

# 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: Luxembourg

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**Research Project Report**

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# 1. About the project

## 1.1. Overview of the Project

The Media Pluralism Monitor (MPM) is a research tool designed to identify potential risks to media pluralism in the Member States of the European Union and in candidate countries. This narrative report has been produced on the basis of the implementation of the MPM carried out in 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 Luxembourg the CMPF partnered with Raphael Kies and Mohamed Hamdi (University of Luxembourg), Dr. Alina Ostling (Open Knowledge Sweden), 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 Annex II for the list of experts). For a list of selected countries, the final country report was peer-reviewed by an independent country expert.

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

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

Table 1: Areas and Indicators of the Media Pluralism Monitor

## The digital dimension

*The Monitor does not consider the digital dimension to be an isolated area but, rather, as 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/>.

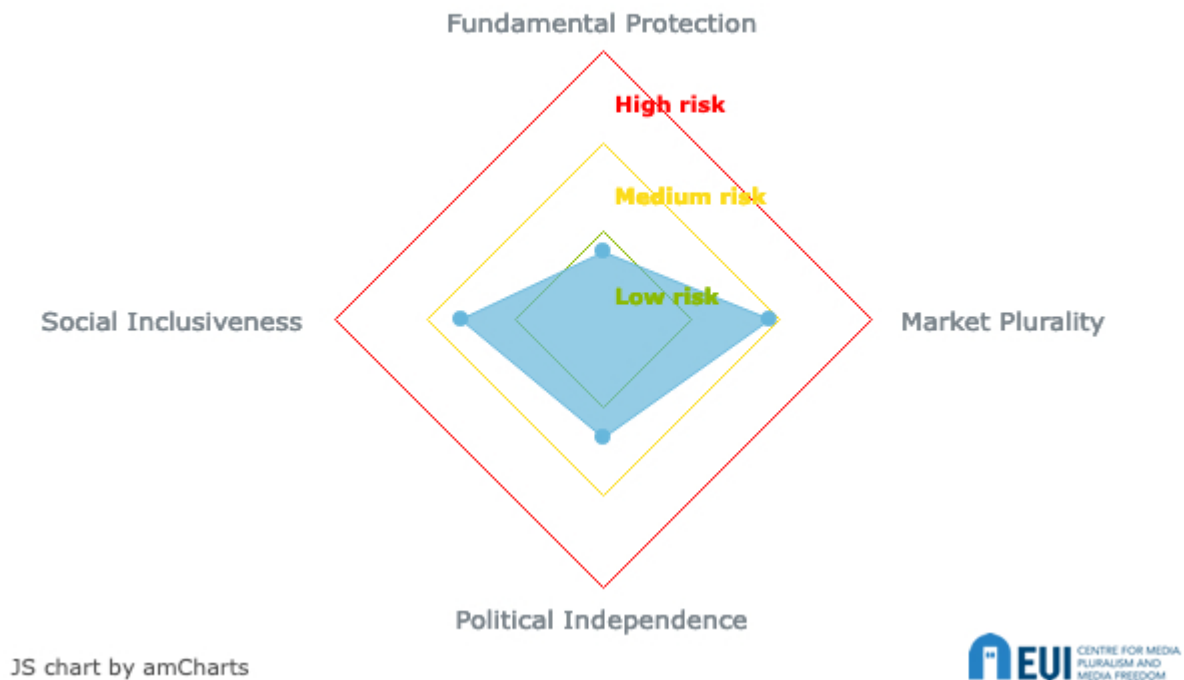
## 2. Introduction

- **Population and minorities:** With 634,000 inhabitants, Luxembourg is one of the smallest, but also richest and most politically stable countries in Europe. The country is largely dependent on foreign working force (the number of inhabitants being insufficient to cover labor requirements) which explains that there is a persistently high migration rate (47.5% of foreigners on 1st January 2021) and an increasing number of cross-border workers (around 200,000 in 2019, or 20,000 more than in 2017) - especially from France and Belgium. This demographic feature creates political and social challenges not only in terms of social cohesion, but also in terms of democratic legitimacy.
- **Languages:** The linguistic situation in Luxembourg is highly complex and peculiar as it is characterized by the practice and the recognition of three official languages (also referred to as administrative languages): French, German, and the national language Luxembourgish, established by law in 1984. Many other languages are spoken, in particular Portuguese (the largest foreign community) and English (essentially spoken by employees of financial institutions and international organisations). While there are several commercial radio channels targeting this multilingual public (e.g. L'essentiel for the french speaking community, Radio Latina for the Portuguese speaking community or Radio ARA for the French, English, Arabic and Italian speaking communities), the PSM (i.e. Radio 100,7) and RTL - the main commercial radio and television company, that has public service missions - broadcast mainly in Luxembourgish.
- **Economic situation:** The country's increase in annual gross domestic product reached 6.9% marking the best growth since before the global financial crisis erupted more than 13 years ago.
- **Political situation:** Luxembourg is a very stable country with strong political parties and trade unions. The Christian-Social People's Party (CSV) has been Luxembourg's largest party at the national level since 1945 and held the prime minister position in all post-war government coalitions except for the periods from 1974 to 1979 and since 2013. For the last two terms, the electoral coalition has been composed of the Liberal party (DP), the Socialist party (LSAP) and the Green party (Déi Gréng).
- **Media market:** The media market in Luxembourg is limited and highly fragmented in linguistic and cultural terms. The media offer is rich compared to its size and the number of inhabitants. The print sector includes four daily newspapers, one free daily newspaper, and several magazines, weekly and monthly newspapers. There are several online news media and 5 TV stations, among which only one (RTL) offers a daily programming, but residents also have access to channels from the neighboring countries. The TV market is dominated by RTL, that has "public service missions" but is not a "public service medium" (PSM), in so far as it is primarily a commercial medium. There are five private radio stations with national or broad coverage and only one radio broadcaster (Radio 100,7) that is officially recognized as a public service medium. Despite the apparent diversity, there is a very large concentration (horizontal and vertical) of the market, since the majority of the national press belongs to two publishing houses while the radio and television sectors are dominated by one group (CLT-UFA). The country also exercises an important role in the management of international media concessions. Internet coverage is very good across the country.
- **Covid-19:** As in the previous year, national politics in 2021 was dominated by the covid crisis. The covid-19 law of 17 July 2020 was amended eight times during the year 2021. The amendments were made to adjust legislation according to the actual evolution of the spreading of the pandemic. In a first

phase, when the pandemic seemed to be under control, the amendments reduced the restrictions imposed on people, schools, work, leisure and commerce. In a second phase, after the emergence of the Omicron variant, the amendments reintroduced stricter measures. The multiplication of the amendments (leading to large confusion among the population) the reintroduction of strict restrictions, the discussion about the possibility of introducing a vaccination obligation caused significant discontent and distrust among the population against politicians and media.

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

#### Luxembourg: Media Pluralism Risk Areas



The media landscape of Luxembourg remains stable and fundamental laws are present and protected. Freedom of expression is explicitly recognised in the Constitution and protected by national law. Journalists are protected by labour law and by professional organisations (in particular the Press Council and the Luxembourg Union of Journalists). Notwithstanding, access by journalists to official documents continues to raise concerns and the Covid crisis led to several violations of freedom of expression: several journalists were the object of offline and online personal attacks. In addition, journalists had at the beginning of the year a restricted access to governmental press conferences, since the government did not broadcast the questions of the journalist, but only the answers to them. On February, following a parliamentary motion, the government backpedaled and broadcasted the integrality of the governmental press conferences (including the journalists' questions). The Luxembourgish Media Authority (ALIA) has been awarded new competences in application of the AVMS directive (monitoring of video-sharing platforms for instance) and, under the request of the government, to organize and monitor the political campaign in the future. Despite a substantial increase of competences and resources, ALIA still appears to be under equipped to effectively fulfill its missions. Indeed, it has to monitor an increasing number of channels (partly due to Brexit), it is not in charge of allocating frequencies (with the exception of local radios), and has very limited sanctioning power. Its director has also been accused of a potential conflict of interest because his wife is on the board of a company that provides a large number of channels under ALIA's supervision.

The news media have largely emancipated themselves from partisan influence, despite the existence of close ties with political parties, and of an increase of public financial support schemes in favor of professional journalism. The new public aid scheme, adopted in July 2021, is particularly beneficial for the online media and community media that were not considered in the past law. With regards to indirect aid, there are no clear rules and public data on the amount allocated to each company. The limited available data however points to the existence of an important difference in amount allocated to different media for the publishing of public notes. As far as the PSM is concerned, the law aiming at legally recognising the station 100komma7 as a public service radio is still under discussion. Finally, the government has

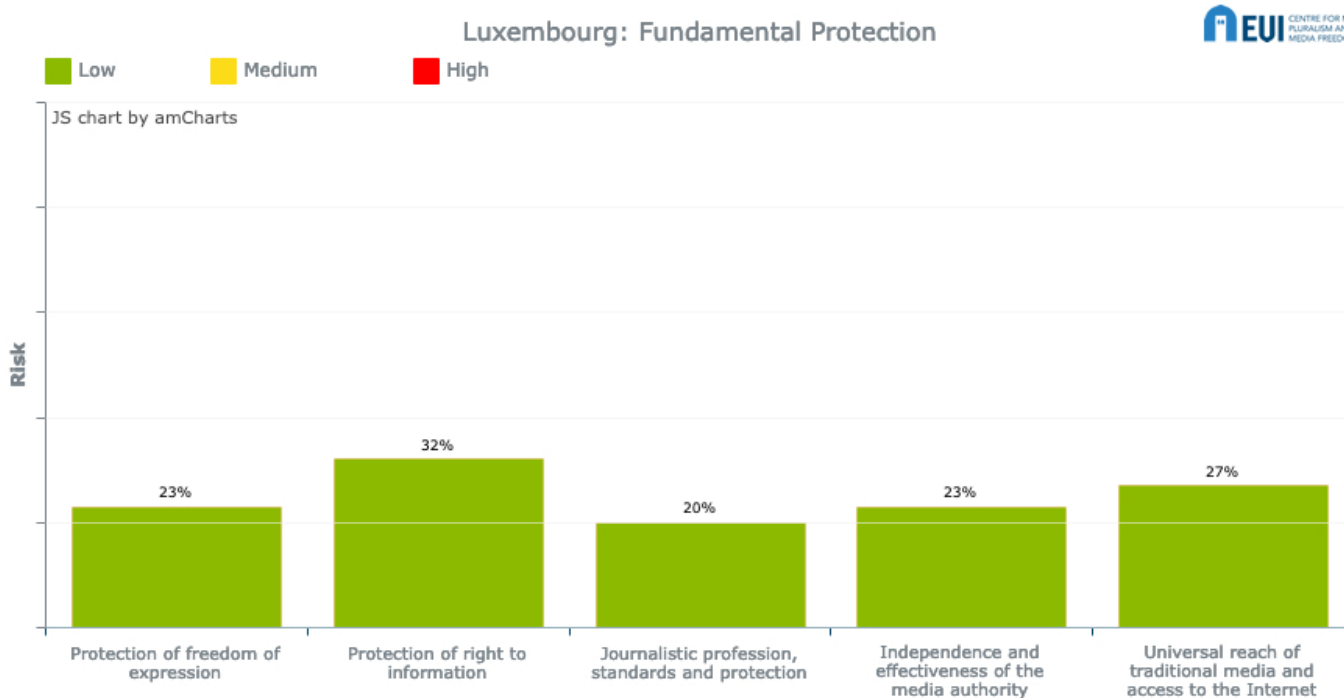


introduced an amendment aiming at regulating the campaign in the electoral period occurring in media with PSM missions and at supervising outside the electoral period political information programs which are broadcast at the request of the government. Knowing that political campaigns are increasingly moving online and that paid political advertisements are not regulated by national law, these limited measures appear to be insufficient to guarantee fair elections in the future.

The two most critical areas remain Market Plurality and Social Inclusiveness. Concerning the first area, Luxembourg continues to have a highly concentrated media landscape and an ownership structure that is not fully transparent and accessible. There is no legal provision aimed at limiting horizontal or cross-media concentration of news media. The audiovisual and online sector is dominated by the RTL Group and in the printed press the Groups mediahuis and Editpress prevail. The new state aid provisions hardly contribute to limiting this phenomenon, as many of the online media, that are the new beneficiaries of the state aid, belong fully or partly to the dominant media group. With regards to social inclusion, the audiovisual sector and the PSM are still dominated by the usage of Luxembourgish and access to people with disabilities is insufficient. Access to media for women is also extremely critical, in particular with regards to their presence in supervising and executive positions.

### 3.1. Fundamental Protection (25% - 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.*



#### Protection of the freedom of expression (23%, low risk)

As in 2021, the indicator Protection of freedom of expression scores a low risk (23%). Freedom of expression is explicitly recognised in the Constitution and protected by national law. Luxembourg has also

signed and ratified important international treaties related to this matter. As a consequence, cases of attacks on the freedom of expression are rare (see, however, chamber-Leaks affair in the MPM 2019). Compared to last year, the respect of freedom of expression in practice probably improved due to a better access to Covid-19 information and by broadcasting the integrality of the press conferences on the youtube channel of the government, including the questions of journalists to the government (Montaigu, 2021<sup>[1]</sup>; Hamus, 2021<sup>[2]</sup>). This explains that the risk score of this sub-indicator has slightly improved (down from 28% to 23%). Defamation is not decriminalised, but criminal defamation prosecutions against the media are extremely rare, and court decisions are proportionate.

### **Protection of the right to information (32%, low risk)**

The indicator “Protection of the right to information” improved from medium risk in 2020 (45%) to low risk in 2021 (32%). The right to information has been enshrined in Luxembourg’s legislation in September 2018, but not in the constitution (see MPM 2020). In practice the Press Council, the Luxembourg Union of Journalists (ALJP), the association of news editors as well as several civil society organisations observe that there are still cases where information is retained in an arbitrary way, that the procedures to access information are too cumbersome and take too much time and regret that journalists do not benefit from more efficient procedures to access information. This dissatisfaction has culminated in a protest that occurred on the international day of press freedom on May 3 2021 (Hass and Pedrosa, 2021).

While there is a regulatory framework in place to protect whistleblowers (loi du 13 février 2011)<sup>[4]</sup>, it is considered too restrictive being limited mainly to cases of corruption, trading in influence or money laundering, and concern only employment relationships. The protection is likely to improve soon since the Ministry of Justice introduced the new draft law transposing the EU Directive on Whistleblowing in Parliament in January 2022 (Projet de loi 7945)<sup>[5]</sup>. Luxembourg scores low risk to the question whether there are cases of arbitrary sanctioning of whistleblowers this year (in contrast to medium risk last year) given that the authors did not come across any case of arbitrary sanctioning of whistleblowers in 2021.

### **Journalistic profession, standards and protection (20%, low risk)**

The indicator on the Journalistic profession is like last year at low risk. Journalists are protected by labour law and their sources are safeguarded. The Press Council guarantees their professional standards and the editorial independence of the journalists. The Press Council, a public body, is composed of journalists (50%) and representatives of media companies (50%) designated by Association of Professional Journalists (ALJP) and Association of Luxembourgish editors (ALMI)<sup>[6]</sup>. Members of the public can file complaints regarding press articles or other media reports to the Press Council. These complaints are handled by a "Commission des plaintes", presided by an independent jurist. The Press Council can also address violations of professional standards on its own initiative. The Press Council also delivers press cards, which have become extremely important since the new law on the financing of journalists stipulates that the funding shall depend on the number of active journalists. Interests of journalists are also defended by the Luxembourg Association of Professional Journalists (ALJP), which is based only on volunteer work.

According to several journalists interviewed for the MPM assessment, the professional organisations operate with limited efficiency. For instance the activity of the journalists association ALJP remains limited and shows a lack of professionalism (e.g. their website is rarely updated). The new association of editors ALMI is virtually unknown to the public and has so far limited itself to being a rather passive "lobbying" organisation. However, several actions were carried out by the journalists organizations in 2021:

- i) the demand that government broadcasts the integrality of the press conferences on covid-19 measures on the youtube channel of the government, including the questions of the journalists (Montaigu, 2021; Hamus, 2021);
- ii) the protest during the international day of press freedom (May 3) to improve the access of official information to journalists originated from their campaign, launched on April 19th 2020.
- iii) the discussion and negotiations around the bill reforming the aid scheme for professional journalists. The Press Council, with the support of ALJP, issued two opinions on the draft law (Conseil de presse, 2020, 2021), mainly asking a reform of the journalists' status and to review the funding scheme to limit certain inequalities among the media.<sup>[7]</sup>
- iv) the condemnation of the spreading of personal attacks against journalists. Among them there is the case where the name and contact of a journalist was shared in a private social media group "NëtgepiktLU2.0".<sup>[8]</sup>

Luxembourg is not immune from cases of strategic lawsuits against public participation (SLAPPs) (see MPM 2021). The president of the ALJP, mentioned the case of the tageblatt newspaper that has been gathering information on the conspiracy theorist scene in Luxembourg, identifying the most incendiary members of the people behind the movement. As a result, the paper received letters from a lawyer requesting a right of reply, which is permitted in Luxembourg, as well as demands from compensation to the tune of 150.000 euro, as the clients felt their honour has been compromised by the paper's activities (Goerens, 2021).

We globally estimate that the working conditions of journalists- (i.e. job security, social security and pay) is rather good and has improved compared to last year. This can be explained by a global increase of the advertisement revenue (see below) and the introduction of the new law on an aid scheme for professional journalism in July 2022 (see below).

### **Independence and effectiveness of the media authority (23%, low risk).**

As for last year, the indicator on independence and effectiveness of the media authority (ALIA) presents a low risk (23%). ALIA acts in practice largely independently from external influences and its decisions list the arguments and legal provisions that support its reasoning. However, different factors point to potential fragilities, some of which were already exposed in the last year report (see MPM 2021). First, all five members of the Executive Board - as well as the Director - are chosen on the proposal of the government, but there is no clear procedure on how the government selects and agrees on a candidate. As indicated by the authority itself, this is not sufficient to comply to the requirements of the SMA directive in terms of defining a transparent, non-discriminatory procedure capable of guaranteeing the degree of independence required<sup>[9]</sup>. Second, it does not have the human resources and competences to deal efficiently and proactively with the many tasks allocated to it by law. The number of channels the authority is supposed to control in different languages dramatically increased to reach around 350 by the end of 2021, due in large part to Brexit. The exit of the country from the EU has resulted in the migration of channels to Luxembourg because they are broadcasted via the Luxembourgish satellites from SES-Astra. It should be noted that the budget allocated by the State as well as the human resources have increased under new director Paul Lorenz (appointed in September 2019) – to reach 1.4 millions euros and 11 members in 2021- but this

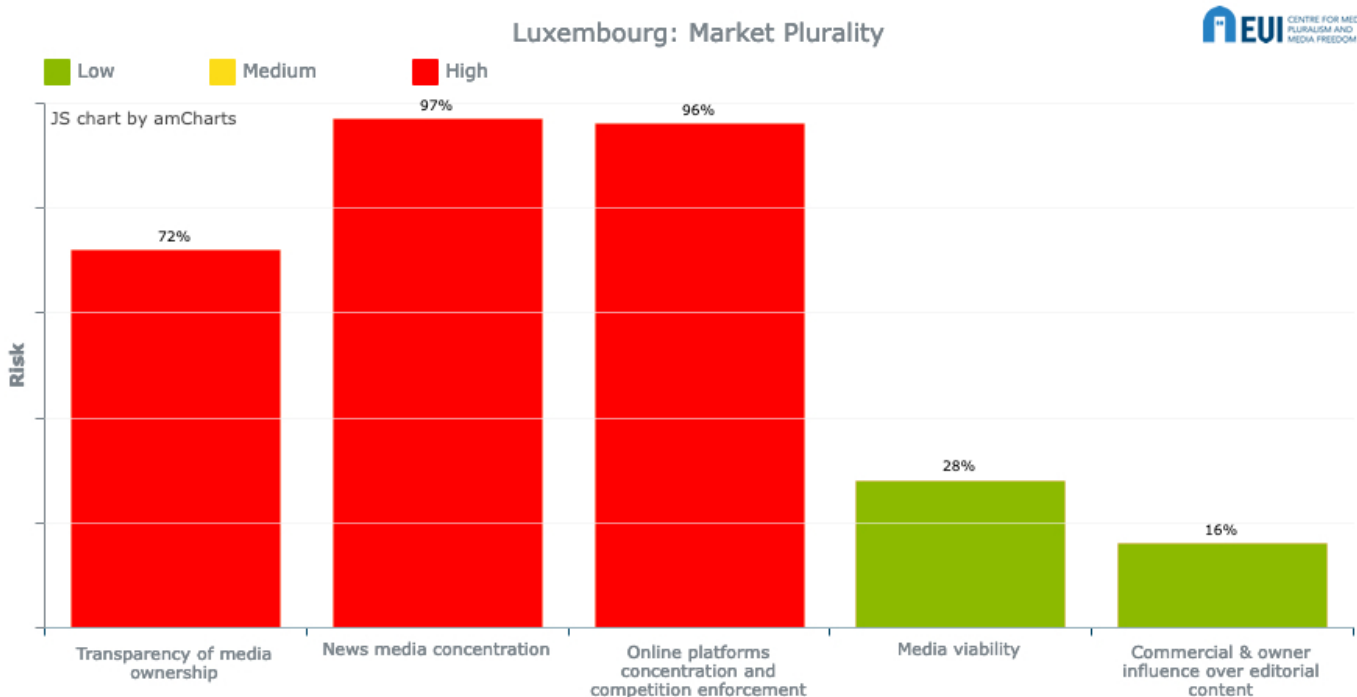
seems to be still insufficient, also in view of the new tasks the regulator received through the transposition of the revised directive SMA directive in national law. In addition, the government introduced an amendment in December 2021 that reforms the 1991 law on electronic media and the 2003 electoral law. It requests ALIA to organize and monitor the political campaign on RTL Luxembourg radio and television and on the radio 100.7<sup>[10]</sup>. Thirdly, ALIA does not have the competence to award national and international frequencies. Its competence is limited to regional and local ones, while all other frequencies are awarded by the government. This implies that the government directly takes the most strategic decision concerning the attribution of national and international licenses. This would be an historical consequence of the presence of the RTL group in the country. ALIA rightly insists on the fact that Luxembourg is the only country in Europe, where the granting of national license is the prerogative of the national government (ALIA 2021)<sup>[11]</sup>. Fourthly, the sanctions pronounced by the board of directors appear to be largely insufficient: 25,000 euros is the maximum fine that ALIA can impose. Lastly, ALIA's independence was put under attack in 2021. In August, two media, reporter.lu and radio 100.7, revealed the presence of potential conflicts of interest: in fact, the wife of the director of ALIA is on the board directors of the Serbian media group United Media, that is under the supervision of ALIA. 71 of its audiovisual services are produced under a Luxembourg license and fall under the control of ALIA. As the national regulator monitors the programs of approximately 350 channels, United Media services account for one in five. The president of Board of directors, Thierry Horscheid attempted to water down this accusation by arguing: i) that existence of these links was known when the director was recruited; ii) that when a complaint is received concerning United Media, the director refrain from intervening. Instead, the case is investigated by the head of the legal department, who receives delegation of power; iii) that in any case the decision concerning a complaint is taken by the board and not by the director; iv) that Paul Lorenz's profile – its large experience in the media sector - outweighed the risk of conflict of interest. This being said he plans to introduce a vice-director, which would be necessary to deal with the increasing amount of work and could also contribute to deal with such cases of conflict of interest.

### **Universal reach of traditional media and access to the Internet (27%, low risk)**

As last year the indicator Universal reach of traditional media and access to the Internet scores low risk (27%). As indicated in the precedent reports, there is no obligation (in law or in conventions) for universal coverage of public service media. Nevertheless, after receiving a second radio frequency in July 2017, the national public service radio (Radio 100.7) reached almost universal coverage. As far as Internet access is concerned, 93.6% of the population is connected to broadband in Luxembourg. The telecom company Post dominates the market share with about 61%, followed by Proximus (around 16%), Luxembourg online (about 7%) and eletrona (about 7%). As indicated last year, there is a "strong presumption of dominance" for Post in the retail broadband market as it enjoys the largest market share in Europe. The Post Telecom's relative importance in the market is accentuated by the fact its technology branch – Post Technologies – is the main wholesale supplier for the majority of alternative operators, as only 10% of the residential and non-residential broadband access services were based on infrastructure that is not owned by the Post. Equal treatment of internet communication (net neutrality) is also supervised by the Luxembourg Institute of Regulation (ILR), which is responsible for monitoring compliance with the obligations arising from the application of EU Regulation 2015/21201 and has prepared an annual report on Internet neutrality activities since 2017.

### 3.2. Market Plurality (62% - medium 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.



#### Transparency of media ownership (72%, high risk)

The indicator on transparency of media ownership scores a high risk with a value of 72%. The transparency obligation is limited to the print press, implying that it does not apply to electronic media (including the internet). Moreover, print media are only obliged to disclose the identity of owners holding 25% or more of the shares (directly or indirectly), the shareholding information has to be published only once a year (in the first edition) and no sanctions are foreseen in case of violations of transparency<sup>[12]</sup>. The application of the Beneficial Owner Register ("RBE")<sup>[13]</sup> directive has not improved the access to information about beneficial owners in Luxembourg. Many media companies still do not reveal their ultimate beneficial owners as most owners do not hold more than 25% of the shares (directly or indirectly).

#### News media concentration (97%, high risk)

Media concentration remains a big issue in the Luxembourgish media landscape. It is generally seen as an

inevitable fact due to the size of the market. Luxembourg remains one of the very few EU member states lacking a national merger control law or a similar provision aimed at limiting horizontal or cross-media concentration of news media. Furthermore, there is no administrative authority or judicial body effectively addressing issues relating to media concentration.

The printing sector is dominated by the companies Editpress and Mediahuis. The audiovisual sector is dominated by the RTL Group, which also has a monopoly in the commercial TV sector. This can be explained by the historical role of RTL, the size of the country - and the accordingly small size of the advertising market - as well as its multilingual setting (which implies a large consumption of foreign TV channels). Horizontal concentration is also very strong as the RTL Group fully or partially owns the three biggest radio stations of the country - i.e. RTL Radio Lëtzebuerg, L'Essentiel Radio, and Eldorado. The other players in the radio sector are Editpress (that partly owns l'Essentiel Radio) and Mediahuis (that partly owns radio Latina). The other national radio are the public service media radio - radio 100.7 - that is fully funded by the State and the community radio - radio Ara - that is partly funded by the State.<sup>[14]</sup>

In return for the provision of international broadcasting frequencies by the State and public funding up to 10 million euros per year, the RTL Television also produces a public service program for television, radio and internet, even though it is a private company belonging to the German giant Bertelsman<sup>[15]</sup>. In order to ensure the permanence of the RTL group in Luxembourg and the execution of its public service missions, the government introduced a bill in November 2021 aiming to transpose a new agreement with the RTL group<sup>[16]</sup>. Based on this agreement the State will pay 15 million euros annually to RTL starting from 2024, the date of renewal of the agreement. The agreement will have a duration of 7 years, in contrast to the current three year duration.

Based on this new agreement, the RTL will have to extend its public service mission to the radio and internet, even though this is already partly the case in the ongoing agreement<sup>[17]</sup>, and to fulfill new obligations, such as the promotion of media education and of the local cultural scene. Critics rapidly observed that by increasing the funding considerably and raising it much above the levels received by other media, as well as introducing new obligations on the RTL group, its dominant position will be reinforced. Indeed, to meet these new obligations, the RTL will enter in direct competition with radio ARA (the community media) and radio 100.7 (the PSM). The radio programmes of the latter two aim at sections of society that were so far not directly covered by RTL because they were less profitable in terms of advertising revenue.<sup>[18]</sup>

### **Online platforms concentration and competition enforcement (96%, high risk)**

Despite the growing importance of the online news environment, Luxembourg lags behind in quantitative and qualitative research on online news consumption. No publicly available studies shed light on audience and advertising concentration online. While there is no doubt in the growing importance of online platforms in the way news is accessed and consumed, it is impossible to assess the degree of online news consumption and online platform concentration due to the lack of data.

However, it is obvious that the lack of legal provisions limiting media concentration offline also applies to online platforms. The shortcomings are therefore similar to the ones cited above. Same goes for the advertising market, which is not regulated in such a way as to prevent concentration and enforce competition. Furthermore, the Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market has not been transposed during the

year 2021. This implies that Luxembourg had no measures to promote publisher's remuneration by the digital platforms until the transposition of the directive on April 1<sup>st</sup> 2022.<sup>[19]</sup>

Moreover, the regulatory safeguards are not sufficiently effective to ensure that money allocated to media with a public service mission does not cause disproportionate effects on (online) competition. In particular, some representatives from the printed press with online presence interviewed for the MPM assessment have complained that publicly funded content which is posted online by RTL is putting them at a competitive disadvantage. The expensive audiovisual content attracts consumers and advertisers onto the website of RTL thereby distorting the market (Graff, 2021).<sup>[20]</sup>

### **Media viability (28%, low risk)**

The level of risk of this indicator has improved from 56% in last year's report to 28% this year. The advertising revenue for television, radio and press has increased:

- For television (that in Luxembourg correspond to a large extent to RTL television) it has increased by more than 25% compared to 2021, reaching approximately 12.5 million euros
- For main national press (i.e. Luxembourg Wort, L'Essentiel, Lëtzebuurger Journal, Le Quotidien et Tageblatt) it has increased by 7.7% reaching 44.9 million euros
- For the radio it has increased by 1.9% reaching 25.5 million euros (Adada, 2021).<sup>[21]</sup>

In parallel state funding has been maintained or increased for almost all the media, through the new law on an aid scheme for professional journalism and the conventions with several national media – in particular with radio 100.7, RTL, radio ARA<sup>[22]</sup>. This positive trend is reflected by the slight increase of the number of professional journalists accredited by the Press Council by 22 units (501 in January 2021, 523 in December 2021). This can also be explained by the new regulations on press aid which is calculated among other things on the number of professional journalists employed on a permanent contract.

### **Commercial & owner influence over editorial content (low risk, 16%)**

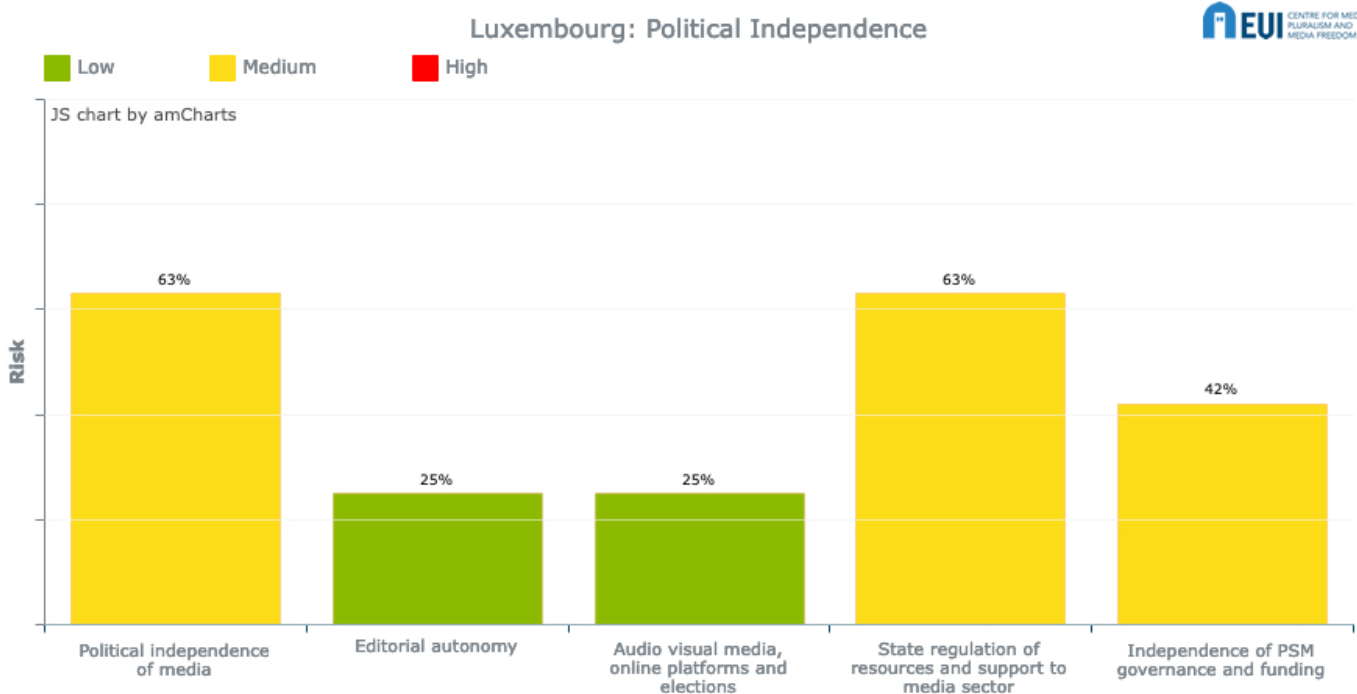
The Luxembourgish deontological code for journalists requires journalists and editors to be independent of any commercial interest and to not accept any benefits or promises that could limit their independence and the expression of their own opinion<sup>[23]</sup>. As far as we can tell, external influence regarding the appointment and dismissal of editors-in-chief is at low risk. However, the pressure on the editorial boards is relatively common - especially the pressure coming from advertisers. Journalists who were interviewed for this study have all confirmed they had witnessed instances of commercial pressure (e.g.. against negative coverage of advertisers) - particularly by a few dominating companies. Some of the journalists argue that it did not prevent them from doing their work in an independent way. Others, however, observed that direct and indirect influence has sporadically occurred.

Especially self-censorship has become a recurring phenomenon. According to several journalists, this influence has increased in the last few years. While this phenomenon has been observed through several interviews, more empirical work is required to evaluate its diffusion and what type of media and content are

particularly concerned by it. Advertorials are sometimes published in a misleading way but the practice of labeling them in order to distinguish them from editorial content is becoming more and more common. As to owner influence, legal safeguards exist in order to grant social protection to journalists in case of changes of ownership or editorial line.

### 3.3. Political Independence (44% - medium 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.



#### Political independence of media (medium risk, 63%)

In the absence of legislation that regulates conflict of interests between media and partisan groups, the printed press has historically developed close ties to political parties and interest groups. While, with time, the press has emancipated itself more and more from partisan influence, the links continue to exist and the risk of outside interference and conflicts of interest remains. For instance, the group Edit-press that owns both (fully or partly) several newspapers - in particular Tageblatt, l'Essentiel, le Quotidien - and part of the Essentiel radio, belongs to 59% to the main left trade union of the country (OGBL, through the asbl Centrale du LAV), 19% to the other left trade union FNCTTFEL and 2% to the socialist party (LSAP). The Zeitung vum Letzebuenger Vollek belongs to the communist party (88%), while De Lëtzebuenger Journal belongs in majority to the Centre d'études Eugène Schauss (63%) which is linked to the liberal party (DP)<sup>[24]</sup>. It is also the official Party publication according to the statute of the party.



The national audiovisual sector that essentially boils down to RTL Télé Luxembourg is rather unaffected by political conflicts of interest as its programming is defined by its public service missions and a commercial logic<sup>[25]</sup>. It should however be noted that due to the national strategic importance of RTL, the nomination of the board of CLT-UFA (a subsidiary of the RTL Group, that controls RTL Télé Luxembourg) is partly defined by a political logic. According to the concession agreement, the shareholders of CLT-UFA must designate the 20 members of the board. Among the board members, the president and three members must (i) be approved by the Government, (ii) have Luxembourgish nationality and (iii) be resident in the Grand-Duchy. Even though there was no specification concerning the characteristics that are requested (except the nationality and the residence), the shareholders have traditionally been appointed from the members of the three main political groups in the Chamber of Deputies (the Socialist party, the Liberal party and the Christian social party). This tacit agreement results from the historic desire for parliament to be informed of the decisions taken by the shareholders.

Despite this political nomination of the board, there are different factors suggesting that RTL is rather independent in practice. First, the fact that different parties are represented on the board (one of which is in the opposition), implies that they do not want to impose a political agenda on the board and, even if they tried, it is very unlikely that the political members would be able to impose their political preferences to the entire board. Second, RTL is under the supervision of the ALIA and of a surveillance commission (composed of members nominated by the governments and one member nominated by the parliament) whose mission is to control whether they respect the ongoing conventions and the coming one (that will enter into force in 2024 and last until 2030). Among other things, these bodies control whether RTL Luxembourg respects its public service mission and therefore that it is independent from any political influence. Third, there is an internal rule according to which, journalists who become active in party politics are not allowed to continue working for RTL.

With regards to radio, the largest radio station belongs to RTL. RTL is considered independent as its programming is defined by its public service missions and a commercial logic and follows the same governance as RTL television. Besides RTL there are several other commercial radio stations - many of which are partly owned by RTL, such as Eldorado (75% of its capital belongs to RTL and 8% to Editpress) and l'Essentiel Radio, a new radio station, broadcasting exclusively in French. L'Essentiel Radio belongs to 25% to CLT-UFA and 45% to Edita, the editing company of the free journal L'Essentiel (joint venture between Editpress and Swiss Tamedia). Other commercial radios include Radio Latina, a Portuguese speaking radio station targeting the large Portuguese community in Luxembourg, which belongs partly to mediahuis.

There is one community radio, Radio Ara, which defines itself as "the independent, alternative radio station of Luxembourg". Finally, radio 100.7 is the national public service radio. Its lack of political independence has been rightly criticized in the past, among other things because the members of the board are directly nominated by the government (see MPM 2020 and 2021). In practice, however the situation has changed in the last couple of years, since the new members of the board have been selected on the basis of a proposal stemming from the board itself, a solution that has been integrated in the new draft proposal on the organisation of the PSM radio 100.7<sup>[26]</sup> (see further information in the section "Independence of PSM governance and funding")

## **Editorial autonomy (low risk, 25%)**

There are no regulations or laws guaranteeing autonomy when appointing and dismissing editors-in-chief. Traditionally, daily newspapers and political parties were closely connected. This is not the case anymore even though links between parties and papers still exist. These links have weakened considerably in the last decade - among other things due to commercial considerations.

In order to attract more readers, newspapers - especially the big ones who see their readership dwindle - try to dilute their political identity and distance themselves from political parties. This loss of political/ideological identity becomes all the clearer when considering the many transfers of journalists from one newspaper to another. Some politicians even bemoan the fact that they have lost a “presse amie” (press partners). This is particularly visible for the two largest national newspapers: Luxemburger Wort and Tageblatt. Having said this, there are occasional articles where the historic links with political parties or trade unions become visible. However, it is unlikely that the articles where political links are evident are published at the behest of politicians or trade unionists. They are more likely results of an independent choice of the journalists/editors. Even though there are no reports investigating the political independence of editorial content for audiovisual media, and radio, we did not come across evidence - such as complaints addressed to ALIA or the Press council- on the undue influence of a party, partisan group or politicians.

## **Audio visual media, online platforms and elections (low risk, 25%)**

As far as elections are concerned, the legal and conventional agreement between the State and the PSM – covering the PSM radio 100.7 and RTL (that have public service missions) - stipulate that the PSM must adhere to impartiality, pluralism, objectivity and must broadcast in electoral period, campaigns for the political parties under the supervision of the government.

Up until the European election of 2019, an agreement was reached before each election between the media entrusted with a mission of public service and the political parties on the organization of the political campaign. This included the air time allotted to the party lists, the conditions for the production, programming and broadcasting of electoral spots, the conditions for the organization and broadcasting of political debates (e.g. round tables), as well as the duration of the media electoral campaign. This was done under the supervision of the Government Information and Press Service (SIP).

Starting from 2019 the independent national supervision authority ALIA took over in order to assure an impartial realization of the task. ALIA’s first assessment of the speaking time allotted to politicians on RTL television during the European election campaign showed that it was generally fair (ALIA, 2021)<sup>[27]</sup>. In order to formalize these new missions already carried by ALIA, the government has introduced an amendment to the draft law modifying the electoral law in December 2021. The amendment aims at regulating the political campaigns in the electoral period occurring in media with PSM missions, and at the supervision of the political information programmes outside the electoral period, which are broadcast at the request of the government (in French: Tribunes Libres).<sup>[28]</sup>

While a regulation and supervision aiming at securing fair elections have been reinforced for media that have PSM missions, neither regulation nor supervision is foreseen for private radio or for the internet. Knowing that political campaigns are increasingly moving online and that paid political advertisements are

not regulated by national law, these limited measures appear to be insufficient to guarantee fair elections in the future. In an opinion expressed to the draft law, ALIA suggests that its monitoring should be extended to all audio-visual and radio services intended for the resident public (so not only the media with PSM missions) during the electoral period for the entire broadcast time. And that a national strategy should be envisioned in the near future to extend the monitoring of the fair presence of political parties in the electronic media (television, radio and internet) in non-electoral period (ALIA 2021)<sup>[29]</sup>. (for more information on political campaigns online see the section “Pluralism in the online environment: assessment of the risks”).

### **State regulation of resources and support to media sector (medium risk, 63%)**

The regulation on spectrum allocation is transparent, but may lead to some contradictory decisions. Depending on the nature of the spectrum, the spectrum allocation is granted either by the state or by the Authority ALIA. ALIA is in charge of the permissions for the regional radios (with emission network) and local radios. The other spectrum allocations - for national and international diffusion, for radio and television - are granted by the government through Grand-Ducal regulation after consultation of the Authority (ALIA). The general rule, defined in article 3 (2) is that each time a new spectrum is available, “Concessions or permissions are granted after publication of a public call”<sup>[30]</sup>. In the past this two-headed regulation – one political and the other administrative - of the spectrum allocation has led to contradictory decisions.

One of the most notable decisions regarded the national frequency 107,7 MHz. This frequency had been allocated to the company SLR in 1991. SRL has however been in deficit ever since its creation. In 2013/2014 SLR asked ALIA if it could change its “cahier des charges” (document specifying the duties and the programme of the radio station) in order to attract a larger audience. The demands included a.o.: (1) a financial collaboration with the biggest radio station RTL Radio Lëtzebuerg, and (2) opening up to the non-Luxembourgish population of Luxembourg, as well as cross-border workers by using the French language instead of Luxembourgish. ALIA rejected the proposed changes forcing SLR to close down. The arguments included that (1) the participation of RTL would threaten media pluralism, and (2) a French language programme aimed at cross-border workers would go beyond the duties of a radio using national frequencies.

One year later, the frequency was attributed to L’Essentiel Radio by the government. In stark contradiction to ALIA’s arguments against the change of SLR’s “cahier des charges”, the programme of this new company was also aimed at the mainly French-speaking cross-border workers. Furthermore, RTL Radio Lëtzebuerg was to become a stakeholder of the new company. The contradiction can be explained by the fact that ALIA does not have the competence to allocate national and international frequencies. However, ALIA is responsible for the control of the “cahier des charges”. In other words, ALIA and the government did not have the same outlook on the frequency 107.7 but the government position prevailed as it is the sole party legally able to allocate national frequencies. ALIA finally gave in by giving its green light to the decision. In order to limit the risk of political interference in spectrum allocation, we consider that the task to allocate national frequencies should be conferred only to the media authority ALIA, in line with the praxis in the other EU countries.

The new legislation on state direct subsidies for the print sector is overall more transparent and fairer compared to the past regime that was based on the number of printed pages and did not include the online publications. The current law modernizes and adapts the direct aid scheme to the new digital environment in order to maintain a fair level of journalists' diversity and safe working conditions. It provides three funding

schemes.

The first and central one is called “pluralism maintenance”. The new plan provides for an annual grant of 30,000 euros per professional journalist working in the newsroom and an annual budget of 200,000 euros is made available to support innovation. Two important novelties compared to the past regime, is that online media are eligible as well as any media in a language that concerns at least 15% of the country's population, which notably includes media publishing in English and Portuguese.

The second mechanism is aimed at media startups. A team of two professional journalists is enough to receive a fixed amount of EUR 100,000 annually, which is limited to two years, and which must be preceded by expenses of at least EUR 200,000. The third aid mechanism is aimed at community media. This means non-commercial media, with at least two professional journalists, who also involve citizens in the editorial work and pursue the goals of media education, integration and social cohesion. The Minister for Communication and Media can grant support of up to EUR 100,000 per year.

The law has also introduced a threshold of the amount of funding that each media group may be allocated. As indicated in art. 13: The maximum annual amount paid to a publisher by type of press publication is limited to: 1° 1,600,000 euros for a daily publication; 2° 800,000 euros for a weekly publication; 3° 650,000 euros for a monthly publication; 4° 550,000 euros for an online publication. The maximum annual amount paid to a press group is limited to 2,500,000 euros<sup>[31]</sup>. For 2021, where both schemes apply based on pro-rata per month the publications that have both a print and online presence benefited from following amount (value be rounded down to the nearest thousand euro): Luxemburger Wort, 528,000 euros; Tageblatt, 498,000; L'essentiel, 396,000 euros; Paperjam, 287,000 euros; Revue, 103,000 euros; Zeitung vum Letzebuenger Vollek, 98,000 euros; Woxx, 94,000 euros; d'Letzebuenger Land 83,000; Télécran, 75,000 euros.

The direct subsidies of the audiovisual and radio sector concern essentially RTL television and radio. Even though they are justified as compensation for the public service mission, this could lead to unfair outcomes. As far as the audiovisual and radio sector are concerned, the domination of RTL is likely to be even stronger as a consequence of the increase of the direct state subsidies from 10 million euros per year to 15 million euros from 2024. Some competing media have argued that the state subsidies put them at a disadvantage against RTL in the online market.

With regards to indirect aid, there are no clear rules and public data on the amount allocated to each company. The most recent data were provided as a response to the parliamentary question of the pirate party MP, Marc Goergen and indicated the official expenditures of the different ministries of the state from 2014 to 2021 for the largest print media. It confirmed that there is a huge gap between the different papers and that the total amount varies from one year to the other. Moreover there is a lack of data for several relevant media such as l'Essentiel, RTL and weekly newspapers (e.g. telecran, revue). The Ministry of State argues that they do not have access to these data because they are not communicated to them (Land, 2021).<sup>[32]</sup>

### **Independence of PSM governance and funding (medium risk, 42%)**

While there is no evidence for politically motivated nominations or dismissals of PSM board members and directors in 2021, the law in force<sup>[33]</sup> does not prevent such an interference. In the past, the appointment

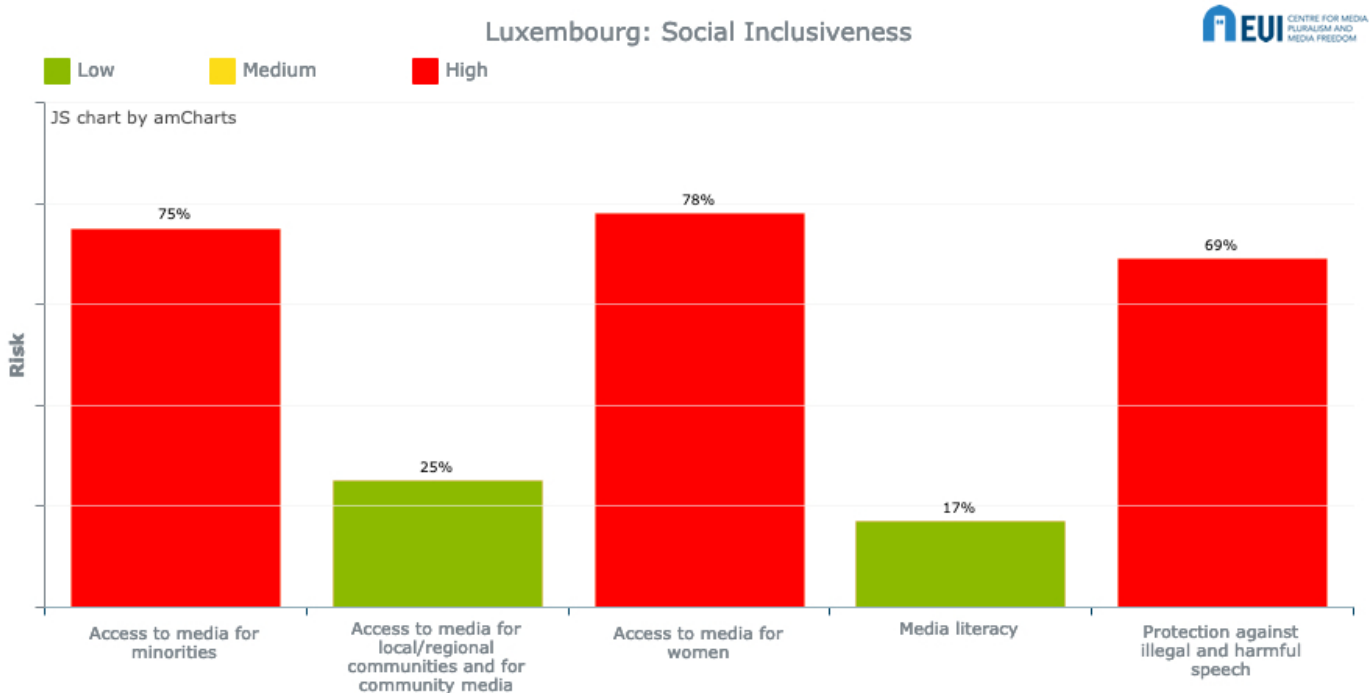
procedures for the board of directors have been rightly criticised, as the current government appointed people who were close to the main party in government (see MPM 2021, 2020, 2019). In fact, the law does not guarantee that the appointment procedures are independent from government or other political influence as all members are directly chosen by the executive.

To remedy this situation, the government decided to update the legal texts relating to PSM<sup>[34]</sup>. According to the new text, three members of the board represent the government and six members will be independent. The right of initiative to propose new members is up to the member of the board itself. They should be chosen so as to represent the social and cultural reality of Luxembourg. Furthermore, they should have clear competences in the sector in order to be able to fulfill their task competently. The law also states who cannot be a member of the board - i.e. parliamentarians, members of the government, employees of ALIA or of another media company as well as employees of the PSM itself. Members of the board who do not act in accordance with the expectations linked to their mandate will be immediately revoked. The president of the board is elected by the members.

While the new law is still not in force, in practice the last four members of the board have been proposed by the board itself and accepted by the government without any comment. Being aware that there is no perfect solution to guarantee the political independence of the selection of the PSM board and its director<sup>[35]</sup>, this law is certainly an improvement as compared to the current regime. The budget for the PSM continues to be provided from the state budget on the basis of a 5 to 10 year long agreement. The PSM is allowed to use other financial sources to fund its program - except advertisement, which is banned on air and online. The new legal project confirms this scheme. The pluriannual funding scheme, results from a negotiation between the radio (through its director) and the government based on a project defined by the director. The amount is to be considered rather fair in the national context. This being said, it is insufficient to offer a full public service, which would include audiovisual, Internet and multilingual public service. Moreover, the negotiation is not transparent as it occurs behind closed doors.

### 3.4. Social Inclusiveness (53% - 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 illegal and harmful speech.



#### Access to media for minorities (75%, high risk)

While 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), it has important linguistic minorities. Almost half of the resident population are foreigners – among them a large number does not speak Luxembourgish. Despite this obvious multi-lingual diversity, the law does not guarantee access to airtime on PSM channels to minorities. The Law on electronic media of 1991, states that the socio-cultural radio is supposed to offer “a broad access to social and cultural organisations in Luxembourgish” (art. 14, al.4)[7]. In practice, socio-cultural radio is essentially available only in Luxembourgish and does therefore not provide proportional access to airtime to the linguistic minorities. The same goes for RTL Télé Lëtzebuerg. Its public mission obligations state that it has to provide a daily program that is essentially in Luxembourgish and that it has a limited obligation to provide news with French subtitles for the evening replays and half an hour weekly program in one of the minority languages of the country. RTL has developed digital products in French and English in the last few years (RTL 5 Minutes & RTL Today) and these platforms are now within the scope of the "convention de service public" that came into effect on January 1st 2021<sup>[36]</sup>. As for the radio sector, the offer is more proportional as several radios target the linguistic minorities, such as for example radio Latina that targets the Lusophone minority or radio l'Essentiel that targets french speaking residents and workers. Relating to the print sector, the minority press, i.e. the press targeting foreign residents in Luxembourg, is considered to be rather proportionate.

Access to the media for people with disabilities is insufficient. The government has set up action plans implementing the Convention on the Rights of Persons with Disabilities and its Optional Protocol (adopted on 13 December 2006 by the General Assembly of the United Nations and entered into force on 3 May 2008). The ongoing action plan that covers 2019-2024 recognizes the necessity to make many adaptations to make print media and television accessible to all types of disabilities, but surprisingly ignores the necessity to extend this access to digital media. The “concrete actions” foreseen are to make the media aware of the need to use information and communication technologies accessible to all and to invite the main TV shows to have subtitles and to be offered in plain language by 2023. These very limited and restricted objectives should be promoted by the media authority, which as we have underlined above, has limited resources<sup>[37]</sup>. It is relevant to underline that the new law concerning the financial support for professional journalists also requires media that receive subsidies to elaborate an annual report that covers measures taken to improve access to content for people with disabilities.<sup>[38]</sup>

### **Access to media for local/regional communities and for community media (25%, low risk)**

The indicator on Access to media for local/regional communities and for community media scores low risk - compared to medium risk last year (50%). The main reason is a new law that came into force in July 2021 that recognizes for the first time the community media under the terminology of "Editeurs citoyens" ("Loi relative à un régime d'aides en faveur du journalisme professionnel", art.9). It grants an amount of 100.000 euro per year to the community media that fulfills the following, rather strict, legal conditions. 1) have a non-profit vocation; 2) have recourse to voluntary participation of citizens in editorial activity; 3) contribute to media education, integration and social cohesion; 4) have various financial resources; 5) not being part of a press group; 6) distribute content primarily intended for all or a significant part of the public residing in the Grand Duchy of Luxembourg; 7) have an editor-in-chief and an editorial team composed of a number of professional journalists equivalent to at least two full-time positions, editor-in-chief included, engaged by employment contract; 8) not constitute a promotional tool or an accessory to an industrial or commercial activity. To date, only one journal fulfills these different conditions: the monthly publication Forum. As this law does not cover electronic media, the state signed a plurianual convention with radio ARA, the other important community media of the country, in May 2021, allocating 250.000 per year until 2025 to ARA.<sup>[39]</sup>

The modified law of 1991 on electronic media recognizes the existence of "local radio service", however without specifying that it has special missions and obligations. The missions are stated in the specifications contained in the concession contract with the state. Article 17 (1) specifies that a local radio service may only be granted to a nonprofit association and article 17(6 a) adds that its book of specifications (cahier des charges) may contain provisions on "the promotion of local life, local culture and artistic creativity in the design and implementation of radio service" and "the respect for pluralism in the presentation of local news and ideas" (Article 17 (6.g)). There are currently 11 local radios in Luxembourg and 3 local televisions (see ALIA website). There are no criteria regarding the distribution of state subsidies to local or regional media. In practice, it appears that most local radio stations do not benefit from state subsidies, while some local TV channels do.<sup>[40]</sup>

### **Access to media for women (78%, high risk)**

The indicator on Access to media remains at high risk. Luxembourg is particularly weak when it comes to the presence of women in key positions. The PSM does not have a gender equality policy and there are no

women represented on its executive board There is however an equal representation of women in the PSM management board.

In the audiovisual sector (i.e. RTL television) the result is even worse as its management board (Clit- Ufa) is composed of only 17% of women (i.e. 3 women out of 18 members) and there are no women in the executive board. Similarly, there are no women in the executive board of the 8 leading news media companies in the country<sup>[41]</sup>. Finally, women are less often invited by the media to comment on political and other relevant matters and events than male experts. The situation may be improved in the future thanks to the new law concerning the financial support for professional journalists that also requires media that receive subsidies to elaborate an annual report that covers the ratio of women to men in newsrooms.<sup>[42]</sup>

### **Media literacy (17%, low risk)**

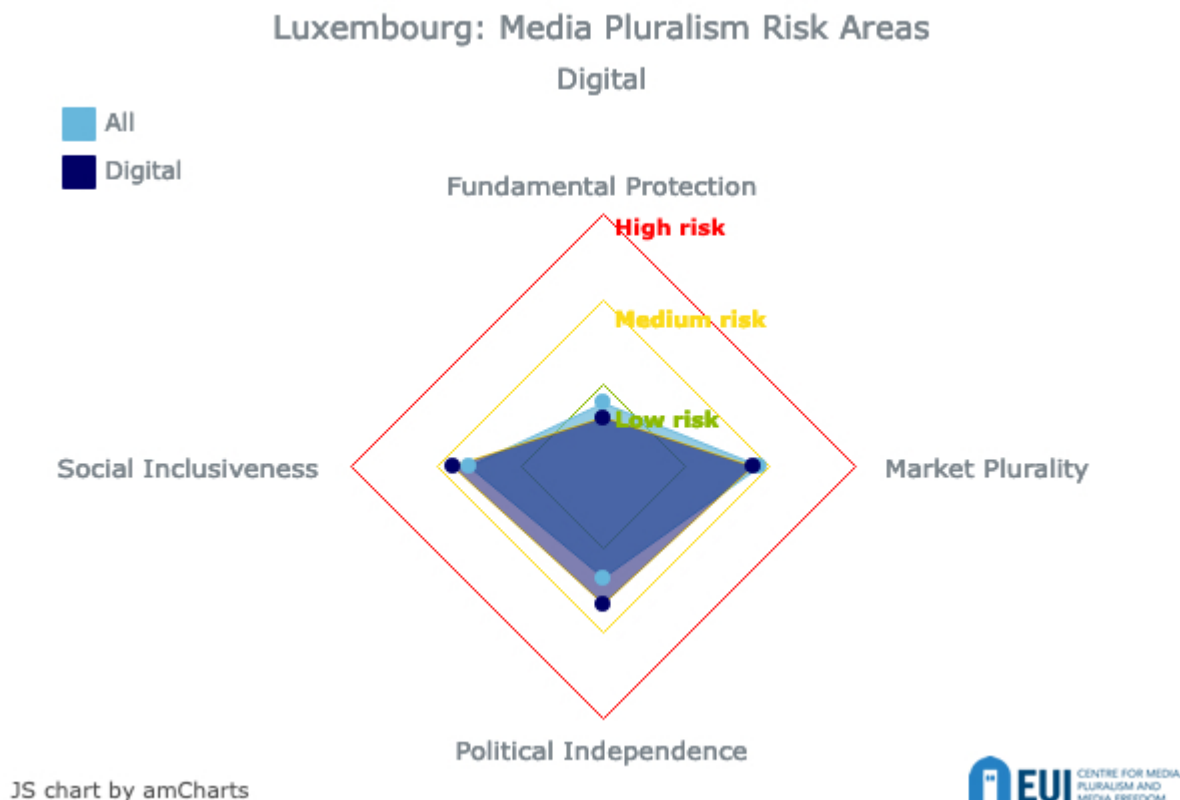
The indicator on Media literacy remains at low risk. The policy on media literacy in Luxembourg is improving due to several initiatives occurring in parallel that involve different categories of the population. Media literacy is present in the 2009 law on the organisation of primary schools. The law states that media education should be integrated at different levels of the teaching (Art. 7)[13]. In addition, it is compulsory in secondary education. There are also many initiatives aiming at promoting some aspects of media literacy within and outside the formal education system (see Bee Secure 2021). According to BEE secure, a governmental initiative that aims to promote a safer, responsible and positive use of information technology, Luxembourg is the only European country to have implemented a mandatory online safety awareness training in its education system. For the last 10 years, Bee Secure has run an annual national campaign to raise public awareness on a specific theme in collaboration with other actors, among which the center for civic education (ZpB) and the media authority (ALIA). Media literacy is likely to be improved in the future due to the new law for media financing that requires the new categories of “citizens editors” to contribute to the promotion of media education and for the other editors to annually report actions taken in favor of media education.<sup>[43]</sup>

### **Protection against harmful content and hate speech (69%, medium risk)**

see below answer for online Social Inclusiveness.



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



### Fundamental Protection

Fundamental rights are protected online. The Law on Freedom of Expression of the media does not make a difference between offline and online freedom of expressions. The law is generally applicable to all types of media as defined by Art.3(8) as the definition of "media" in this specific legislation includes "all physical and intangible means of publication"<sup>[44]</sup>. The code of ethics drawn up in 2006 by the Press Council is more specific and explains in Art.10 that the code of ethics, including the freedom of expression, covers information disseminated by "all professionals" online or by other electronic means<sup>[45]</sup>. The same restraint therefore applies to offline and online media, in respect of the article 10(2) of the ECGR.

The researchers did not come across any case of arbitrary filtering/removing by the state of online content in 2021. Similarly there is no indication that platforms under Luxembourgish jurisdiction arbitrary filtered or removed content. However in absence of granular data for all the platforms it is impossible to have a full picture for Luxembourg.

There have been cases of online threats against journalists. Recently (on December 5), ALJP condemned an MP from the Alternative Democratic Reform Party (ADR), for publishing a private communication with an investigative journalist of the Tageblatt in the covid-skeptic group in Telegram. The journalist found that a profile bearing the name of Roy Reding was also a member of the group. The journalist then contacted the MP to verify whether it was him in the group or just a fraud. Since the screenshot contained both work and private phone numbers of the journalist in question, he has been receiving "featherbrained" messages of conspiracy theories and attempts of intimidation, according to ALJP. In the group, the journalist was called a "collaborator" and a "Gestapo spy".

Broadband coverage and speed is excellent (99% of households have access to a broadband of at least

30Mbps) and regulatory safeguards for Net neutrality are implemented and controlled by the Luxembourg Institute of Regulation (ILR) . There is however a high concentration in Internet service Providers. Based on data of the first semester 2021 from the Institut luxembourgeois de la régulation, the top-4 internet service providers control about 90% of the market<sup>[46]</sup> . The Post company dominates the market share with about 60%, followed by the following companies: Proximus (around 16%), Luxembourg online (about 7%) and eltrona (about 7%).

## Market Plurality

There are no specific limits on media concentration in Luxembourgish law nor are there provisions in the law governing cross-media ownership. In addition, there are not media-specific provisions requiring the disclosure of ownership details of digital native media. The ownership structure is therefore available at the discretion of the editors.

There is a high concentration of audience share. According to Plurimedia study for the second semester 2021, RTL is calling the shots in the online news sector. Its website RTL.lu is the most popular site in Luxembourg with 212 800 unique views per day, followed by L'essentiel.lu (partly owned by RTL too) with 146 800 unique views. Only then comes Wort.lu with 97 700 unique views and the Tageblatt with 27 700 unique views. The PSM Radio 100komma7 gathers 9 200 unique views.<sup>[47]</sup>

It can be assumed that the use of digital platforms (Facebook, Twitter etc.) in the consumption of news is considerable but it is impossible to offer a precise analysis of its evolution over the years due to a lack of data. Similarly, In absence of usable public data it is not possible to calculate the market share of the online news media. It is however clear that RTL - which also has a monopoly in the TV sector and which is the dominant player in the radio sector - manages to attract by far the largest online audience - and in turn a large number of advertisers.

As far as online media viability is concerned, most of the online versions of dailies have integrated paywalls. There is no data on the efficiency of this measure. Similarly, there is no publicly available data on the amount of ad revenues that went to digital news media and media platforms. We can nevertheless extrapolate from the available data from the company adada, that the revenue stemming from the online advertisement in favor of news media have slightly increased. Online media have also benefited from the new aid scheme in favor of professional journalism that entered into force in July 2021.<sup>[48]</sup>

In 2021, when both schemes applied the online publications benefited from the following amounts based on pro-rata per month : Delano 137,000 euros, Journal 166,000 euros; Luxembourg Times 171,000 euros; Reporter.lu 152,000 euros; Contacto 157,000<sup>[49]</sup> . By comparison, the publications with both a print and online presence benefited from the following amounts: L'essentiel, 396.000 euros, d'Letzebuenger Land 83,000; Télécran, 75,000 euros; Paperjam, 287,000, Revue, 103,000 euros; Tageblatt, 498,000; Woxx, 94,000 euros; Zeitung vum Letzebuenger Vollek, 98,000 euros.

## Political Independence

There are only two digital native media in Luxembourg. The first one is a small news outlet in Luxembourgish called moien.lu which is partly owned by the president of the Pirate party Sven Clement. All

their articles are written in Luxembourgish. No data exists on the unique visitors of moien.lu. The second one is a young investigative journal called Reporter.lu, which has provided critical and independent coverage of the social and political life in Luxembourg targeting both government and opposition parties. Apart from state aid, Reporter is fully funded by paid subscriptions making them independent from commercial influence. The journalists have uncovered several scandals and their articles are often cited in other media. Their added value to the Luxembourgish media landscape is unquestionable and the number of subscribers prove that their work is much appreciated among the population of Luxembourg.

In February 2021, Reporter announced that its subscriptions have reached a new record with 3000 paid customers. It should be noted that in June, the Internal Security Minister Henri Kox was forced to apologise after a spokesperson at his ministry requested reporter.lu, to remove an article about police reforms. The spokesperson had used a poor choice of words when stating "I ask you to please delete the article" in an email to the Reporter.lu website at the end of April. The ministry denied that he had ordered his spokesperson to ask for the article to be deleted (Monaghan, Luxembourg times, Minister apologizes after request to remove an article-8.06.21). This clumsy attempt to limit freedom of expression quickly failed and became highly publicized<sup>[50]</sup>. This rapid and public denunciation is an indication that freedom of expression is well protected in digital media.

As far as elections are concerned, the data protection authority has emitted several communications ever since the application of GDPR which aim to explain the new legal framework. The communications included detailed guidelines in order to guarantee the protection of personal data in electoral periods<sup>[51]</sup>. However, there is no regulation that aims to ensure transparency of political advertising online and parties are not transparent about their electoral spending. There are also some issues with the implementation of transparency policies on political advertising by online platforms.

While in previous elections parties reached a gentlemen's agreement (e.a. on spending margins), the elections of 2019 were the first ones without any such agreement as parties could not agree on a common basis. As a result, spending was only transparent to a limited extent. Especially the spending for online ads was rather nebulous. Some parties are said to have spent larger sums than officially indicated (ALIA 2020). During the last European elections, the ALIA participated in an EU-wide analysis of political online ads organised by ERGA and monitored political advertising published by the 10 political parties on social media. The ALIA reached two main conclusions: 1. The control mechanisms of the 3 platforms - Google, Facebook and Twitter - were not efficient enough to identify political ads accurately; and 2. advertisers (i.e. the parties) did not respect the guidelines of the three social network giants. In other words, several parties failed - deliberately or undeliberately - to activate the disclaimers which underlined the political nature of their ads even though the parties were requested to do so upon payment. Many ads which circulated on social media were thus not categorized as political.

### **Social Inclusiveness (covering protection and disinformation and hate speech)**

Disinformation is present - and reinforced by the (ab)use of social media - also in Luxembourg. There are some examples of disinformation in the context of COVID-19 mentioned by the report Bee Secure 2020 (Bee Secure, 2021). To date, there are no legal/policy frameworks aiming at effectively fighting disinformation in Luxembourg.

However, some disinformation initiatives are emerging. The first one is EDMO BELUX. It is a hub for

research, fact-checking and media literacy on **online disinformation in Belgium and Luxembourg**. Launched in October 2021 and funded by the European Commission, it gathers an international network of disinformation experts and operates in five languages (Dutch, French, English, German, Luxembourgish). RTL is one of the partners of this network<sup>[52]</sup>. Moreover, Bee Secure offers schools a teaching module to help students to identify cases of disinformation.<sup>[53]</sup>

With regards to hate speech, the criminal prosecution of "Hate Speech" is regulated in Luxembourg by the Penal Code<sup>[54]</sup>. These articles represent a restriction of freedom of expression to protect the rights of others. In addition Luxembourgish media that benefit from state subsidies based on the "Loi du 30 juillet 2021 relative à un régime d'aides en faveur du journalisme professionnel" (see article 3 (2) 9°) as well as RTL and radio 100.7 are requested to "implement appropriate measures to fight against illegal content on the personal contribution spaces of Internet users".

To implement these measures, the media have to follow a code of conduct established by the Press Council in collaboration with Bee Secure in July 2017 ([www.netiquette.lu](http://www.netiquette.lu)). In absence of publicly available data, the extent and efficiency of this content moderation could not be assessed.

There are also several public and civil society organizations that actively monitor the presence of hate speech in Luxembourg, among them: ASTI, Zentrum fir Politisch Bildung, Centre pour l'égalité de traitement, Musée de la résistance, Conférence Générale de la Jeunesse du Luxembourg. In addition, BEE SECURE deals with the subject in the frame of various awareness raising actions. This being said, the quantity of hate speech content is however still high, and increasing among certain categories of the population (such as the journalists). Its fight is still insufficient, particularly concerning "indirect hate speech" act, corresponding to hate or violence against a group of people with a specific characteristic (religion, age, gender, sexual orientation, etc.) that however is not considered as illegal by law." In absence of granular data on the removal of hate speech, we globally consider that the effort in particular of Bee secure to raise awareness and combat any type of hate speech are laudable but not sufficient to eradicate the phenomenon. This is all the more problematic for social media where the national law is not applicable.

## 5. Conclusions

Compared to last year's report, the situation has worsened in several respects and improved in some others. These changes are mainly due to new national laws and regulations on the one hand and international developments such as COVID or Brexit on the other hand.

Many risks identified in the past have been reduced considerably. This is particularly true for the community media which have finally been legally recognised and supported. However, most positive developments in this year's report are only marginal as many issues continue to exist in the very categories that have been improved. For instance, access to information continues to be a serious issue in Luxembourg. Furthermore, while the media authority ALIA has seen its independence strengthened, its field of action is still in many respects restricted and its workload still too large for the small number of employees. This in turn is unhealthy for the Luxembourgish media landscape in general.

These positive developments need to be relativised even further as most of the improvements were made in categories where the risks were not very high in the first place. Protection of the right to information for instance went down from 45 % to 32%; Independence and effectiveness of the media authority went down from 33% to 23%; Editorial autonomy went down from 46% to 25%.

Some risks have slightly increased compared to last year. This is the case for Audiovisual media, online platforms and elections as well as State regulation of resources and support to media sector, which went up from 19% to 25% and from 48% to 63% respectively. This is mainly due to the arbitrariness of the state aid and regulations. For instance, neither regulation nor supervision is foreseen for private radio or for the internet during electoral periods; no supervision or rules exist for indirect press aid. Furthermore, some financial support measures seem to strengthen big players such as RTL and even distorting the free market competition for smaller players.

Most importantly however, the highest risks have not been reduced at all. Social inclusiveness remains an issue and especially market plurality remains extremely problematic as the concentration of media is increasing and media ownership remains intransparent despite new laws. These risks have been high in all the reports and remain in the 90% risk area. Some risks have even increased in some crucial categories. Thus, transparency of media ownership has a risk increase that went up from 50 % to 72%; access to media for minorities went up from 63% to 75%; protection against harmful content went up from 44% to 69%.

Our recommendations remain slightly similar to last year:

With regards to **Fundamental Protection**, we invite the authorities:

- **To improve the access to information for journalists.**
- **To extend the competence of the national authority to national frequencies.**

With regards to **Market Plurality**, we invite the authorities:

- **To improve transparency of media ownership by centralizing them in an easily accessible format.**
- **To provide publicly available data on audience and advertising for offline and online media (including online platforms).**

With regards to **Political Independence**, we invite the authorities:

- **To pursue the monitoring of representation of political parties during the official campaign in the PSM and RTL and to extend it to other media as well as to the online counterparts and the online platforms.**
- **To guarantee transparency and accessibility of the spending for political advertising both offline and online.**
- **To define rules that ensure a fair distribution of indirect state subsidies and their full transparency.**

With regards to **Social Inclusiveness**, we invite the authorities:

- **To improve the offer and accessibility to linguistic minorities in RTL (television and radio) and in Public service radio (radio 100.7).**
- **To improve access to media (both offline and online) to people with disabilities.**
- **To encourage women's access to key positions (both in governance council et executive boards).**

More generally, we underline the necessity to have a multi-stakeholder center that would promote the collaboration and the research to timely respond to the multiple challenges raised by the digital transformation of the media landscape

## 6. Notes

- [1] Montaignu, G., 2021, le gouvernement rembobine et passe à l'intégrale, Le Quotidien, 24 février.
- [2] Hamus, E., 2021, Uns reicht es, Tageblatt, 13 February.
- [3] Loi du 13 février 2011 renforçant les moyens de lutte contre la corruption
- [4] Loi du 13 février 2011 renforçant les moyens de lutte contre la corruption.
- [5] Projet de loi 7945 transposant en droit national la directive (UE) 2019/1937 du Parlement européen et du Conseil du 23 octobre 2019 sur la protection des personnes qui signalent des violations du droit de l'Union européenne (lanceurs d'alerte), déposé à la chd le 12 janvier 2022.
- [6] ALMI replaced the national associations of newspaper editors in July 2020.
- [7] The main criticisms against the new funding scheme are the following : 1) limited redistributive effect "Except for new beneficiaries, the aid distributed will not increase significantly. And some newspapers are losing from this new scheme (tageblatt, ZVL) and one drastically (le Quotidien). The calculation mechanism, as proposed, also has only a limited redistributive effect"; 2) regret that the amount offered to individual journalist is not more elevated. "The Press Council therefore joins the ALJP and the ALMI in regretting the downward review of the amounts of aid per professional journalist compared to the preliminary drafts that the government had submitted to it during the period of preparation for the reform."
- [8] The journalist became the object of conspiracy theories messages theories messages of and attempts of intimidation. See post of ALJP on their facebook page of December 5. <https://www.facebook.com/Asociation-luxembourgeoise-des-journalistes-professionnels-321492504994740>
- [9] ALIA, 2021, « AVIS N° 81/2020 du 7 décembre 2020 du Conseil d'administration de l'Autorité luxembourgeoise indépendante de l'audiovisuel relatif au projet de loi numéro 7651 portant modification de la loi modifiée du 27 juillet 1991 sur les médias électroniques ». p.7
- [10] Projet d'amendements gouvernementaux au projet de loi n° 7877 portant modification de la loi électorale modifiée du 18 février 2003
- [11] ALIA, 2021, « AVIS N° 81/2020 du 7 décembre 2020 du Conseil d'administration de l'Autorité luxembourgeoise indépendante de l'audiovisuel relatif au projet de loi numéro 7651 portant modification de la loi modifiée du 27 juillet 1991 sur les médias électroniques ». p.14-15.
- [12] See art. 66 of Loi du 8 juin 2004 sur la liberté d'expression dans les médias, <http://legilux.public.lu/eli/etat/leg/loi/2004/06/08/n4/jo>
- [13] Loi du 13 janvier 2019 instituant un Registre des bénéficiaires effectifs, <https://legilux.public.lu/eli/etat/leg/loi/2019/01/13/a15/jo>
- [14] For a recent overview of the concentration of the media landscape in Luxembourg see: Adada, Infographie médias au Luxembourg 2020, <https://www.adada.lu/2020/10/infographie-medias-au-luxembourg-qui-possede-quoi/>
- [15] Avenant à la convention portant sur la prestation du service public Luxembourgeois en matière de radio et de télévision, entre CLT-UFA S.A., RTL Group S.A., et l'Etat du Grand-Duché du Luxembourg, 5 septembre 2018.
- [16] Projet de loi autorisant l'Etat à participer au financement de la mission de service public en matière de télévision, radio, activités digitales confiée à CLT-UFA et RTL Group pour les exercices 2024 à 2030 inclus, déposé le 23.11.2021.
- [17] Convention portant sur la prestation du service public luxembourgeois en matière de télévision conclue entre l'Etat du Grand-Duché de Luxembourg et CLT-UFA et RTL Group, Signée à Luxembourg, le 31 mars 2017.
- [18]

Graff, R., Le pluralisme déjoué, Woxx, 24.09.21.

- [19] Loi du 1er avril 2022 portant modification : 1° de la loi modifiée du 18 avril 2001 sur les droits d’auteur, les droits voisins et les bases de données ; 2° de la loi du 3 décembre 2015 relative à certaines utilisations autorisées des œuvres orphelines ; 3° de la loi du 25 avril 2018 relative à la gestion collective des droits d’auteur et des droits voisins et l’octroi de licences multiterritoriales de droits sur des œuvres musicales en vue de leur utilisation en ligne dans le marché intérieur, en vue de la transposition de la directive 2019/790 du Parlement européen et du Conseil du 17 avril 2019 sur le droit d’auteur et les droits voisins dans le marché unique numérique et modifiant les directives 96/9/CE et 2001/29/CE.. <https://legilux.public.lu/eli/etat/leg/loi/2022/04/01/a158/jo>
- [20] Graff, R., Le pluralisme déjoué, Woxx, 24.09.21.
- [21] Adada, Luxembourg Ad’Report 2021, <https://www.adada.lu/2022/03/luxembourg-adreport-2021-1312-millions-deuros-dinvestissements-publicitaires-dans-les-medias-luxembourgeois-en-2021-en-hausse-de-619/>
- [22] It should be noted that our evaluation is based on the evolution of advertisement revenue and public fundings. We could not access easily to the other sources of funding as well as data on resources of digital (native) media nor for local and community media.
- [23] See art 6 in « code de déontologie de déontologie de la presse et des média », <https://legilux.public.lu/eli/etat/leg/div/2006/03/28/n1/jo>
- [24] See Adada, Infographie médias au Luxembourg 2020, <https://www.adada.lu/2020/10/infographie-medias-au-luxembourg-qui-possede-quoi/>
- [25] Convention portant sur la prestation de service public luxembourgeois en matière de télévision conclue entre l’Etat du Grand-Duché de Luxembourg et CLT.UFA et RTL Group, signé à Luxembourg, le 31 mars 2017.
- [26] Projet de loi portant création de l’établissement public « Média de service public 100,7 » et portant modification de la loi modifiée du 27 juillet 1991 sur les médias électroniques. <https://legilux.public.lu/eli/etat/projet/pl/20170398>
- [27] ALIA, 2021, Rapport annuel d’activité 2020.
- [28] Projet de loi portant sur la modification : 1. De la loi électorale modifiée du 18 février 2003 ; 2. De la loi modifiée du 27 juillet 1991 sur les médias électroniques. <https://legilux.public.lu/eli/etat/projet/pl/20170511>
- [29] ALIA, AVIS N° 14/2021 du 13 décembre 2021 du Conseil d’administration de l’Autorité luxembourgeoise indépendante de l’audiovisuel relatif au projet d’amendements gouvernementaux au projet de loi n°7877 portant modification de la loi électorale modifiée du 18 février 2003.
- [30] Loi du 27 juillet 1991 sur les médias électroniques, <https://legilux.public.lu/eli/etat/leg/loi/1991/07/27/n1/jo>
- [31] Loi du 30 juillet 2021 relative à un régime d’aides en faveur du journalisme professionnel, <https://legilux.public.lu/eli/etat/leg/loi/2021/07/30/a601/jo>
- [32] Land, Indirekte Pressehilfe, 19.11.2021
- [33] Règlement grand-ducal du 19 juin 1992 fixant les modalités de structure et de fonctionnement de l’établissement public créé par l’article 14 de la loi du 27 juillet 1991 sur les médias électroniques, <https://legilux.public.lu/eli/etat/leg/rgd/1992/06/19/n1/jo>
- [34] Projet de loi portant création de l’établissement public « Média de service public 100,7 » et portant modification de la loi modifiée du 27 juillet 1991 sur les médias électroniques. <https://legilux.public.lu/eli/etat/projet/pl/20170398>
- [35] In its AVIS N° 14/2021, ALIA suggests that In order to ensure the greatest independence of the Board,



the power of appointment could be distributed between different institutions, such as for example the Government, Parliament and ALIA.

- [36] Avenant à la convention portant sur la prestation du service public Luxembourgeois en matière de radio et de télévision, entre CLT-UFA S.A., RTL Group S.A., et l'Etat du Grand-Duché du Luxembourg, 5 septembre 2018.
- [37] Ministère de la famille, 2020, Plan d'action national de mise en oeuvre de la Convention relative aux droits des personnes handicapées 2019 – 2024.
- [38] Loi du 30 juillet 2021 relative à un régime d'aides en faveur du journalisme professionnel, <https://legilux.public.lu/eli/etat/leg/loi/2021/07/30/a601/jo>
- [39] Convention conclue entre l'État du Grand-Duché de Luxembourg et Radio ARA 2021-2025, <https://smc.gouvernement.lu/dam-assets/ConventionMedia-2021-Ara-SMC-FINALsite.pdf>
- [40] Nordlicht TV receives an annual subsidy of 80.000 euros. (information abstained from the service media et communication.
- [41] This calculation is made on the basis of the two most relevant (based on readership and/or impact) news media per type (audiovisual, radio, newspapers, digital native).
- [42] Loi du 30 juillet 2021 relative à un régime d'aides en faveur du journalisme professionnel, <https://legilux.public.lu/eli/etat/leg/loi/2021/07/30/a601/jo>
- [43] Loi du 30 juillet 2021 relative à un régime d'aides en faveur du journalisme professionnel, <https://legilux.public.lu/eli/etat/leg/loi/2021/07/30/a601/jo>
- [44] Loi du 8 juin 2004 sur la liberté d'expression dans les médias, <http://legilux.public.lu/eli/etat/leg/loi/2004/06/08/n4/jo>
- [45] Conseil de Presse, « code de déontologie de déontologie de la presse et des média », <https://legilux.public.lu/eli/etat/leg/div/2006/03/28/n1/jo>
- [46] Data from institut luxembourgeois de la régulation, <https://web.ilr.lu/FR/Professionnels/Communications-electroniques/Statistiques/Tableaux-de-bord-interactifs/Pages/default.aspx?>
- [47] see TNS-ILRES, Etude Plurimedia Luxembourg 2021.II, url: [https://www.tns-ilres.com/media/1822/communiquede\\_presse\\_etudeplurimedia\\_2021ii.pdf](https://www.tns-ilres.com/media/1822/communiquede_presse_etudeplurimedia_2021ii.pdf)
- [48] Loi du 30 juillet 2021 relative à un régime d'aides en faveur du journalisme professionnel, <https://legilux.public.lu/eli/etat/leg/loi/2021/07/30/a601/jo>
- [49] Please note that the value was rounded down to the nearest thousand euros.
- [50] Monaghan, J., Minister apologises after request to remove article, Luxembourg Times, 8.06.2021.
- [51] CNDP, 2019, Les campagnes électorales dans le respect de la protection des données personnelles.
- [52] <https://belux.edmo.eu>
- [53] see: <https://www.bee-secure.lu/de/training/checkyourfacts-glaub-nicht-alles-im-internet-2/>.
- [54] The criminal prosecution of "Hate Speech" is regulated in Luxembourg by articles 442-2 (obsessive persecution), 443 to 452 (public insults and defamation) and 454 to 457-4 (Chapter VI "Racism, Revisionism and Other Discrimination") of the Penal Code, <https://legilux.public.lu/eli/etat/leg/code/penal/20211226>

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<https://legilux.public.lu/eli/etat/leg/loi/2019/01/13/a15/jo>

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<https://legilux.public.lu/eli/etat/leg/rgd/1992/06/19/n1/jo>

## ANNEXE I. COUNTRY TEAM

First name	Last name	Position	Institution	MPM2022 CT Leader
<i>Raphael</i>	<i>Kies</i>	<i>Research Scientist</i>	<i>University of Luxembourg</i>	X
<i>Alina</i>	<i>Ostling</i>	<i>Co-chair</i>	<i>Open Knowledge Sweden</i>	
<i>Mohamed</i>	<i>Hamdi</i>	<i>External expert</i>	<i>University of Luxembourg</i>	

## 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>Caregari</i>	<i>Luc</i>	<i>Representative of a journalist organisation</i>	
<i>Hoffmann</i>	<i>Jean-Paul</i>	<i>Academic</i>	<i>University of Luxembourg</i>
<i>Hoscheit</i>	<i>Thierry</i>	<i>President of the Board of Directors</i>	<i>Autorité Luxembourgeoise Indépendante de l'Audiovisuel</i>
<i>Christophe</i>	<i>Goossens</i>	<i>CEO</i>	<i>RTL Lëtzebuerg</i>
<i>Guy</i>	<i>Antony</i>	<i>President</i>	<i>ARA / Graffiti asbl</i>
<i>siweck</i>	<i>Jean-Lou</i>	<i>director</i>	<i>press council</i>
<i>Bumb</i>	<i>Cristoph</i>	<i>director</i>	<i>reporter.lu</i>
<i>Cole</i>	<i>Mark</i>	<i>professor in media and telecommunication law</i>	<i>Uni.lu</i>

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