

# 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: Romania

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**Research Project Report**

Issue -

June 2022



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Published by

European University Institute (EUI)

Via dei Roccettini 9, I-50014

San Domenico di Fiesole (FI)

Italy

ISBN:978-92-9466-298-9

doi:10.2870/709224



With the support of the Erasmus+ Programme of the European Union. The European Commission supports the EUI through the EU budget. This publication reflects the views only of the author(s) and the Commission cannot be held responsible for any use which may be made of the information contained therein.

# 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 Romania the CMPF partnered with Raluca Toma, Marina Popescu and Roxana Bodea (MRC - Median Research Centre, Bucharest), who conducted the data collection, scored and commented on the variables in the questionnaire and interviewed experts. The report was reviewed by the CMPF staff. Moreover, to ensure accurate and reliable findings, a group of national experts in each country reviewed the answers to particularly evaluative questions (see Annexe II for the list of experts). For a list of selected countries, the final country report was peer-reviewed by an independent country expert.

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

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

Table 1: Areas and Indicators of the Media Pluralism Monitor

## The digital dimension

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

## The calculation of risk

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

*Scores between 0 and 33%: low risk*

*Scores between 34 and 66%: medium risk*

*Scores between 67 and 100%: high risk*

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

**Disclaimer:** The content of the report does not necessarily reflect the views of the CMPF, nor the position of the members composing the Group of Experts. It represents the views of the national country team that carried out the data collection and authored the report. Due to updates and refinements in the questionnaire, MPM2022 scores may not be fully comparable with those in the previous editions of the MPM. For more details regarding the project, see the CMPF report on MPM2022, available on: <http://cmpf.eui.eu/media-pluralism-monitor/>.

## 2. Introduction

### Country overview

- Romania has 19.2 million residents (INS, 2021) and a surface area of 238.4 thousand square kilometers (World Bank, n.d.). It is the sixth largest European Union member state by population size and the eighth largest by surface area.
- After ethnic Romanians, ethnic Hungarians are the second largest ethnic group, accounting for 6% of the population, according to 2011 census data. Roma persons make up 3% of the population, according to census self-reports; this number is likely an underestimate, but by how much is unclear (INS, 2011; Agenția Națională pentru Romi, 2020). Other ethnic groups include Ukrainians (0.3%), Germans (0.2%), and the Turkish, Russian and Tatar minorities (0.1% each) (INS, 2011). Eighteen ethnic minority groups have parliamentary representation based on special electoral provisions.
- Norms of political and social tolerance are not fully established (Median Research Centre, 2017a; Toma, 2020; Popescu, Tóka & Chiru, 2018; Popescu et al., 2019a). Under Nicolae Ceaușescu's authoritarian regime, state institutions cultivated ethnic nationalism, and after the 1989 revolution, such tendencies were not abandoned quickly or fully.

### Economic situation

- In 2021, Gross Domestic Product (GDP) grew by 5.9%, per a March 2022 estimate, after having dropped by 3.7% in 2020 (Eurostat, 2022a). The recovery trend started in the latter half of 2020, following a sharp contraction of the economy in the spring of that year.
- Romania has some of the highest rates of income inequality and highest shares of people at risk of poverty and social exclusion in the European Union (Eurostat, 2022b; Eurostat, 2021a). It also registers some of the highest rates of early school-leaving (Eurostat, 2021b) and lowest PISA scores in Europe (Zay 2019) and has major problems with healthcare services (Björnberg and Phang, 2019). Levels of government spending on education and healthcare, as a share of GDP, are among the lowest in the EU (Eurostat, 2022c; Eurostat, 2021c).

### Political situation

- Romanian politics is polarized, but mainly on symbolic topics, not substantive policy issues, and the public policy positions of political parties have been inconsistent (Borbáth, 2019).
- State capacity and quality of government are low (Coppedge et al., 2019; Kaufmann and Kraay, 2018; Rothstein, 2021). There are numerous ways in which this travels into the media sector, such as the governance issues of the public service media (PSM) (Median Research Centre, 2017b); the perfunctory discussions in parliament about public media the audiovisual regulatory agency preceding appointment or reform decisions; and the lack of serious, evidence-based parliamentary initiatives to address the challenges facing journalism. Some politicians also attack uncomfortable oppositional journalism, including by use of strategic lawsuits against public participation (SLAPP).

## Media market

- Romanians have some of the lowest levels of news consumption in the EU (European Commission, 2022, pp. 16, 19;<sup>[1]</sup> Newman et al., 2020<sup>[2]</sup>). Yet they report relatively high trust in mass media (European Commission, 2022, pp. 29–31, 38-40; Newman et al., 2021, pp. 18, 99), probably partly due to self-selection into partisan media camps.
- Romanians turn more than other Europeans to television as a source of news - but not to the public broadcaster, which is exceptionally unpopular (Bambu, 2022). Television is the primary or secondary source of news about national affairs for 82% of respondents to Standard Eurobarometer 92, followed by radio (33%) (European Commission, 2020, p. 49<sup>[3]</sup>). Estimates for the size of the online news audience vary. In the above-mentioned Eurobarometer, 20% of respondents in Romania mentioned “online websites” as one of their top sources for news and 19% mentioned “social media”. The daily number of unique users (meaning devices) in early 2021 hovered around 9.5 to 10 million, according to the Study of Internet Audience and Traffic (SATI), a monitoring conducted by the BRAT (Romanian Joint Industry Committee for Print and Internet).<sup>[4]</sup>
- In this small and poor market for news and public affairs content, media outlets were highly reliant on ad revenue and had limited resources even before the collapse of the legacy media business model. In the decade after the economic crisis of 2008-2009, newspapers experienced an 80% drop in print revenue, and though online audiences grew, online revenue did not offset that loss entirely (Bodea and Popescu, 2018).
- In 2021, advertising revenue across TV, radio, print and digital media will have gone up by approximately 11%, according to Media Fact Book estimates, issued mid-2021 (Initiative Media, 2021, pp. 25-31). Much of that revenue will have gone to television (68%), similarly to last year. Print ad revenue, which dropped precipitously in 2020 compared to 2019 (by 49%), was forecast to stay the same. Digital revenue was expected to register the most growth, by approximately 19% compared to 2020.
- Journalists operate in precarious professional and financial conditions. These conditions make it more difficult, though also more necessary, to engage in creative innovation, professional development activities or in advocacy to secure better labor conditions and safeguard journalistic norms. In fact, there is little consensus on shared journalistic norms in the Romanian media industry (Fengler et al., 2015). And there are few efforts to communicate said norms to those “formerly known as the audience” (Rosen, 2006), to engage with a diverse public - rather than a particular social or political segment - and to embody transparency and accountability.<sup>[5]</sup>

## Regulatory environment

- In Romania, media regulation reform has been preceded by a discussion that is cynical, superficial and short. An illustrative example: an advertised intent to deeply reform public media turned, in spring 2021, into a plan to swiftly dismiss the public radio and public broadcaster heads, quickly enact some reforms and then deeper reforms later. Thus, in June 2021, representatives from the then-ruling coalition put forward a bill whose main innovation would be taking the “president-director general” positions at the

helm of the public broadcaster and of the public radio (respectively) and splitting them into two: president and director general (PL-x nr. 262/2021). This would not actually tackle the factors that undermine the independence and performance of public media (Median Research Centre, 2017b).

- The process of transposing EU Audiovisual Media Services Directive 2018/1808 is ongoing. A legislative project aiming to do this passed the Chamber of Deputies in late 2021 and is now in the Senate (PI-x no. 430/2021).
- Romania has missed the deadline to transpose EU Directive 2019/1937 on whistleblower protection. A legislative proposal to transpose it is currently in the Chamber of Deputies, having passed the Senate (PI-x. no. 219/2022).<sup>[7]</sup>
- Romania somewhat belatedly transposed EU Directive 2019/790 on Copyright in the Digital Single Market. At the end of 2021, a proposal on this was in committee in the Chamber of Deputies (the deadline to transpose had been June 2021). In early 2022 the proposal became law (Law 69/2022).

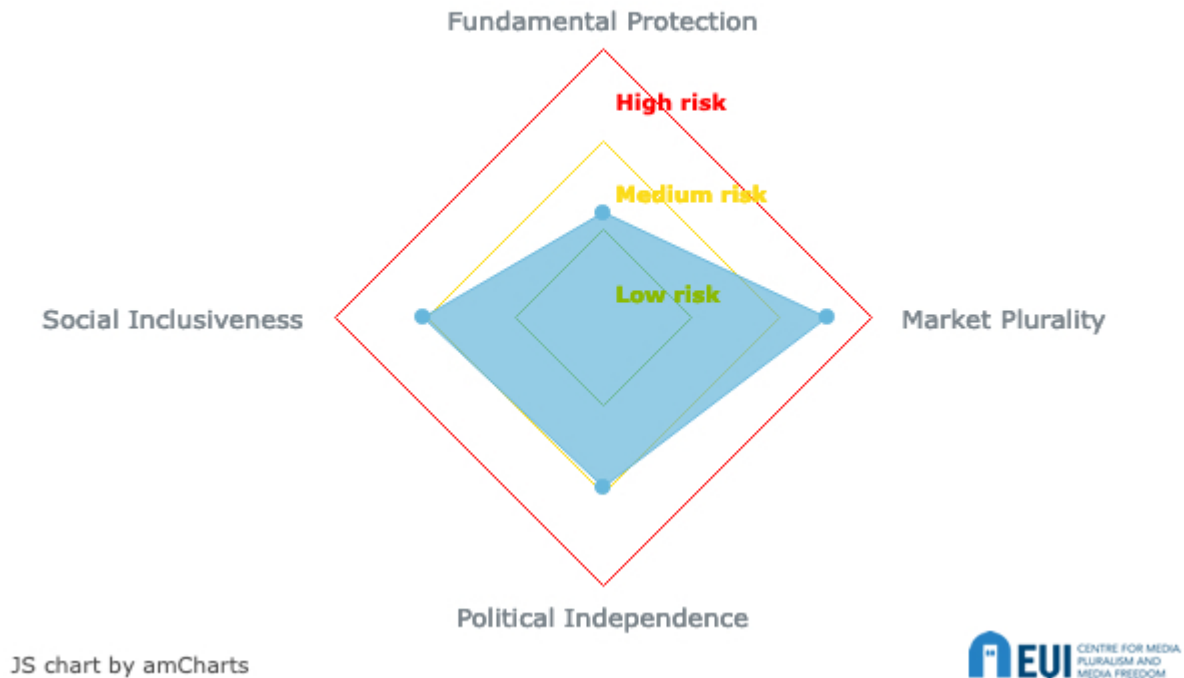
## COVID-19

- In 2021, public health orders to limit the spread of the coronavirus were quite limited and somewhat targeted (Oxford Covid-19 Government Response Tracker, 2022a; Hale et al., 2021). The vast majority of workplaces were open for most of the year, with the only obligations being mask-wearing and isolation for specific periods, if infected or if exposed and presenting symptoms.<sup>[6]</sup> Businesses in retail, entertainment and hospitality dealt with specific rules that varied by locality and in time.<sup>[8]</sup> After mid-May 2021, school closures were pegged to the local case incidence rate, until October, when they were decoupled from this indicator, with specific class groups switching online temporarily after a confirmed infection.<sup>[9]</sup>
- GDP grew overall but more in some areas than in others.<sup>[10]</sup> In terms of employment, the overall trend is negative, though there are sectoral differences, with some sectors rebounding after 2020.<sup>[11]</sup> The end of 2021 found Romania with a smaller number of employees across all sectors and a higher unemployment rate than at the end of 2020.<sup>[12]</sup>
- The scarcity of data makes it difficult to assess the impact of the pandemic on the media. In the (very broad) “information and communication” sector of the economy, GDP and employment both went up slightly in both 2021 and 2020, according to the latest data.<sup>[13]</sup> But slightly more fine-grained data indicates that operators in “programming and broadcasting”, in publishing and in “information services” employed fewer people in 2020 compared to 2019 (2021 data unavailable).<sup>[14]</sup>



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

#### Romania: Media Pluralism Risk Areas



**The MPM assessment referring to the year 2021 has produced a high risk score in two areas - Market Plurality and Social Inclusiveness - and a medium risk score in another two - Political Independence and Fundamental Protection.** The previous assessment, referring to the year 2020, resulted in a high risk score for three areas and a medium risk score for one area (Fundamental Protection).

The basic risk factors that undermine media pluralism and the media's ability to fulfill its mission remain the same, despite changes in the scores of certain indicators. As we have done in the past (Popescu, Bodea and Toma, 2021), we underline that deficient institutions and procedures - both official and unofficial, regulatory and self-regulatory - lie at the root of many problems. That is because they do not encourage and protect journalism that is done in line with high professional standards, with the public interest in mind and free of undue interference.

**The overall risk score for the Fundamental Protection area is 39% in 2021**, the same as in 2020. Three out of five indicators register medium risk scores. Key points:

- Protection of the right to information is still inadequate. Insufficient and inconsistent responsiveness of authorities to freedom of information requests is an ongoing problem. Patterns that were pointed out by other organizations and that we have also discussed in previous reports include the passing around of information requests from one institution to another; and the (mis)use of personal data protection laws to refuse to release public interest information.
- Legal protections for whistleblowers only cover public sector workers. Evidence suggests there is limited awareness in society about whistleblower protections, and there are at least occasional cases where whistleblowers were penalized.

- Problems facing the journalistic profession and its norms are pervasive and persistent. Most journalists face poor working conditions and uncertain job and financial prospects. The lack of industry-wide organizations and self-regulation mechanisms undermines both labor conditions and the establishment and enforcement of basic journalistic norms. A few cases of attacks and threats against journalists were reported in 2021. There is no legal framework to prevent strategic lawsuits against public participation (SLAPPs), and in 2021 there was significant coverage of a high number of cases that may represent SLAPPs.
- The activity of the audiovisual media regulator, the National Audiovisual Council (CNA), was interrupted for three months after the tenure of four members ended without replacements being interviewed and voted on in a timely manner. This is, however, the tip of the iceberg, as the activity of the CNA should not be just about the board members voting on penalty decisions. The main challenges to the effectiveness of CNA as a regulator come from limited funding and access to expertise, related to a vision of its role among the framers of the regulation (and elites in general) that ranges from unclear to quite minimal. Therefore, there are few premises for reaching consensus and consistency in decision-making, and even fewer for contributing to an understanding of basic standards of quality.

**Market Plurality has the highest risk score - 83% in 2021**, one point below the 2020 score. All but one indicator in this area register high risk levels. Key points:

- Transparency of media ownership is still limited, although one of the loopholes that could be used to hide the ownership of media in the past is now closed. Audiovisual media are still subject to the most stringent (media-specific) regulations, and existing regulation lacks a cross-media component.
- Lack of data remains a problem for assessments of media viability. For national media revenue, we have to rely on ad spending as a proxy measure and use estimates typically issued mid-year (Initiative Media, 2021). In 2021, digital revenue was expected to grow the most, followed by television - which still commands the majority of ad revenue. Radio was also expected to increase its revenue, while print revenue was forecasted as stagnant for 2021.
- Commercial and owner influence remains an extremely high risk area. There are no legal or self-regulatory guardrails to protect editors-in-chief and newsrooms from arbitrary appointments, dismissals or the exertion of undue owner or commercial pressure. Nor are there legal or industry-level codes of conduct and instruments laying down and enforcing basic journalistic norms and standards.

**Political Independence has a medium risk score this year (63%)**. It is just five points below the 2020 level and just 3 points shy of the threshold for a “high risk” assessment. Three out of five indicators are at high risk levels. Key points:

- Lack of regulation or self regulation and low institutionalization are root causes that feed problems in this area, as well as the areas of Fundamental Protection and Market Plurality. The lack of self-regulation mechanisms and self-regulatory enforcement mechanisms, as well as of any legislation, to protect editors-in-chief and newsrooms from pressure, prevent arbitrary dismissals or appointments and to safeguard against issues like conflict of interest undermines the independence, professionalism and public-interest orientation with which journalists should serve their mission.

- There are no subsidies and no support for the media to speak of. The only feature that can qualify as a subsidy has, at best, a marginal impact on the market; it is a reduced Value Added Tax rate for print.
- The institutional design of public service media does not incentivize performance and independence, as essentially, the only thing that matters in order for the boards and their leaders to stay in office is to have the backing of a parliamentary majority, and performance targets or achievements are not considered at any stage. A bill put forth in 2021, aiming to split the position of president-director general of the public radio and public television into two positions (president and director-general, respectively), does not address the actual design features that are the problem. After the summary dismissal of the boards and presidents in May, interim heads were at the helm of the radio and broadcaster for a protracted and legally questionable length of time. In November, their replacements were voted on mere days after their nomination was announced; their Parliamentary hearings were short, and they were rapidly rubber stamped by the plenary.

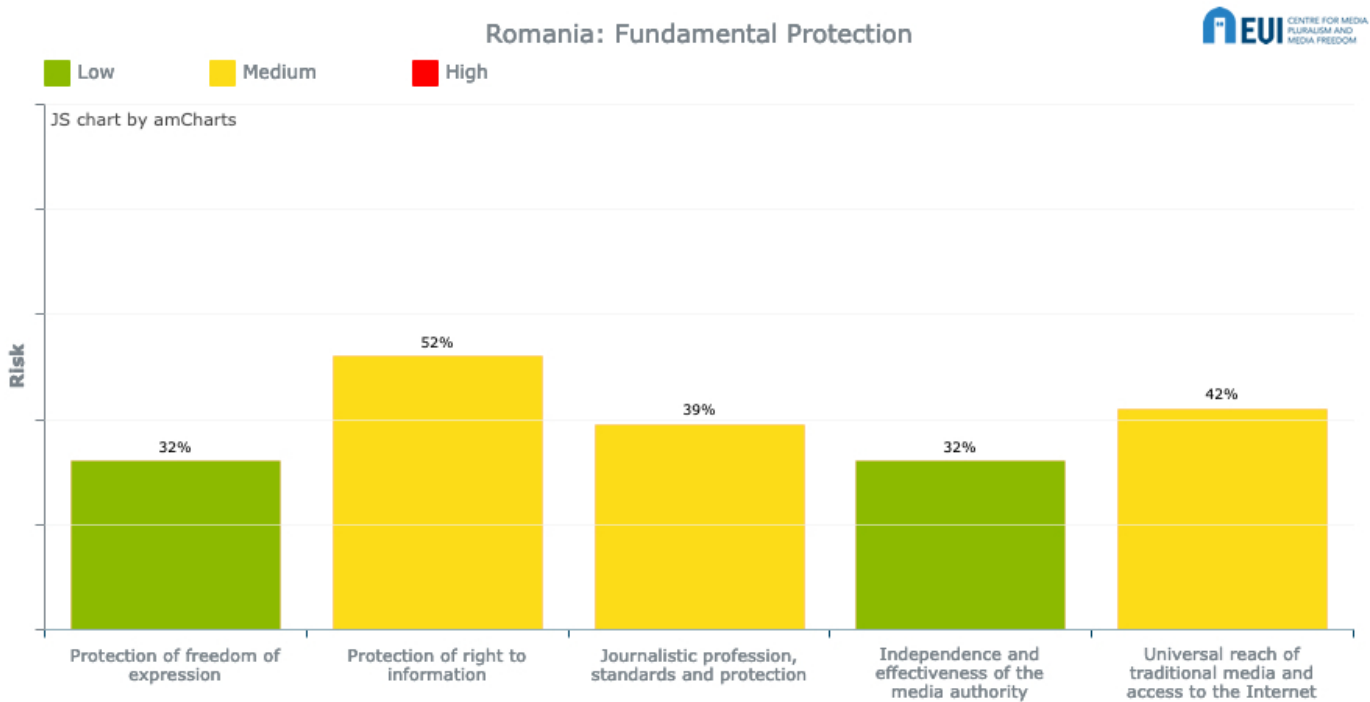
**The Social Inclusiveness area has a high risk rating - 67%** (69% last year). Two indicators have a high risk score and the other three a medium risk score. Key points:

- There is very little programming on television and on the radio in minority languages. In terms of news content, for instance, the public broadcaster only provides a (shortened) news show in Hungarian on one of its regional branches. The national public radio channel focused on news (Radio România Actualități) only broadcasts the news in Romanian, and according to our research one of the regional PSM channels offers limited news content in slots dedicated to minority languages.
- Broadcasters have extremely limited obligations related to providing news and analysis content with sign language interpretation, and our research indicates that they do comply with it. There are no legal requirements for broadcasters to provide audio description.
- The state does not have a well thought out and evidence-based strategy to promote digital and media literacy. Some of the elements that are part of a media literacy education can be found scattered in various classes that are part of the core curriculum, but we want to emphasize that there are no “media literacy” classes in the core curriculum. Civil society organizations are working to promote media literacy, but their efforts cannot be comprehensive and systematic enough to meet the needs of the population.
- Romania has legislation that aims to combat incitement to hatred and discriminatory acts, including speech acts, and it has a dedicated agency to fight against and raise awareness about discrimination (the National Council on Combating Discrimination, CNCD). But the CNCD can only tackle a small number of cases that are brought to its attention, not hate speech or discriminatory speech as a mass phenomenon. It is very difficult to assess the scope of the “hate speech” problem online and the efficacy of state and non-state efforts to combat it (either by curtailing it or by discouraging it through education) because of a lack of comprehensive and high-quality studies on this.
- Even as increased media and activist attention goes to the problems of mis- and disinformation, we want to emphasize that much more good data and analyses are needed to understand the local specificities of these phenomena and to grasp if any policy or regulatory changes are needed - outside of increased transparency, accountability and more evidence-based communication strategies from public institutions and their high-level representatives. Moreover, throughout the pandemic, the

Romanian public has been faced with a proliferation of low-quality media pieces that could be considered part of an “infodemic”, and major television channels have given a platform to persons making misleading or confusing claims. These are insidious problems that may not count as “disinformation” but are no less serious in terms of their impact on the public’s ability to make informed decisions.

### 3.1. Fundamental Protection (39% - medium risk)

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



**The Fundamental Protection area risk score is 39%, corresponding to a “medium risk” rating.**

As in previous years, the assessment for 2021 points to Fundamental Protection as an area where there is less risk compared to the other areas of the MPM. The risk score is the same as it was for 2020 and two points lower than for 2019. Three out of five indicators registered a medium risk score, the same ones that had medium risk levels in the past two years. As in 2020, the indicator with the highest risk level in this area is the Protection of the right to information.

**Protection of the freedom of expression (32%)** is typically a relatively low-risk indicator for the MPM assessment of Romania compared to other indicators. Historically, most of the problems have seemed to come from apparent problems with enforcement of the legal framework rather than the legal framework itself. For instance, the proportionality and justification of court rulings have been questioned in a few high-profile cases where very high amounts were awarded as damages and/or courts ruled that journalistic pieces must be taken down completely.<sup>[15]</sup> In previous editions, we also discussed some anecdotal evidence of inconsistencies in the damages awarded in cases where media was judged to have damaged someone’s reputation (Popescu, Bodea and Toma, 2021, p. 12). Yet it is difficult to know, absent comprehensive and

rigorous analyses, whether cases that come to wide public attention are representative of a broader phenomenon.

In the past couple of years, there has been accumulating evidence of risks coming from the regulatory framework, too. Especially with regard to the online environment, there are questions about the appropriateness of transparency requirements in cases where online content is filtered or taken down, as well as about the suitability of avenues to appeal decisions that curtail one's freedom of speech. We discuss these issues more in the section dedicated to media pluralism online.

**Protection of the right to information** is still inadequate, and this indicator has the highest risk level in this area once again (52%, same as for 2020). Insufficient and inconsistent responsiveness of authorities to freedom of information (FOI) requests represents an ongoing problem. The available evidence on this comes from reports from civil society organizations (CSOs) and the media, but not a thorough, comprehensive study. Patterns that were pointed out by other organizations and that we have also discussed in previous reports include the passing around of information requests from one institution to another; and the (mis)use of personal data protection laws to refuse to release public interest information, such as the membership of certain decision-making bodies or the names of advisors for the Prime Minister (Popescu, Bodea and Toma, 2021, p. 12; Popescu, Bodea and Toma, 2020; APADOR-CH, 2021a; APADOR-CH, 2021b; Simina, 2021). Obtaining recourse if a request is ignored or arbitrarily denied can be expensive and time-consuming. A bill that would bring some updates to the Romanian FOIA (Law 544/2001),<sup>[16]</sup> pitched as addressing some of the above-mentioned problems and additional issues, almost came to a final vote in 2021, but it remains in the Chamber of Deputies for now (PI-x nr. 529/2020).

Legal protections for whistleblowers only cover public sector workers at the moment. The key legal text in this area is Law 571/2004, which lays down some provisions and measures meant to protect public sector employees raising the alarm about unlawful acts.<sup>[17]</sup> Romania has now missed a deadline to transpose EU Directive 2019/1937, which establishes certain obligations for private companies, as well as additional obligations for the state in this area.<sup>[18]</sup> Based on the available information, it appears that there is limited awareness in society about whistleblower protections (APADOR-CH and ActiveWatch, 2021a), and there are at least occasional cases where whistleblowers are penalized – cases that media and/or civil society organizations raise awareness about (APADOR-CH and ActiveWatch, 2021b; ActiveWatch, 2019; Syene, 2020; Nistoroiu, 2019). The true scope of the phenomenon is unknown.

The problems in the area of the **Journalistic profession, standards and protection** are the same as last year, even though the indicator risk score is lower (39%, down from 44%).

Most journalists face poor working conditions and uncertain job and financial prospects. Industry-wide problems include: relatively low pay; the wide use of freelancer contracts that do not include healthcare coverage and social security benefits by default and have fewer employee protections than standard employment contracts;<sup>[19]</sup> the expectation of working longer hours than the contract stipulates as a matter of routine; and long unpaid internships (Popescu et al., 2019, p. 66; Paylab.ro; Ionescu, 2019; Lupsa, 2020; Surugiu, 2013).

The lack of industry-wide organizations and self-regulation mechanisms compounds the problems mentioned above and also undermines the development and enforcement of professional norms. This affects who gets to access and stay in this profession, as well as the quality of the work they do.

A few cases of attacks and threats against journalists were reported in 2021. In March, journalist and host of the “Starea Natiei” talk show on Prima TV Dragos Patraru reported to the police and the public that he had received an atypically serious threat via telephone (Bambu, 2021). In September 2021, two journalists were assaulted while filming a documentary on illegal deforestation in Suceava county (Council of Europe, 2021). And in December 2021, there was an extraordinary incident involving a crew from the Italian broadcaster RAI and Senator Diana Șoșoacă, wherein the MP reportedly lost her temper, and she and her husband reportedly attacked the journalists and locked them in the bathroom of the MP’s office (Council of Europe, 2022).<sup>[20]</sup>

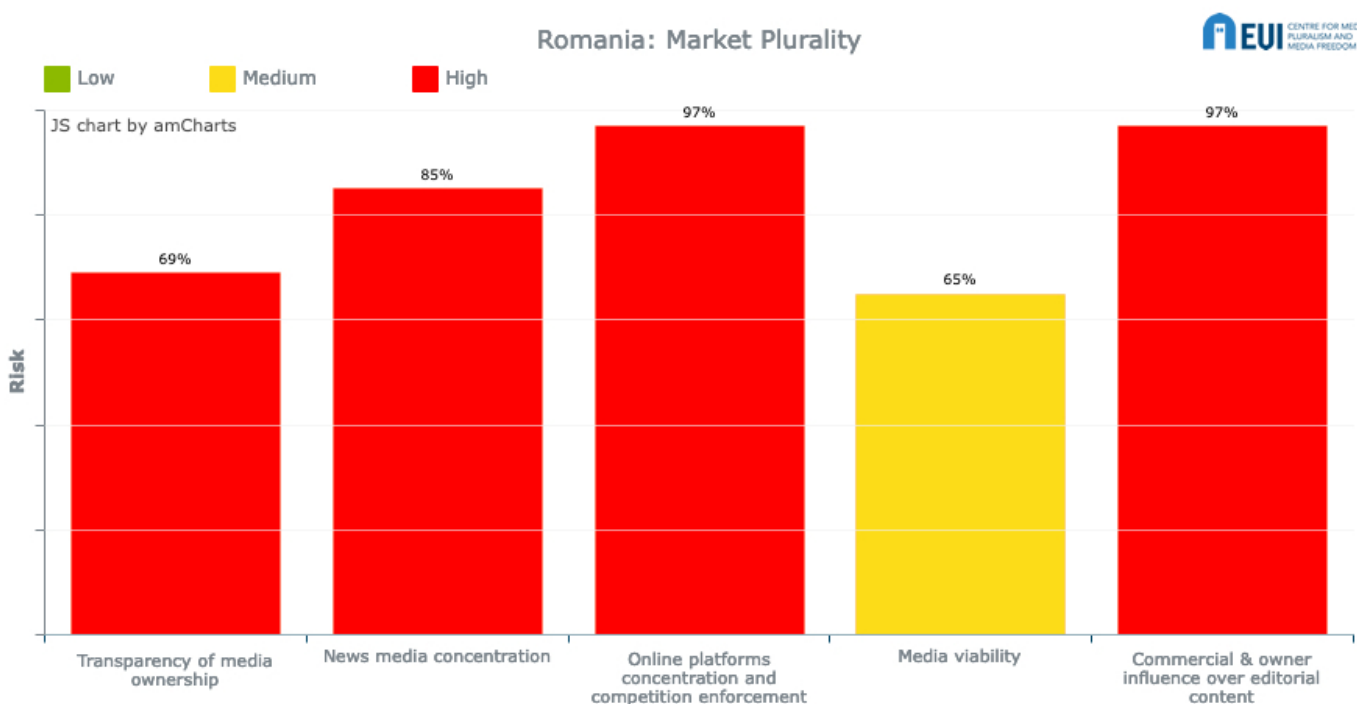
There is no legal framework to prevent strategic lawsuits against public participation (SLAPPs). In 2021 there was increased coverage of cases that could be SLAPPs. For instance, in an extraordinarily prolific and persistent campaign, Daniel Băluță, the mayor of Sector 4 of Bucharest, has filed 20 court cases against Libertatea journalists and lodged complaints with several other institutions of the state, primarily directed at journalists from Libertatea but also other journalists (Radu, Luțac and Tolontan, 2021). In 2021, Baluta also filed a complaint with the Directorate for Investigating Organized Crime and Terrorism (DIICOT) – again directed at several Libertatea journalists, who he described as colluding against him in an organized crime group; the DIICOT concluded there is no evidence of any criminal activity (Duca, 2021). It is not entirely clear if the use of SLAPP is growing or if what is growing is, instead, attention to them, recognition of them as such and discussion of these cases as falling under the same umbrella.

The **Independence and effectiveness of the media authority** have the same risk rating as last year (32%). The activity of the audiovisual media regulator, the National Audiovisual Council (CNA), was interrupted for three months, between February and May 2021, after the tenure of four members ended within a period of several months without replacements being interviewed and voted on quickly enough. The four seats were finally voted on in Parliament in mid-May 2021 (Obae, 2021; Samoilă, 2021).<sup>[21]</sup> In the MPM assessment, CNA typically has good ratings on transparency, non-interference from the government, and the regulatory framework. As we have noted in past reports, too, the role envisioned for the CNA in the law and in the imagination of influential elites is relatively minimal, and CNA has limited funding and access to limited expertise. Among its members, consensus and consistency in decision-making have traditionally been difficult to reach, sometimes because of different backgrounds and levels of preparation for the job, but also because consensus on norms in media production is, in general, quite limited in Romania.

The **universal reach of the traditional media and access to the Internet** is a medium risk area (42%) due to a level of broadband coverage that is considered a medium risk because of the fact that the top three Internet Service Providers command nearly all of the market share and because of imperfections with the regulatory framework that should ensure full net neutrality.

### 3.2. Market Plurality (83% - high risk)

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



**The Market Plurality area risk score is 83%, corresponding to a “high risk” rating.**

This is the area with the highest risk level, and four out of five indicators under it register high risk. There are two indicators that reach very high risk levels (97%), as they have for the past two years: Online platform concentration and competition enforcement and Commercial and owner influence over editorial content. Media viability has a lower risk score for 2021 than for 2020 because of an apparent growth in revenue this year in more areas than last year; but it remains to be seen how meaningful and lasting this is, not least because the data we have is from mid-2021 forecasts of the ad revenues for the full year (Initiative Media, 2021). The scarcity of data on certain indicators is a chronic challenge for the MPM and a risk factor in itself.

There is not full-fledged **Transparency of media ownership** (69% risk score). Since the beginning of 2021, one of the loopholes for concealing the ownership of a company is gone: Law 129/2019 eliminated bearer shares but allowed for a grace period, which meant that companies had until Jan 21, 2021 to convert bearer shares into nominal shares. Still, only audiovisual media are subject to media-specific regulations about



disclosure of ownership structures, such as the obligation to report to the audiovisual authority (CNA) on the ownership structure and to make sure that the public can easily access information like the name of any stockholders who have more than 20% of shares (Audiovisual Law 504/2002, art 48).<sup>[22]</sup> Media companies not operating in the audiovisual field are only subject to the (less extensive) requirements any other company in Romania must abide by, laid out in the Law on Societies 31/1990.<sup>[23]</sup> For instance, they have to communicate information on ownership structures, including shareholders, to the National Trade Register Office (Oficiul Național al Registrului Comerțului - ONRC), and the information is published in the official gazette (Monitorul Oficial). However, it is still possible, for example, for a media company to be owned by another company, owned in turn by an entity registered abroad, in a country without disclosure rules. Moreover, the public cannot access much information about the ownership structure of such a company without going through a registration process (with the ONRC or a private company) and paying a fee.

**News media concentration is high** (85% risk score, even higher than last year). The print news market is extremely small – in both demand and supply – something that is reflected in the virtually 100% concentration of the top four outlets. The audience size and number of copies sold daily continue to decline for non-tabloid dailies. Libertatea sold around 18,000 copies and Adevărul around 3,600 copies in October-December 2021 (daily average, according to BRAT, the Romanian Joint Industry Committee for Print and Internet). Both Libertatea and Adevărul are in the top 10 online news outlets, with Libertatea coming in second in terms of unique users and Adevărul fourth, and Adevărul third and Libertatea fourth in terms of visits in November 2021 (SATI, 2021).<sup>[24]</sup> The digital news market is relatively fragmented (45% audience concentration - depending also on how it is measured). In radio and television, the top four owners command 61% and 55% of the audience, respectively. Provisions on concentration are not tailored to the media sector. As we wrote last year too, this regulatory framework has limitations, in terms of providing any incentives specific to the media market that would facilitate the production of public interest information (Popescu, Bodea and Toma, 2021, p. 14).

**Online platforms concentration and competition enforcement** is an extremely high risk area (97%). Part of the problem is that we lack extensive, accurate and up-to-date information on several variables. For example, we do not have the data to assess the audience concentration of the top four online players, if the players are to include major platforms. We also do not know how big the dominance of the platforms is, in the Romanian online advertising market or how fragmented this market is. We could also use better data on exactly what share of the people who consume news online do so using “back doors”, although the data available suggests it is a high share.<sup>[25]</sup> Other contributing factors to this score include the fact Romania did not meet the June 2021 deadline to transpose Directive 2019/790 into national law<sup>[26]</sup> and that there is no measure in place to promote publishers' remuneration by digital platforms. Some steps were taken in the direction of taxing streaming services: a legislative proposal aiming to transpose Audiovisual Media Services Directive 2018/1808 contains provisions related to this. It is currently in the Senate, having passed the Chamber of Deputies (PI-x no. 430/2021).

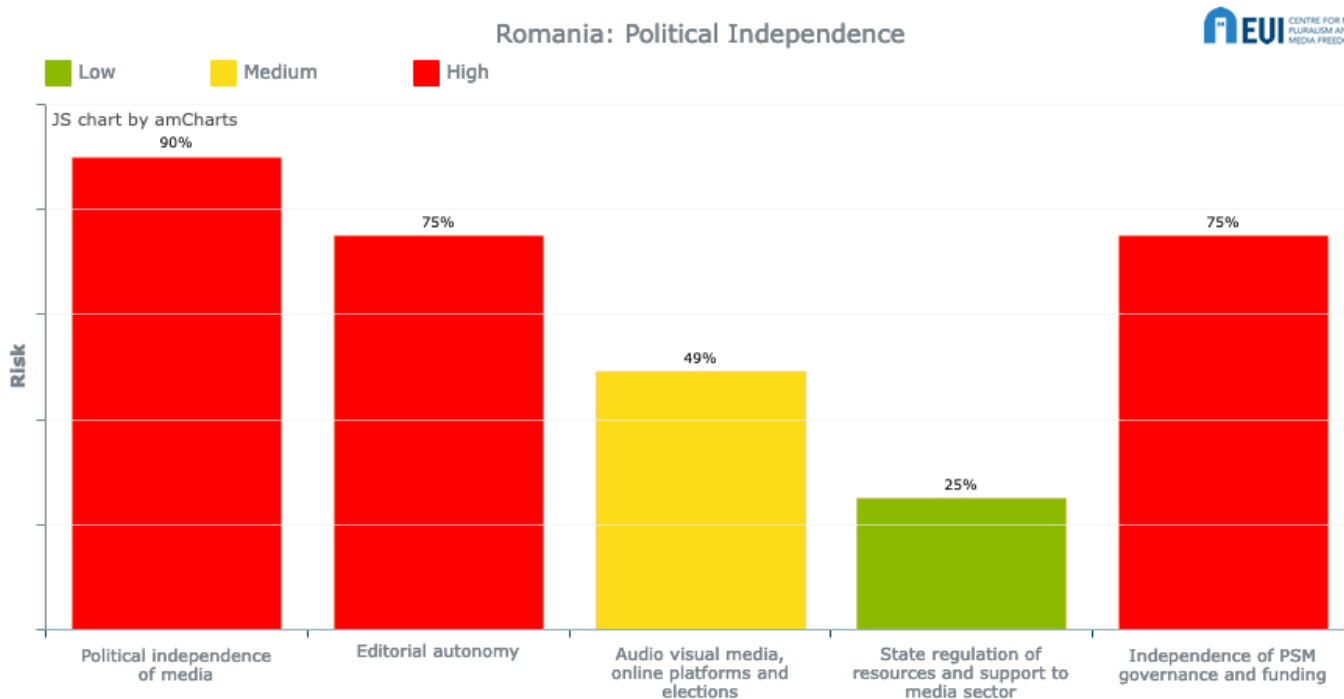
Lack of data remains a problem for assessments of **Media viability** (65% risk score). We have no data on local media revenue, and for national media revenue we have to rely on ad spending as a proxy measure and use estimates typically issued mid-year (Initiative Media, 2021). Scarcity of data is a problem in itself, since good policy-making is informed by evidence. According to the latest data, ad revenue was expected to go up approximately 11% across different media (to approximately 487 million EUR), with most of the revenue (still) going to television (69%), followed by digital (26%).

**Commercial and owner influence over editorial content** is still an extremely high risk area (97%). If

ownership switches hands or wishes to change editorial policy, there are no legal or self-regulatory guardrails to protect editors-in-chief and newsrooms from arbitrary appointments, dismissals or the exertion of undue owner or commercial pressure. Nor are there legal or industry-level codes of conduct and instruments laying down and enforcing basic journalistic norms and standards. A few editors-in-chief and media outlets put in place certain rules in their labour contracts or ethical codes, but these are exceptions. Moreover, there are examples where there is a tenuous connection between the written code and the actual practices in place and work put out.

### 3.3. Political Independence (63% - 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 has a medium risk score this year (63%).**

The risk score for 2021 is just 4 points shy of the threshold for a “high risk” assessment (67%). Like last year, three out of five indicators in this area have a high risk score. The risk rating for some sub-indicators related to public service media was edited this year to more accurately reflect the nuances of the status quo, which resulted in an overall reduction of the risk score. But essentially the problems related to public media governance we have discussed in previous reports and in other publications remain the same (Popescu, Bodea and Toma, 2021; Popescu, Bodea and Toma, 2020; Median Research Centre, 2017b).

The risk factors undermining the **Political independence of media** (90%) and **Editorial**

**autonomy** (75%) are the same ones we have written about previously (Popescu, Bodea and Toma, 2021, p. 16). We maintain that lack of regulation and low institutionalization are important root causes for problems in this area, as well as some issues discussed in the Fundamental Protection and Market Plurality sections. The lack of self-regulation and self-regulatory enforcement mechanisms, as well as of any legislation, to protect editors-in-chief and newsrooms from pressure, to prevent arbitrary dismissals or appointments and to combat issues like conflicts of interest undermines the independence, professionalism and public-interest orientation with which journalists should serve their mission. There are few agreed norms and standards established at the level of outlets or publishers, least of all at the level of the industry. Some of the top outlets in each media sector have some kind of code of conduct or ethical code, but most do not, and issues with their enforcement have also been observed, where they exist.

In terms of **Audiovisual media, online platforms and elections** (49%), the situation is not really changed compared to last year, and in the previous report we discussed at some length some of the positive and negative features of the existing framework (Popescu, Bodea and Toma, 2021, p. 16). Among the former is guaranteed and equitable access to airtime on audiovisual media for political competitors during electoral campaigns. Among the latter is the fact that the law does not do enough to compel television channels to very clearly explain the distinction between different types of content produced during campaigns - especially between their own editorial content and airtime bought by the parties - and to signal who is paying for the content. Furthermore, because the law does not demand it, at the end of the campaign, there is not enough transparency about how much various parties paid to which channels and for what content.

As regards the **State regulation of resources and support for the media** (25%), the status quo is again unchanged compared to previous years. There are no subsidies and no support for the media to speak of. The only feature that can qualify as a subsidy has, at best, a marginal impact on the market; it is a reduced Value Added Tax rate for print. The rules are fair and transparent but they make little impact because of low print circulation.<sup>[27]</sup> Some observers and commentators on the media industry have characterized the state buy advertisement space - for example during 2020, for special public health messages - as a form of assistance to the press. We emphasize that state subsidies or emergency help for the media and state advertisement should not be conflated. When the state buys ad space for a public message it is (expected to do so) based on criteria that speak to its number one goal: to reach as many people from the target audience as possible, with the money available for the campaign. Therefore popularity can and should be a major consideration. When the state provides a subsidy, the goal is to support the creation of a particular kind of media content and as such, the criteria for allocation can and should be different.

As for the **Independence of public service media (PSM) governance and funding** (75%), we have adjusted the rating for some of the items that make up this indicator, to accurately reflect the fact that dismissal procedures are more problematic than appointment procedures, for example. However, despite what the decreased risk score for this indicator might suggest, developments in 2021 did not go in the direction of solving the problems of public media.

Changes of the laws or structure of public service media institutions in Romania are often conducted after a hasty and superficial analysis and discussion phase, and the preparations for reform in 2021 were no exception. Having communicated an intent to reform public media, in the spring of 2021, representatives from the then-ruling coalition said that first, they would depose the existing leadership of the public broadcaster (TVR) and public radio (SRR), then make some quick changes to the institutional structure and follow up with further reform later (Andrei, 2021a; Andrei, 2021b). After the dismissal of the existing board and heads, coalition members in Parliament submitted a bill whose main element of change would be taking

the “president-director general” position at the helm of the public broadcaster (and its correspondent in public radio) and splitting it into two positions (PI-x. nr. 262/2021). It does not address institutional design features and procedures that undermine the performance and independence of public media, features that we discuss, as much as space allows, in this report and in previous MPM reports.<sup>[28]</sup>

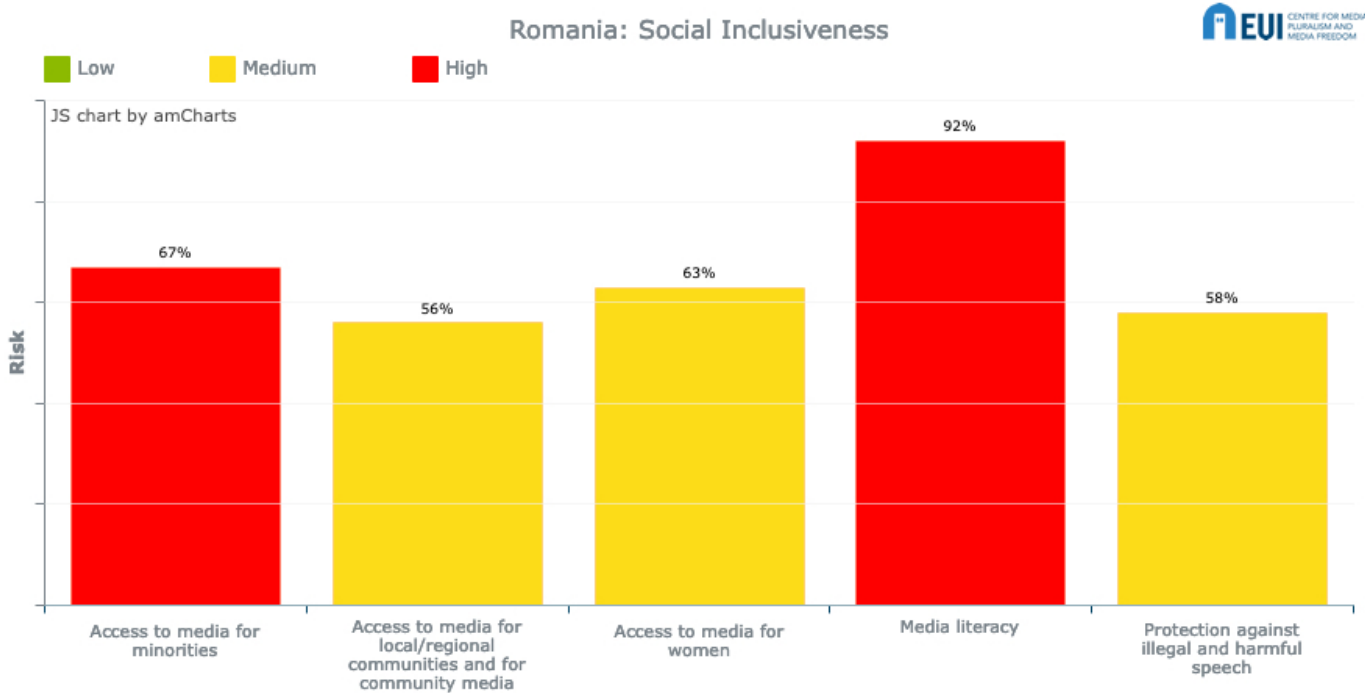
As we have written before, part of the problem with the PSM is that executive board members and the president-directors can be dismissed very easily and with the most perfunctory discussion. This exact scenario played out in 2021. To dismiss the board and president-directors, Parliament only needs to reject the PSM activity report for the previous year. There are no performance targets and no discussion thereof in the (quick) process of analysis of past activity and decision-making about whether to approve or reject a report, whether to assess the PSM activity positively and how much funding to allocate. Moreover, for several years in a row, the activity report of the public broadcaster and radio company was not even looked at in Parliament at all. In part as a result of sub-optimal institutional design, heads of the public radio and public broadcaster rarely serve a full term, historically (Median Research Centre, 2017b).

The annual reports for 2017 through 2019 were rejected in May 2021, triggering the dismissals of the boards of the radio and broadcaster company. What followed was a protracted, politically controversial and legally questionable placement of two interim directors at the helm of these two PSM until November.<sup>[29]</sup>

Appointments and dismissals are often publicly discussed in a cynical manner as a pure horse-trading process, and this is what happened throughout 2021 too (Stanescu, 2021; Andrei, 2021c; Eremia 2021). When the names of the nominees were released, the soon-to-be head of TVR was presented as the PNL choice and the nominee for SRR was presented as the PSD choice. It is symbolic of how little transparency and accountability characterizes this process that only three days passed between the announcement of the nominees’ names (12 November) and their being rubber-stamped by the Parliament (on November 15) (Mihăescu, 2021; Bambu, 2021b). The committee hearings for all the nominees for members of the boards started at 12pm on November 15, and a plenary vote approving them took place just a few hours later, on the same day (Neacșu and Otopeanu, 2021).

### 3.4. Social Inclusiveness (67% - high 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.



**Social Inclusiveness is a high risk area (67%).** The indicators with the highest risk score are Access to media for minorities and Media literacy.

**Access to media for minorities** is limited (67% this year, 63% last year). There is very little programming on television and on the radio in minority languages. In terms of news content, for instance, the public broadcaster only provides a (shortened) news show in Hungarian on one of its regional branches. The national public radio channel focused on news (Radio România Actualități) only broadcasts the news in Romanian, and according to our research one of the regional PSM channels offers limited news content in slots dedicated to minority languages. There is some additional educational or entertainment content in some minority languages, especially on regional PSM media branches, but it is limited and not quite proportional to the relative sizes of the minority groups in Romania. Broadcasters have extremely limited obligations related to providing news and analysis content with sign language interpretation, and our research indicates that they do comply with it. There are no legal requirements for broadcasters to provide audio description. <sup>[30]</sup>

**Access to media for local/regional communities and for community media** has a medium risk score (56%). The risk score has gone down compared to last year - when it was 69% - because of the addition of a new variable (the number of local and regional branches for PSM). There are still only two community media outlets, two radios established through a project by civil society organization ActiveWatch and

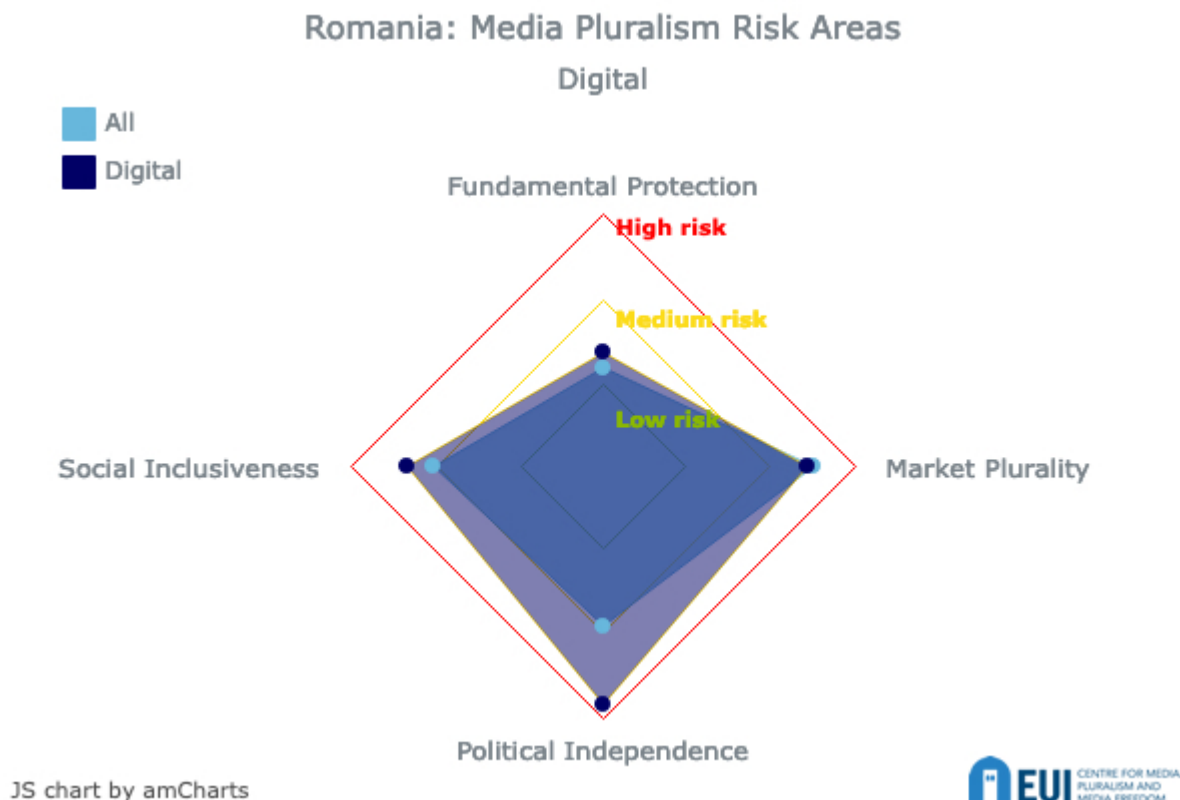
operated by community members at the moment. Besides, there is no specific legal framework or state assistance for community media. The state does not guarantee licenses or frequencies for local/regional media or give out any assistance. However, it does require cable providers to carry some local/regional media through must-carry rules. The public broadcaster has five regional channels and public radio has nine regional branches.

**Access to media for women** has a 63% risk score (60% last year). In 2021, 46% of the PSM board members in Romania were women, one out of three of the heads of executive boards of PSM were women. In the top two news sources across TV, radio, print and digital, 50% of editors in chief in 2021 were women, and according to our research. We want to underline, like last year, that gender parity at the top level does not mean that women and men are treated equally in the newsroom, and this is not an issue that is receiving much attention at all (for example, public media have no gender equality policy). The (few) analyses available suggest that female experts and panelists are significantly less frequently featured by Romanian media than men (Macharia, 2021, p. 94; Leșcu and Chiorpec, 2013).

**Media literacy** is a very high risk area (92%, same score as last year). Some of the elements that are part of a media literacy education can be found scattered in various classes that are part of the core curriculum, but we want to emphasize that there are no “media literacy” classes in the core curriculum. Many experts say that critical thinking education – where it is found – is poorly designed and taught, and media literacy elements are neither sufficiently developed nor consistent across schools (Ion, 2021; Peticilă, 2019; Peticilă, 2018). In non-formal education organised by NGOs, there is a range of media literacy content but there is no coordination and coherence, therefore certain aspects are missing and some over-emphasized. Moreover, there is no media literacy discussion regarding adults, despite a documented need, even in established democracies, given the current fast-changing digital information environment.

**Protection against illegal and harmful speech** includes questions that have to do with hate speech and mis- or disinformation (58% score, 63% last year). Romania has several pieces of legislation that cover incitement to hatred or discrimination.<sup>[31]</sup> The legislation does not specifically reference online hate speech. It is difficult to assess how widespread hate speech is and how effective the enforcement of existing regulations with respect to online hateful or discriminatory speech perpetrated by ordinary citizens (not high profile individuals) is because of a scarcity of good studies and systematic monitoring on this issue. As for disinformation, we want to emphasize two things: 1) the lack of good data on the spread and impact of “disinformation”; and 2) the fact that apart from disinformation, specifically, what we are dealing with in Romania seems to be a problem of excessive information of poor quality or of misleading commentary (Popescu, Bodea and Toma, 2021, pp. 11, 23). More on hate speech and mis-/disinformation online in the next section, on media pluralism online.

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



Some of the risks captured by the MPM items related to media pluralism online have to do with the particular challenges and characteristics of the online environment - such as those generated by the outsized impact and limited transparency or accountability of major actors like Facebook and Google. But many problems in the digital environment are the same problems we see offline - though sometimes amplified online.

**Of the digital environment-focused items of the MPM, those falling under the Fundamental Protection area register the lowest risk score (45%).**

Writing about what occurred in 2020 in the previous MPM report, we discussed an ad hoc, untransparent and legally questionable mechanism created during the State of Emergency to take down or filter content that (unnamed) government officials deemed a threat to public health because it was “false” or presented a risk of inducing panic (Popescu, Bodea and Toma, 2021, p. 20). These measures were not repeated in 2021. However, representatives from some state institutions have expressed an interest in making it easier to take down content and bolster some areas of the Penal Code to make it easier to penalize certain online speech acts (more on this when discussing the Social Inclusiveness digital variables).

In this report, we would like to draw particular attention to the limited transparency about how much content is being taken down or filtered in Romania - be it by a platform’s own volition or at the request of a state institution - and to the somewhat limited and/or short-lived windows for appealing certain kinds of decisions.

For instance, to our knowledge, there is no centralized list of all sites blocked as a result of court rulings or orders from various institutions that the law enables to issue take-down orders, though individual court rulings can be searched and accessed online.<sup>[32]</sup> The same goes for decisions to block specific pieces of content (e.g., a court order to take down a media article). Meta, the mother company of Facebook and Instagram, publishes country-specific summaries of content filtering measures as a consequence of local

law, which consists of a count of filtering measures by type of content, by type of law or regulation demanding it, and by type of platform. It does not publish country-specific summaries of content filtering on the basis of its Community Standards. When specific cases that could constitute arbitrary take-downs or bans do get attention, it is typically because they involve high-profile organizations or persons.

Some avenues for appeal may be inadequate. For example, ISPs have an obligation to take down / block content in Romania if relevant authorities demand it, and the target of the order has only 15 days to contest the order by going to court.<sup>[33]</sup> We lack studies on this that would tell us, first, how often this happens and, second, how effective avenues for recourse are. We know anecdotally that court cases can take a very long time (some cases related to the blocking of gambling websites in Romania have been going on for years), and they can be costly, too. Understanding the effectiveness of appeal mechanisms against take-downs on platforms is also almost impossible due to the lack of data from the platforms on this matter.

### **In the area of Market Plurality there are high risks to media pluralism online (81%).**

Digital media ownership transparency requirements are the same as for any other company in Romania; it is only audiovisual media that are subject to more media-specific and more stringent regulation. One loophole that used to allow for ownership to be more secretive has now been eliminated, but there are still issues. For example, a digital media company can still be owned by a legal entity registered abroad about which little is known.

While in the case of recent mergers and acquisitions with a digital component, the competition authority (Council of Competition) took a cross-media perspective, that was not actually required by law, which means that it is not clear if that will happen in the future.

We still face a scarcity of data on market shares, but in terms of concentration, there seems to be less of it among digital media outlets than in the TV, radio or print market, though it depends on how it is measured. The audience concentration is 45% among the top four sites in November 2021 - Digi 24, Playtech, Adevărul and Libertatea - if we take the number of visits registered as a metric and look at the websites registered as "news" and "news and analysis" sites with the Romanian web traffic study (SATI, the Internet Audience and Traffic Study, conducted by industry organization BRAT).<sup>[34]</sup> Yet, it must be mentioned that most Romanians still use television as their main source of news.<sup>[35]</sup>

The Romanian digital advertising market is dominated by Google and Facebook. According to the latest data we have, we estimate that Facebook and Google still take approximately 75% of the digital advertising market (Initiative Media, 2021, 2020).

### **The risk score for the digitally-focused variables pertaining to Political Independence is very high (94%).**

Here, the root causes are much the same as the ones we have highlighted in the Political Independence section and in previous reports. The lack of self-regulation also applies in the online environment. Although they are sometimes hailed as the hope of Romanian journalism, not all of the digital native publications exhibit independence from undue (political or commercial) influence and a commitment towards the public interest and high journalistic standards and very few reach a wide audience (Bodea and Popescu, 2019;



2019 MPM digital report). Some of the most read digital natives do not meet basic standards of journalism, standards that formally do not exist in Romania, and they also provide few, if any, elements of transparency and accountability, both regarding their ownership and their content producers.

**The variables focused on the online environment from among those that fall under Social Inclusiveness have a high risk score overall (77.5%).**

Among the factors that contribute to this is the comparatively low average level of digital literacy among the population. According to Eurostat, in 2019, 31% of Romanians had basic or above basic digital skills (Eurostat, 2022d)

It is difficult to know the scope of the phenomenon of online speech that runs afoul of anti-hate speech or anti-discrimination legislation because we lack high quality and comprehensive studies on this. As discussed in the previous report (Popescu, Bodea and Toma, 2021, p. 23), Romania had several pieces of legislation in this area already, and in 2020 a law on “anti-Gypsyism” was also added to the list. The National Council on Combatting Discrimination (CNCD) analyzes cases that people submit complaints about - or that CNCD takes note of as a result of public attention - but it has neither the mandate nor the resources to tackle hateful or discriminatory speech on a mass scale.<sup>[36]</sup>

As with hate speech, in the case of mis- and disinformation, too, it is difficult to fully grasp the scope of the problem and understand its specific local features because we do not have enough data and analyses. Yet with increased concern about mis- and disinformation on the part of authorities, media and civil society organizations, there is the risk of hasty and ill-conceived policy or regulatory changes being made just to do something (more) about this. For example in late 2021, the General Prosecutor said that the authorities perceive pressure to do more coming from the media. She also said that the office was considering amending the Penal Code to make it easier to prosecute people for undermining efforts to combat the pandemic through their speech acts (Olaru, 2021). This would represent a rather radical departure from the part of the Penal Code that focuses on crimes against public health.<sup>[37]</sup>

The fact is that the law can be a blunt and inappropriate instrument with which to attempt to tackle a complex and slippery phenomenon like the spread of misleading or false claims in the midst of a pandemic. At the moment, the spread of false information is a crime if it is done knowingly and if doing so endangers “national security”. Since the start of the pandemic, there have been a few attempts to prosecute people for online speech using this section of the Penal Code, none of them successful.<sup>[38]</sup>

Besides, strictly unlawful speech may not be the biggest problem the Romanian public faces in accessing the information it needs to make decisions. Our research suggests that Romanian media fanned the flames of the “infodemic”, putting out large amounts of content on the pandemic, for example, but with little contextualization and synthesizing of the information and little vetting for accuracy or relevance, in many cases. What is more, a few analyses published in mainstream media in 2021 indicated that some of the promoters of skepticism towards vaccines and public health measures with the biggest online reach were catapulted to popularity by television channels (Marincea, 2021; Pagina de Media, 2020-2021). This is a problem we also flagged in the MPM 2021 monitoring and country report: some of the purveyors of claims that are not necessarily legally actionable but that nevertheless ultimately confuse or mislead individuals have been given a platform by the mainstream media (Popescu, Bodea and Toma. 2021, p. 23).



## 5. Conclusions

Our report highlights several risks to media pluralism and citizens' access to public affairs information in Romania. We provide a summary of the main issues and some recommendations to address them below.

- Limited progress towards and staggeringly low interest in establishing protections for journalists, the journalistic profession and its norms against political and commercial interference as well as harassment. This includes a lack of self-regulatory institutions of media and journalism, as well as weak presence of professional and labour organisations, in a context of high risk of political and commercial interference.
- Poor financial prospects of most news media outlets, yet limited evidence of sustained efforts towards sustainable media funding models for public affairs information/news for all.
- Flawed institutional design features, which enable partisan games and inadequate practices in how public service media are handled.

More generally, there is a dearth of evidence-based policy debate and policy making regarding all aspects of the information environment, broadcasting and digital media, platforms and 'fake news', as well as of the opportunities of self-regulation. These patterns are related but cannot be fully explained by the widespread distrust in regulation and state intervention as a force for good among all relevant stakeholders.

### Fundamental Protection

Lack of regulation and self-regulation leaves both rank-and-file journalists and their newsroom leaders vulnerable, in different ways. The fact that basic journalistic norms and standards are not agreed on and secured also undermines the journalistic profession.

- **Though unlikely, it could be beneficial if journalists were to organize in unions or professional organizations and campaign for better contracts and better working conditions for newsroom employees and more protection against pressures and arbitrary dismissals for rank-and-file journalists as well as their editors-in-chief.**
- **The journalistic profession and the audience would likely benefit if industry or professional organizations at the level of the entire news media sector could agree on some basic journalistic norms and standards and create ways to enforce this self-regulation.**

Protection of the right to information is still inadequate, with two key issues being the insufficient and inconsistent responsiveness of authorities to freedom of information requests and insufficient whistleblower protections.

- **The law on accessing public interest information (Law 544/2001) should be amended according to the recommendations of experts in the field, to make it harder for authorities to delay or avoid answering requests on false or tenuous pretenses;**
- **It is also necessary to complete the process of transposing EU Directive 2019/1937 to Romanian law, to extend whistleblower protections and obligations for private companies and the state in**

this area.

## Market Plurality

In the Market Plurality area, the highest risks come from high concentration and commercial influence over editorial content. As highlighted in previous reports, too, these risks must be addressed with legislative initiatives to update the regulatory and competition framework.

As the pre-condition of healthy media markets is the economic sustainability of media, the questionable financial viability of many media outlets is a major risk to media pluralism in the medium and long term. Ad revenue for the (very small) print media sector appears to have flatlined in 2021, after a precipitous drop in 2020. While digital revenue grew, it is still limited and the prospects are not much better; television still commands almost 70% of the advertising money.

- **Outside of a few niche publications, there has been little experimentation with new funding models, which would rely less on advertising revenue. More work in this direction, informed by models and evidence from abroad, could be part of securing a more promising future for media outlets in Romania.**

## Political Independence

In a media market where television is still the number one place people turn to for news and not just entertainment, the lack of regulation to ensure journalistic independence and content quality remains a problem. Partisan (and, as previously mentioned, commercial) influence on content remains high due to a lack of legal and self-regulatory mechanisms, which are affecting media pluralism across the domains.

The public broadcaster (TVR) falls well short of its public service mission by attracting a very small audience and, for the most part, providing similar programming to what can be found on commercial television channels.

Regarding PSM, legislative changes need to provide mechanisms to enable accountability for journalistic performance in the public interest. This would be the opposite of the purely partisan bickering surrounding PSM currently. The aspects are the following: dismissals, parliamentary oversight, funding mechanisms and multi-year framework.

This means:

- **Making appointments and dismissals accountable, i.e. linked to a journalistic and management plan and not at the whims of parliamentary majorities.**

Currently, PSM executives can be dismissed following a vote of rejection of the annual report (the decisions need not even be justified with any arguments related to the performance of PSM or the content of the report). This makes the PSM executives likely prisoners - or at least submissive clients - of the parliamentary majority. It is more important to not offend the parliamentary majority than to provide an unspecified public service mission.

- **Ensuring that parliamentary oversight is more effective and meaningful.**

It is currently intrusive (one can summon PSM bosses at any time for anything); empty (the annual reports, often not discussed for years, are just summarily voted on); and toothless (without any specifics on the PSM targets and not even a commonly agreed definition of the public interest mission of PSM, parliamentary oversight naturally turns into nothing more than a partisan game).

- **Making funding decisions mechanisms clear and transparent.**

That would require that the law specify the procedure through which funding is decided, by whom, based on what criteria and with what frequency. That can prevent funding being at the whim of the government. Ideally, the decisions should be informed by deliberations between a diverse range of stakeholders.

- **Enabling a multi-year timeframe for funding and for performance evaluations.**

That would provide a more secure form of funding, less vulnerable to arbitrary governmental decisions or retaliation for a specific disliked action of the PSM. It would also allow an actual plan to be devised and implemented, with multi-year and clearly defined measurable appropriate yearly targets.

Problems that affect the situation in different areas of the MPM assessment compound each other, and the case of editorial independence is no different. A lack of financial resources and reasonable alternatives to the classic business model of selling eye balls to advertisers makes media more vulnerable to commercial and owner influence. Additionally, insufficient professionalization in the news media industry and weak labour protections make journalists, with some exceptions, fair game for both politicians and owners. Thus, the financially and professionally insecure situation many journalists find themselves in, combined with market dysfunctions, contribute to an overall precarious situation of Romanian media, and one of the areas where this vulnerability shows is the independence that newsroom leaders in both PSM and privately owned media.

## **Social Inclusiveness**

In 2020, in response to the (perceived) proliferation of “fake news” about the Covid-19 pandemic, the government put together a legally highly suspect, untransparent and ramshackle mechanism to take down or filter content that it deemed false and harmful (Popescu, Bodea and Toma, 2021, p. 20). In 2021, no such measures were adopted, but there were messages coming out in the press that indicated the authorities perceive a pressure to “do something” and are considering more legislative changes to attack the proliferation of “false” information in the same punitively-oriented manner.

- **The authorities need to focus more on proactive and constructive measures, such as transparently communicating with and engaging with the citizens in relation to measures and policies adopted.**
- **There needs to be an evidence-based, comprehensive strategy put in place to impart critical thinking skills and media literacy through the core curriculum of the national education system.**
- **Policy-makers should consider, based on available evidence about what works in other media systems, constructive and effective measures to encourage the spread of accurate, high quality information rather than focusing so much on potentially disproportionate, unjustified and**

## **ineffective punitive approaches to combating the spread of misinformation.**

Assessment continues to be a challenge in some areas due to the scarcity of data, which is a recognized problem in itself. The lack of data is itself reflective of limited state capacity or interest in evidence-based policy making in certain areas and/or of the dearth and limited scope of organizations reuniting publishers or professionals in the media sector. It is probable that in some areas, the risk scores are underestimated due to the fact that various indicators are aggregated, while following a “weakest link” logic of institutional evaluation may be more appropriate.

## 6. Notes

- [1] Romania sample: n = 1,033, computer-assisted in-person interviewing (CAPI), fieldwork 12 February - 8 March 2021 (European Commission, 2022, p. TS2-TS3).
- [2] Romania sample: n = 2,010, online survey, fieldwork late January-early February, 2021 (Newman et al., 2021, p. 5).
- [3] Romania sample: n = 1,058, computer-assisted in-person interviewing (CAPI), fieldwork 15-24 November, 2019 (European Commission, 2021, p. TS1).
- [4] Source: daily number shown on <https://www.brat.ro/sati> at various points in April 2022.
- [5] “The people formerly known as the audience” is the title phrase and the subject of an influential 2006 article by writer and New York University journalism professor Jay Rosen. In it, he exhorted journalists and media outlets to respond with humility to what he described as a shift in the “balance of power” of the relationship between journalistic institutions and the greater public. This shift meant that those who journalists might have seen as being on the receiving end, for the most part, of their curated work were beginning to have more power to disseminate and curate or even produce journalistic work and to talk back at journalists (Rosen, 2006).
- [6] Some mask mandate exceptions were in place, e.g. for workplaces with less than 5 people, all vaccinated (Dădăcuș, 2021).
- [7] As of the end of 2021, there was a legislative proposal in committee in the Chamber of Deputies that aimed to transpose Directive 2019/1937 (PI-x 573/2021). After it passed the Chamber, however, it was rejected in the Senate, and the Government came out with a revised proposal in Spring 2022 (PI-x nr. 219/2022).
- [8] Vaccine mandates were in place for access to certain types of venues in the leisure and hospitality industry (e.g. malls, restaurants) for most of the year. Business hours for retail and hospitality were curtailed at night-time depending on local conditions and indoor dining was conducted with reduced density - or, more rarely, temporarily banned - depending on local case incidence rates.
- [9] In November the authorities introduced the criterion of 60% vaccination rate among teachers to the mix.
- [10] In terms of GDP, some major sectors strongly affected in early 2020 - manufacturing, wholesale and retail trade, transport, accommodation and food service have rebounded to pre-pandemic levels of output and continued to grow in 2021 (Eurostat, 2022d).
- [11] There is a very slight positive trend in some sectors, compared to 2020 (wholesale and retail trade, transport, accommodation and food service, e.g.), while other major employment sectors have rebounded but not to pre-pandemic levels (industry, manufacturing). There was also a precipitous drop in employment in agriculture, forestry and fishing. (Eurostat, 2022e).
- [12] The estimated unemployment rate was already on a slight upward trend pre-pandemic and shot up in early 2020. In December 2021, at 5.4%, it was higher than it had been since 2018 (Institutul Național de Statistică, 2022).
- [13] Information and communication is a broad category from the statistical classification of economic activities in the European Community (dubbed NACE, which is “Nomenclature statistique des activités économiques dans la Communauté européenne”). This particular category (NACE rev.2 code J) includes businesses in newspaper publishing or broadcasting, as well as telecommunications, IT services or cinema production (Eurostat, 2008, p. 78).
- [14] Note that this refers to the sub-sector of the economy the employer is registered in. Therefore an accountant for a television station would be counted here as an employee working in broadcasting. The number of employees in the “programming and broadcasting industry” went down by 4.6% in

2020, reaching 12.5 thousand people (it has code 60 under section J - Information and communication of NACE rev.2). The publishing industry had 12.6 thousand employees in 2020, 1.4% fewer than in 2019. It includes not just newspapers and magazines but also book publishing and software publishing and corresponds to NACE rev. 2 section J, code 58. The "information services" category reduced its workforce by 12.5%, to 28.1 thousand (Eurostat, 2022f). It includes news agencies and news portals, as well as hosting in general and other types of portals or services (e.g. web hosting) and corresponds to NACE section J code 63 (Eurostat, 2008, p. 78). Note also that sometimes, in Romania, media publishers are actually not registered under any of these codes. For example, the publisher of one of the top newspapers (Adevarul) is registered under NACE code 7312 - Media representation, nested under 73 - Advertising and market research (Ministerul Finanțelor, 2022).

- [15] Both of these could be seen as disproportionate and unjustified, depending on a range of factors, including the specifics of each case, and an analysis of this falls outside the scope of our research. However, we note that in criticizing court rulings demanding that publications remove articles altogether (instead of issuing corrections or addenda), civil society representatives have argued that this is an excessive measure and cited the European Court of Human Rights' 2016 ruling in the case of *Węgrzynowski and Smolczewski v. Poland* (Ganea, 2019). There, the Court had found it a persuasive argument that "it was not the role of judicial authorities to engage in rewriting history by ordering the removal from the public domain of all traces of publications which had in the past been found, by final judicial decisions, to amount to unjustified attacks on individual reputations" and that it would serve the public's interest better if full information were, instead, to be provided on the result of any completed or ongoing court proceedings related to the article (European Court of Human Rights, 2013)
- [16] Law 544/2001 on free access to public interest information. Available at: <https://legislatie.just.ro/Public/DetaliiDocument/31413> (Accessed 7 April 2022).
- [17] Law 571/2004 on the protection of personnel from public authorities, public institutions and other units that signals unlawful actions. Available at: <https://legislatie.just.ro/Public/DetaliiDocumentAfis/57866> (Accessed 7 April 2022). Other laws could also be invoked in some specific situations to advocate for whistleblower protection, but they do not strictly refer to whistleblowing: e.g. Law 682/2002 on witness protection (Available at: <https://legislatie.just.ro/Public/DetaliiDocument/41031>, Accessed 7 April 2022).
- [18] In March 2021, the Government first launched an official consultation procedure for a draft law to transpose Directive 2019/1937. In the following months several civil society organizations submitted feedback and exchanged views with government representatives, including at a roundtable in October. The Government ultimately submitted its draft law to the Chamber of Deputies in November 2021, and the bill is still in committee (the deciding chamber will be the Senate) (EU Whistleblowing Monitor, 2022).
- [19] Freelance contracts here refers to copyright ceding contracts - "contracte de cedare a drepturilor de autor", in Romanian. A standard employment contract refers to an "individual labor contract" - "contract individual de munca", in Romanian.
- [20] The police was called in, and the television crew claims that it took the intervention of the Italian Embassy for them to be allowed to leave the office. The police detained the journalists for eight hours and searched them. Later, the journalist filed a police complaint against the senator and her husband. The husband is also accused of attacking a police officer. The Romanian Government later issued a statement condemning any intimidation or obstruction of the press and the freedom of information.
- [21] Two members completed their term in February 2021, one had ended his term in December 2020, and a fourth had died in autumn 2020.
- [22] Audiovisual Law 504/2002, available at: <https://legislatie.just.ro/Public/DetaliiDocument/37503> (Accessed 15 April 2022).
- [23] Law on Societies 31/1990, available at: <https://legislatie.just.ro/Public/DetaliiDocument/56732/>



(Accessed 15 April 2022).

- [24] Adevărul had 25.2 million visits and Libertatea 25.6 million visits in November 2021. In the same month, Adevărul had 8.1 million unique visitors and Libertatea 9.1 million.
- [25] As we wrote in the introduction to this report, the best survey data available suggests that television is, by far, the number one news source for a vast majority of Romanians (followed by radio). It is somewhat more difficult to tell exactly how online news consumers get their news, based on the available data, in part because some surveys are not entirely representative, while others do not ask the exact questions we would need to answer this. In Standard Eurobarometer 92, only 30% of respondents named online sources as their first or second choice when they are looking for news about national affairs (November 2019, n = 1,058, CAPI) (European Commission, 2021). Of the entire sample, 19% named social networks as a source of news and 20% named "websites" (note: there is overlap between those who named social networks and websites. They are not mutually exclusive answers since respondents could name both a #1 source and a #2 source). According to Flash Eurobarometer 437, of people who read news online, 37% reported mainly going to the app or site of the publisher directly, while 30% reported going to social media, 18% to search engines, and 14% to news aggregation services (n=502, 10-17 January 2016, online survey) (European Commission, 2016). According to the 2021 Digital News Report, 60% of respondents to an online survey used Facebook to get some of their news (n = 2,010, late January-early February 2021, online survey) (Newman et al., 2021, pp. 5, 98). We would like to emphasize, however, that given that Flash Eurobarometer 437 and the survey the Reuters Digital News Report cites are online-only surveys, and there are no probability online samples in Romania, the data cited does not entirely reflect the consumption habits of all Romanians.
- [26] In early 2022, a legislative proposal aiming to transpose this directive became law (Law 69/2022). However, this report refers to 2021, and at the end of 2021 the proposal was still in the committee phase in the Chamber of Deputies.
- [27] As we mentioned in the Fundamental Protection section, two of the top dailies, Libertatea and Adevărul, sold approximately 18,000 and 3,600 copies, respectively, per day in October-December 2021 (BRAT, 2021).
- [28] On TVR, see also: Median Research Centre (2017b). The 2021 bill is currently awaiting a Senate vote, having tacitly cleared the Chamber of Deputies, after 45 days elapsed without a plenary vote on it.
- [29] The interim heads ultimately served for longer than the original law provided for and the battle over the legality of the extension of their terms even reached the Constitutional Court of Romania - twice. First, the ruling coalition named two interim directors for six months at the helm of the two companies by adopting two Parliamentary Decisions (no. 31/2021 and 32/2021). The opposition Social Democratic Party (PSD) flagged this to the Constitutional Court and at the end of June, the Constitutional Court ruled that it was in fact unconstitutional. The Court reasoned that since the parliament was in session and there was a quorum, they should have proceeded with the normal procedure, starting with the naming of a new board and going forward with the regular process of voting for a new director (Curtea Constituțională, 2021). Then, the Parliament invoked a lack of quorum again and named the same interim heads for 60 days. When that deadline approached, in late August, the government adopted an Emergency Governmental Ordinance (EGO) on interim terms (EGO 89/2021). Ultimately, this, too, would be declared unconstitutional in December 2021. Simplifying a little, the key problem was the EGO was seen as an artifice to extend the term of an interim director (far) beyond the limit of the terms of the board members in such a manner that it circumvents the intention of the design of those term limits (of the board) and, ultimately, undermines the text and intent of the legal texts (including the Constitution) that are the basis of the organization of the public broadcasting and radio companies (Curtea Constituțională, 2022).

- [30] The audiovisual law (art. 42) obligates broadcasters to provide at least 30 minutes of what it describes as programming on "news, analysis and debate on political and/or economic themes related to current events" per day that features a sign language interpreter. Moreover, "programs of national importance" have to be interpreted in full or the broadcaster has to provide a summary in sign language. The data we have indicates that channels tend to comply with these minimal requirements but that much more needs to be done to ensure accessibility.
- [31] For instance, incitement to hatred or discrimination is a crime punishable by a fine or a prison term of 6 months to 3 years, according to the Penal Code (Art. 369) (Penal Code, 2009). Governmental Ordinance 137/2000 makes it a contravention, in cases judged not to fall under the purview of the Penal Code, to "instigate racial or national hatred or to behave in such a way that targets or threatens one's dignity or creates an atmosphere that is intimidating, hostile, degrading, humiliating or offensive against someone or a group of persons or a community, with regard to their belonging to a particular race, nationality, ethnicity, religion, social category or category that is disadvantaged, or with regard to someone's convictions, sex or sexual orientation" (Article 15) (GO 137/2000). Harassment and other forms of discrimination are also touched upon in the ordinance. In 2020 a new law, which some described as redundant, against "anti-Gypsyism", was also adopted (Government of Romania, 2020; Legislative Council, 2020).
- [32] The state reports transparently about the sites that are blocked as a result of being deemed gambling operators without appropriate authorization. On the website of the National Office for Gambling, one can consult the list of blocked unauthorized gambling site operators. Decisions regarding updates to the block list are also published there. Outside of that, it is much more difficult to get complete information about what content or what sites were blocked, upon whose request, and why (copyright infringement, penal law infringement, court order to take down content for reputational damage, etc).
- [33] Law 365/2002 on online commerce is a key piece of legislation in this area. According to article 16, if the relevant ("competent") authority requests this, ISPs are obligated to cut off transmission or hosting of information or cut off access to a network or interrupt any other service supply to a client (Art. 16, para (3). The request has to come with a written justification (though that can be delayed by up to 30 days (para (4) of Art. 16). The target of the order can contest this measure, but only if they go to court within 15 days of the order being communicated. The matter is to be settled by a court (paras (5) and (6) of Art. 16). Note: this law specifies that the "competent authority" is the national authority tasked with the regulation of communication and information technology, and per later legislation (Emergency Government Ordinance 22/2009, later approved by Parliament through Law 113/2010, and also per Emergency Government Ordinance 33/2017, later approved through Law 245/2018), that authority is the National Agency for Management and Regulation of Communications (ANCOM). According to the same law, however, depending on the situation, other authorities could also be considered "competent authorities" - for example a court ordering the take-down of a piece of content.
- [34] Because there is considerable overlap between audiences, adding up the "unique visitors" (devices) of all websites classed as news will result in a number of unique visitors that is significantly higher than the population of the country.
- [35] According to Standard Eurobarometer 92 (data collection via computer-assisted in- person interviewing, in November 2019, n=1,058), 82% of Romanian respondents name television as their primary or secondary source of news. Respondents were asked to name their #1 source and their #2 source (European Commission, 2021a).
- [36] Existing analyses cover very specific areas - e.g. our analyses on comment sections on specific websites, as part of the Less Hate, More Speech project (see Median Research Centre, 2017a) - and/or are not representative for other reasons. For instance, the tracking project for the implementation of the Code of Conduct against Hate Speech involves selected organizations from EU

Member States flagging “illegal hate speech” to platforms. What happens to the flagged cases is then tallied up at the end of a reporting exercise. According to the latest report, in Romania, between 1 March and 14 April 2021, a number of 56 cases were flagged by the participating organization (ActiveWatch), all of which were taken down. As the European Commission itself writes, this study is not representative: “The figures do not intend to be statistically representative of the prevalence and types of illegal hate speech in absolute terms, and are based on the total number of notifications sent by the organisations.” (European Commission, 2021)

[37] At the moment, the list of actions that qualify as "undermining the combating of disease" says nothing about acts of public speech whatsoever and only discusses actions like failure to comply with quarantine orders or public health directives (punishable only if a damage to another person can be proven) (Art. 352, Title V, Special Section, Penal Code, 2009).

[38] Art. 404: "Communicating or spreading, through any means, false news, data or information or falsified documents, with awareness of their falsity, is punishable with imprisonment for one to five years, if by doing this one is putting national security at risk" (Article 404, Title X, Special Section, Penal Code, 2009). Thus, a successful prosecution requires convincing proof that the information that the accused spread was false, that the accused knew it was false, and that the actions posed a threat to national security. Radio Free Europe/Radio Liberty Romania reported in November 2021 that the Directorate for Investigating Organized Crime and Terrorism (DIICOT) told the publication that it currently has four open cases based on this article. Per RFE/RL, anonymous sources revealed that in all four cases, there was - at the time of writing - no named accused person, meaning a potential crime had been named, but not an alleged perpetrator (Despa, 2021). In December 2021, online publication Newsweek.ro reported that a prosecutor had opened up an investigation (based on art. 404) against a former Member of Parliament who had posted false information about vaccines on Facebook. He reportedly claimed that vaccines "paralyze you", that Covid tests are being falsified, that case numbers are not real, that ICU units are empty, that some people are being killed in hospitals and other things (Drăgan, 2021).

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## ANNEXE I. COUNTRY TEAM

First name	Last name	Position	Institution	MPM2022 CT Leader
<i>Raluca</i>	<i>Toma</i>	<i>Senior researcher &amp; programmes director</i>	<i>MRC - Median Research Centre, Bucharest</i>	
<i>Marina</i>	<i>Popescu</i>	<i>Research Director</i>	<i>MRC - Median Research Centre, Bucharest</i>	X
<i>Roxana</i>	<i>Bodea</i>	<i>Executive Director</i>	<i>MRC - Median Research Centre, Bucharest</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>Ioana</i>	<i>Avădani</i>	<i>President</i>	<i>Center for Independent Journalism</i>
<i>George</i>	<i>Chiriță</i>	<i>Executive Director</i>	<i>Romanian Audiovisual Communications Association (ARCA)</i>
<i>Ionuț</i>	<i>Codreanu</i>	<i>Project Manager</i>	<i>Activewatch Press Monitoring Agency</i>
<i>Silvia</i>	<i>Branea</i>	<i>Conf. univ. dr., Dean, Department of Cultural Anthropology and Communication</i>	<i>Department of Journalism, University of Bucharest</i>
<i>Dragoș</i>	<i>Stanca</i>	<i>Vice-president</i>	<i>Romanian Transmedia Audit Bureau (BRAT)</i>
<i>Ștefan</i>	<i>Luca</i>	<i>Researcher</i>	<i>European University Institute (EUI)</i>

**Research Project Report**

Issue -

June 2022

doi:10.2870/709224

ISBN:978-92-9466-298-9

QM-07-22-561-EN-N



Publications Office  
of the European Union

