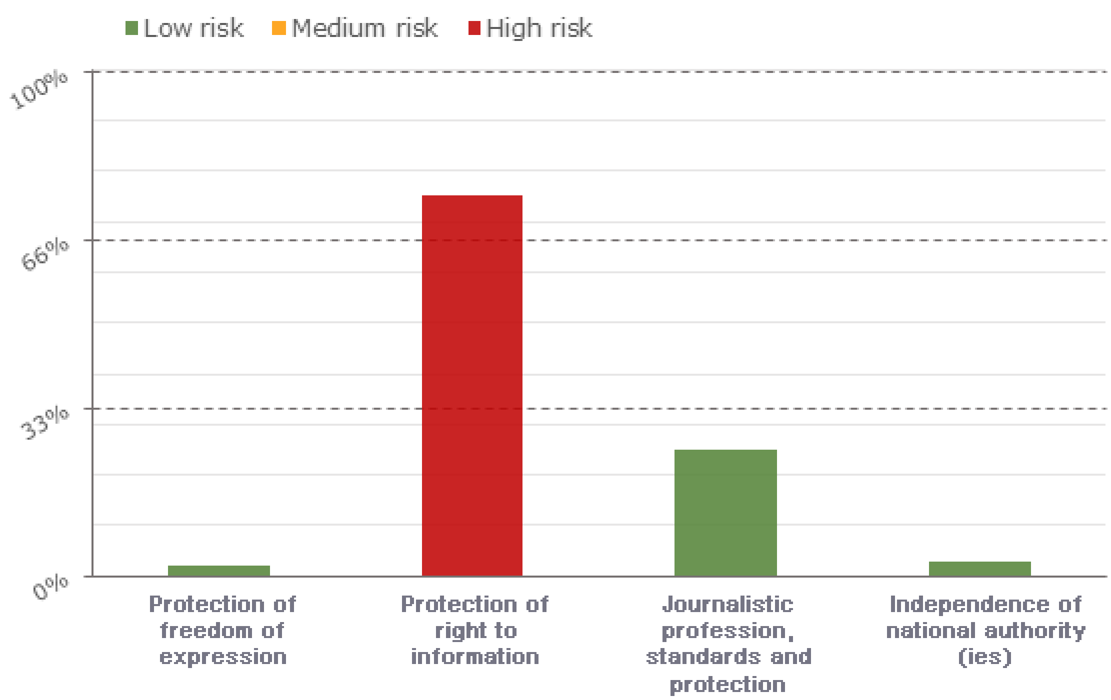

Figure 2. Media Pluralism Monitor 2015 - Luxembourg, Basic Protection Domain, Results by Indicators

2.2 Market Plurality (84% risk – high risk)

The Market Plurality indicators examine the existence and effectiveness of the implementation of transparency and disclosure provisions with regard to media ownership. In addition, they assess the regulatory safeguards against high concentration of media ownership and control in the different media, within a media market as well as cross-ownership concentration within the media sector.

Indicator	**Risk**
Transparency of media ownership	58% risk (medium)
Concentration of media ownership	93% risk (high)
Concentration of cross-media ownership	100% risk (high)

The indicator: ‘Transparency of media ownership’ (58%, medium risk). The law obliges the media to publish their ownership structures when holding more than 25% of the media, but does not require these elements to be referred to a media authority. There is no legal obligation to report a change of ownership to the public. Finally, the law does not fully ensure that the public can know who the owners of the media are.

The indicator: ‘Concentration of media ownership’ (93%, high risk). National law does not contain any provision that aims to control concentration in the media, nor a legal framework about net neutrality (discussions are ongoing). The role of the competition authority is to control mergers in cases of the abuse of a dominant market position for the whole economic market, without taking into account the specificities of the media market. So, even if there are competent authorities (competition authority and ALIA) to monitor the media, there are no legal provisions to which they could refer in order to efficiently monitor media concentration issues. Media concentration is not seen as a problem but as being inevitable, due to the very small size of the market (563.000 inhabitants) and its linguistic fragmentation (since over 45% of residents are foreigners). The media market is thus emerging as one of the most concentrated in Europe: one TV channel clearly dominates the market (the RTL Group), one group dominates the radio sector (the RTL Group) and one site largely dominates the Internet content intermediaries’ sector (Google.com). The press sector is very specific, because it is widely supported by the government (this explains the presence of six different daily newspapers). However, only two publishers share this market (Imprimerie Saint-Paul and Editpress). All in all, the four main television owners (including non-Luxembourgish ones) accumulate 59% of the national audience, the four main radio owners 75%, and the four main press owners 56% (we have no figures for internet content providers).

The indicator: ‘Concentration of cross-media ownership’ (100%, high risk). Luxembourgish law contains no limit or specific criteria with which to control cross-media concentration. Major groups (Editpress, Imprimerie Saint-Paul and the RTL Group) are present in all media sectors (the newspapers, radio, television and the Internet). The competition authority is seized only if an abuse of dominant position in the market is observed, but it does not take into account the specificities of the media sector.

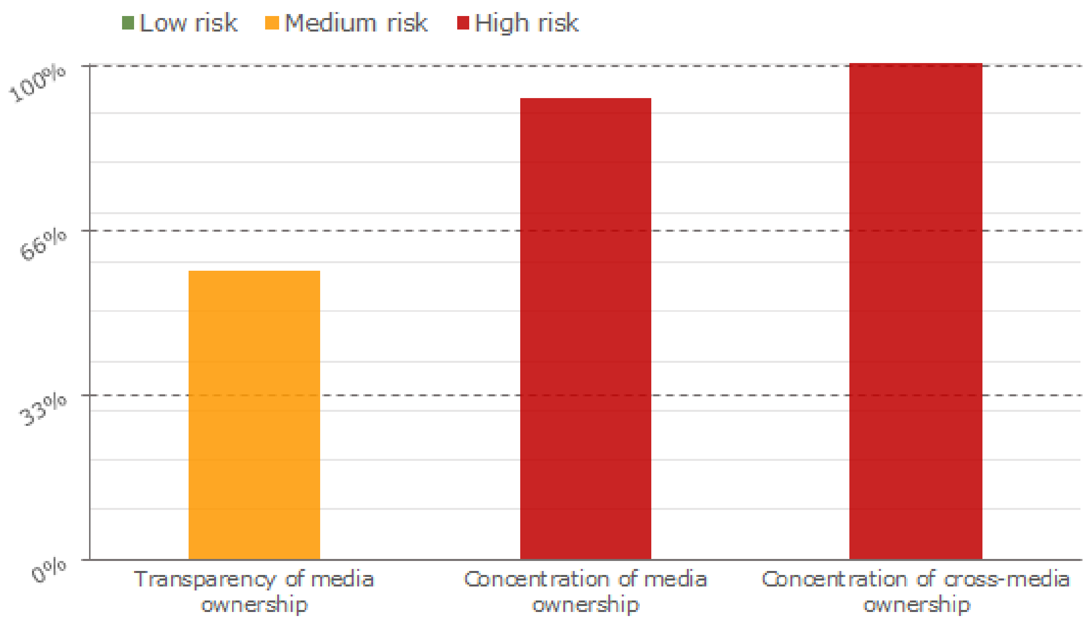

Figure 3 Media Pluralism Monitor 2015 - Luxembourg, Market Plurality Domain, Results by Indicators

2.3 Political Independence (22% risk – low risk)

The Political Independence indicators assess the existence and effectiveness of the implementation of regulatory safeguards against the biased representation of the political viewpoints in the media, and also the extent of the politicisation over media outlets, media distribution networks and news agencies. Moreover, it examines the influence of the state on the functioning of the media market, with a focus on state advertisement and public service media.

Indicator	**Risk**
Political bias in the media	25% risk (low)
Politicisation of control over media outlets	12% risk (low)
Politicisation of control over media distribution networks	17% risk (low)
State advertising	33% risk (low)
Independence of PSM governance and funding	23% risk (low)
Independence of news agencies	Not applicable

The indicator: ‘Political bias in the media’ (25%, low risk). Law and conventions impose rules that aim at the fair, balanced and impartial representation of political viewpoints in news and informative programmes on the PSM channel and its services. ALIA is the administrative independent body that is tasked with actively monitoring compliance with these rules and/or to hear complaints. ALIA has sanctioning/enforcement powers in order to impose proportionate remedies in cases of noncompliance with the rules, and appeal mechanisms exist against ALIA's decisions. The authors consider that the new authority does not have sufficient human and financial resources to 'actively monitor' the respect of these rules. They are not aware of an internal charter or of other self-regulatory instruments that guarantee access to PSM channels by political actors. Despite this, and in the absence of official complaints, it is estimated that the regulatory safeguards for fair representation of political viewpoints are correctly implemented in the national PSM channel. Please note that there is no public sector television in Luxembourg, the only national PSM is the radio channel 100,7.

It is also considered that political coverage on commercial channels is generally fair. During election periods, media law (including conventions) imposes general rules that aim to guarantee access to airtime on PSM channels and services by political actors during election campaigns in all types of elections. In concrete terms, the electoral campaign is planned and supervised by a consultative commission on 'electoral campaigns', which was created by a decree of the Governing Council of 25 July 2003. It should be said that the control of compliance with these rules is rather limited in relation to its scope (it is related only to the official events of the campaign) and to its resources (only one person checks whether the speaking time is allocated equally among all of the candidates). Complaints concerning the non-respect of pluralism must be directed to ALIA, but ALIA is not competent in relation to complaints concerning the non-respect of the informal convention between the government, the parties and the PSM. Despite limited control in electoral campaigns, and in the absence of official complaints, the authors estimate that the regulatory safeguarding and audiovisual coverage of the electoral campaign on PSM is fair, balanced and correctly implemented. There is no legal restriction as far as political advertising is concerned (in either the electoral or non-electoral periods). The same rules apply to commercial and political advertising.

The indicator: 'Politicisation of control over media outlets' (12%, low risk). While no TV or radio channel belongs to a political party, all of the national newspapers are ideologically close to parties and interest groups. Although most people are aware of this situation, information on media ownership is not clearly accessible to everyone. The Press Council states, in its code of ethics, that the independence of newspapers and journalists must be guaranteed against any political or commercial influence.

The indicator: 'Politicisation of control over media distribution networks' (17%, low risk). The Executive Boards of the biggest publishing companies are closely linked to interest groups and political parties. Despite traditionally close links to parties and interest groups, a tendency to move away from these, especially in terms of editorial policy and their directorates, can be observed (especially for the most important national newspaper *Luxemburger Wort*). In relation to audiovisual distribution networks, the RTL Group is the only radio and TV distribution network that covers the national territory and reaches more than 15% of the population. RTL Radio and RTL Tele Lëtzebuerg both belong 100% to CLT-UFA, which, again, belongs 100% to the RTL Group and is a commercial station without political affiliation.

The indicator: ‘State advertising’ (33%, low risk). There is no legislation regulating state advertising, and advertising is referred to as a commercial activity, nor do we find rules guaranteeing proportionate distribution of state advertising. Given that the RTL Group dominates the audiovisual market and reaches most of the population, state advertising tends to focus on these audiovisual communication channels (especially TV). It is hard to make estimations in relation to the print media sector as it is more fragmented and the numbers on advertising that are available do not distinguish between the publishers of print media. It should also be acknowledged that advertising on the Internet only began to be taken into account in the investment census of 2014.

The indicator: ‘Independence of PSM governance and funding’ (23%, low risk). There is only one public service (radio 100,7) in Luxembourg that is financed and controlled by the state. but CLT-UFA, of which RTL is a subsidiary group, has signed a contract with the government in which it agrees to assume a ‘public service mission’ (the last agreement was signed in 2007 and runs for a period of 13 years). RTL has a public service mission and is the most popular TV and radio provider, but it remains a commercial channel. There are fair, objective and transparent appointment procedures for the management and board functions of the PSM radio, which is independent in its reporting, but only a very small, and mostly well-educated, part of the population listens to it.

The indicator: ‘Independence of news agencies’ (not applicable). There are no Luxembourgish news agencies; in most cases reference is made to the French and German news agencies (AFP and Reuter).

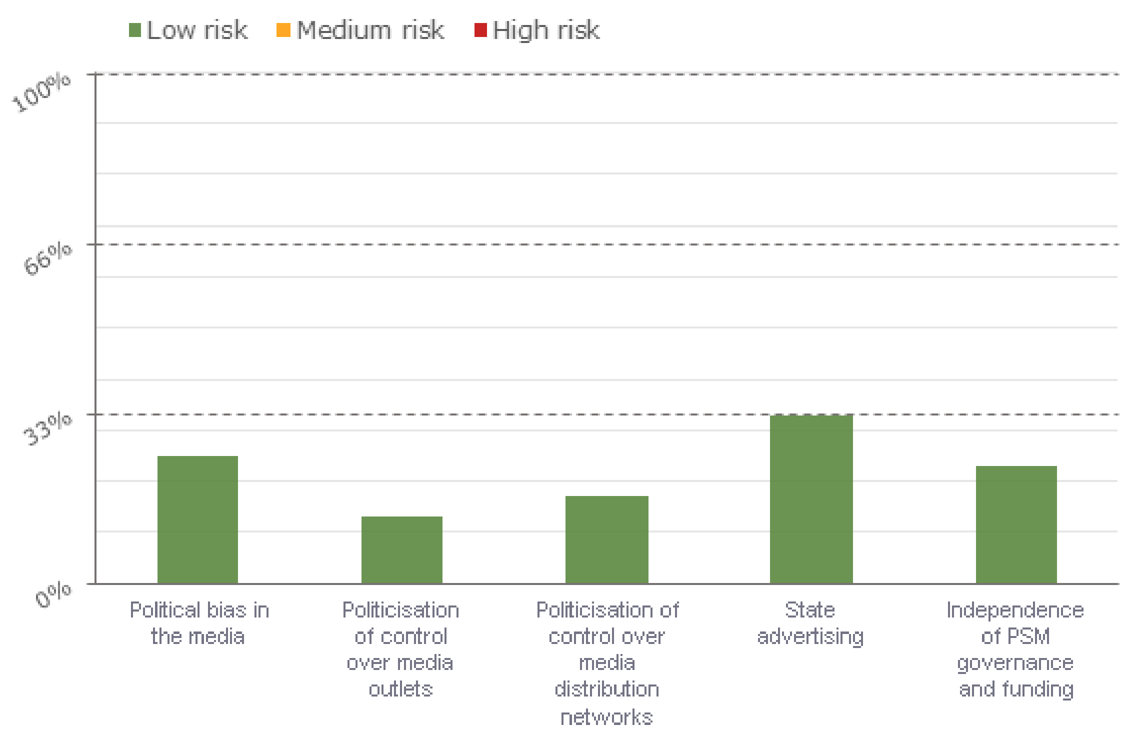

Figure 4 Media Pluralism Monitor 2015 - Luxembourg, Political Independence Domain, Results by Indicators
(Independence of news agencies = not applicable, excluded from the graph)

2.4 Social Inclusiveness (50% risk - medium risk)

The Social Inclusiveness indicators are concerned with access to, and availability of, media for different, and particularly vulnerable, groups in the population. They assess regulatory and policy safeguards for access to media by various cultural and social groups, by local communities and by people with disabilities. Moreover, they assess the centralisation of the media system, and the quality of the country's media literacy policy, as well as the digital media skills of the population.

Indicator	**Risk**
Access to media for different social and cultural groups, and local communities	52% risk (medium)
Availability of media platforms for community media	100% risk (high)
Access to media for the physically challenged people	25% risk (low)
Centralisation of the media system	58% risk (medium)
Universal coverage of the PSM and the Internet	50% risk (medium)
Media literacy	17% risk (low)

The indicator: 'Access to media for different social and cultural groups, and local communities' (52%, medium risk). There is a legal obligation of access to airtime for different social and cultural groups for the socio-cultural radio (radio 100,7), the only 'proper' national PSM. A limited number of public service missions are also requested of the commercial audiovisual channels - RTL Télé Lëtzebuerg and RTL Radio Lëtzebuerg – which are- by far the most successful national channels. These services also include, even if to a lesser extent than is required of the socio-cultural radio, obligations concerning access to airtime for different social and cultural groups. These obligations are defined in the modified law of 1991 on electronic media, and also in the state convention with RTL Tele and Radio Lëtzebuerg (signed in 2007 and valid until 2020).

The expert team estimates that, overall, the PSM (meaning radio 100,7) offer adequate access to the different social and cultural groups. ALIA is the body that is supposed to monitor and sanction the access to airtime on PSM channels for different social and cultural groups according to the law and to the state conventions with the PSM channels. The expert team, however, considers that ALIA cannot properly exercise its monitoring and sanctioning powers, considering that it is only composed of 2,75 permanent employees, who are also supposed to monitor around 50 audiovisual concessions in several countries. ALIA, as the national media authority, is in charge of supervising the correct implementation of the legislation of broadcasters that have been given a concession by the Luxembourgish state. The broadcasters in question are part of the RTL Group, whose headquarters are in Luxembourg but who broadcast in different languages, and mostly from different countries.

As far as minorities are concerned, Luxembourg does not have any minorities in the sense of the Council of Europe's definition, which implies that such minorities should have Luxembourgish nationality. This, however, does not mean that Luxembourg is a homogeneous entity. In 2015, almost half of the resident population (45.9%) were foreign residents. Finally, the questions related to the local obligations of the PSM (local news, local correspondents, local productions and distribution) do not apply to Luxembourg, since it is a "local state".

The indicator: 'Availability of media platforms for community media' (100%, high risk). There are no specific provisions granting legal recognition to community media as a distinct group (alongside commercial and public media), even if some media offer services that largely correspond to what one might expect from community media. The questions of whether the law contains specific provisions granting access to media platforms for the minority media is considered not to be applicable, since there are no minorities in Luxembourg -- according to the Council of Europe's definition. For the same reason, the remaining questions concerning minority media are not applicable. In a country such as Luxembourg, where a large proportion of the resident population is foreign, we suggest that the definition of minorities should also include the category of non-national residents.

The indicator: 'Access to media for the physically challenged people' (25%, low risk). As far as the access for physically challenged people is concerned, the expert team estimates that there is a well-developed policy and a strong tradition of policymaking in this area. However, some efforts need to be made in practice. For instance, in relation to TV channels (in the case of Luxembourg RTL Television), subtitles and sound descriptions are not available on a regular basis in different scheduling windows.

The indicator: 'Centralisation of the media system' (58%, medium risk). The law recognises local media as a specific category of media with a special mission and obligations, and it reserves frequencies for regional/local radio or TV. ALIA awards permissions for local radio services and controls the content of local radio. In the absence of official complaints, the expert team considers that the legislation is effective in safeguarding regional/local media. Despite being legally recognised, local electronic media (radio and TV) do not benefit from subsidies or specific measures. The very limited number of, and audience share of the local media, can partly explain this absence of subsidies (whether in relation to radio, TV or newspapers).

The indicator: 'Universal coverage of the PSM and the Internet' (50%, medium risk). There is no obligation (either in the law or in conventions) for universal coverage by the PSM. The socio-cultural radio (100,7), the only national PSM, strictly speaking, covers only around 80% of the population, but there are plans to enlarge this coverage. Broadband penetration and speed are excellent.

The indicator: 'Media literacy' (17%, low risk). Luxembourg scores very high on Internet usage and basic digital skills, but its policy on media literacy is rather underdeveloped. According to the Director of

ALIA: ‘There is no policy of media literacy - to the regret of ALIA - in terms of the definition used in Directive 2010/13/EU (unless you limit media strictly to the Internet). There are only some excellent web sites dealing with Internet security/safety, such as www.bee-secure.lu and www.cases.lu. Yet, they do not touch upon media literacy in a comprehensive way, including on the skills to protect young people from "harmful or offensive material" in radio and television."

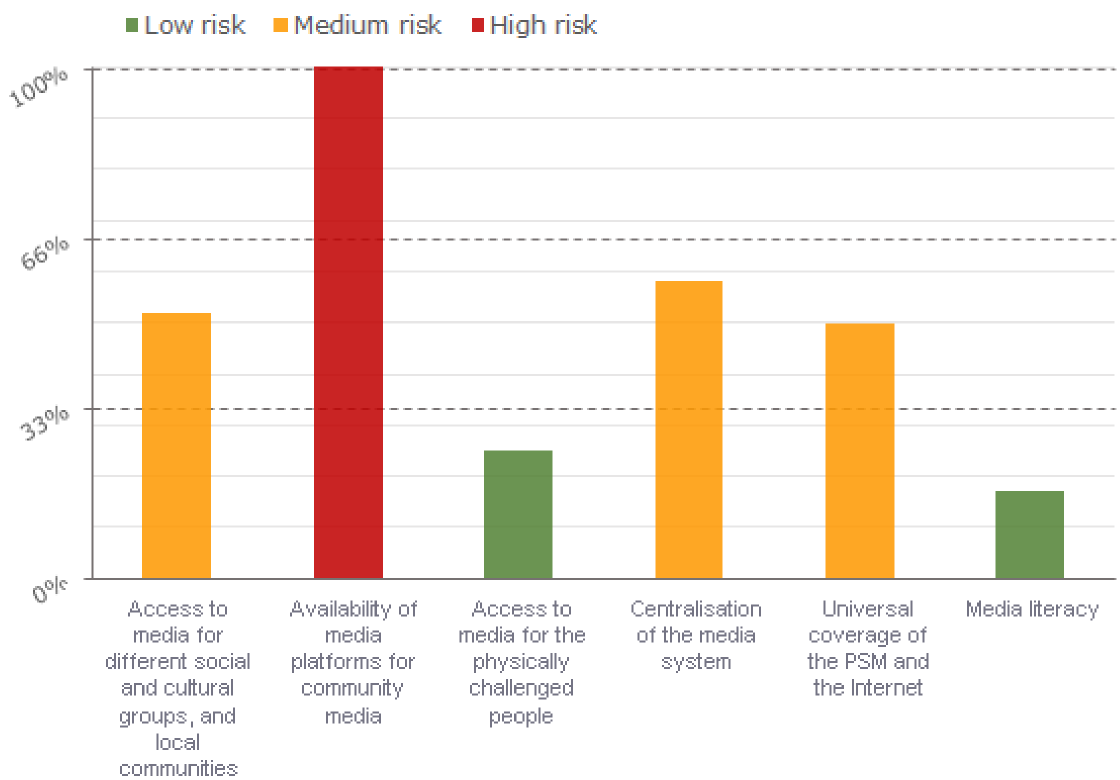

Figure 5. Media Pluralism Monitor 2015 - Luxembourg, Social Inclusiveness Domain, Results by Indicators

3. Conclusions

Based on the findings of the MPM2015, the following issues have been identified by the country team as being more pressing or as deserving particular attention by policy-makers in order to promote media pluralism and media freedom in the country.

In terms of policy recommendations, we encourage policymakers to conduct more studies on media, especially ones regarding the audience and market shares, as well as the influence of political actors. These investigations should also nurture public debate and might be initiated by civil society groups and the university. Furthermore, we suggest that they allocate more human and financial resources to independent public authorities so as to guarantee a more consistent and continuous supervision of media pluralism. Moreover, the meaning of public service in Luxembourg should be clarified and a public service in several languages should be created (at least in the three national languages), thus reflecting the national realities. In addition, access to online information and relevant documents such as media concessions, media owners, members of boards, etc., could be improved. Finally, we encourage policymakers to implement a law on the right to information, which will enable the media and civil society to monitor the political process and to hold political representatives to account.

Annexe I. List of national experts who were consulted

Romain Kohn

ALIA (Autorité Luxembourgeoise Indépendante de l'Audiovisuel)

Paul Lesch

University of Luxembourg

David Dominguez Muller

RTL