

# 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

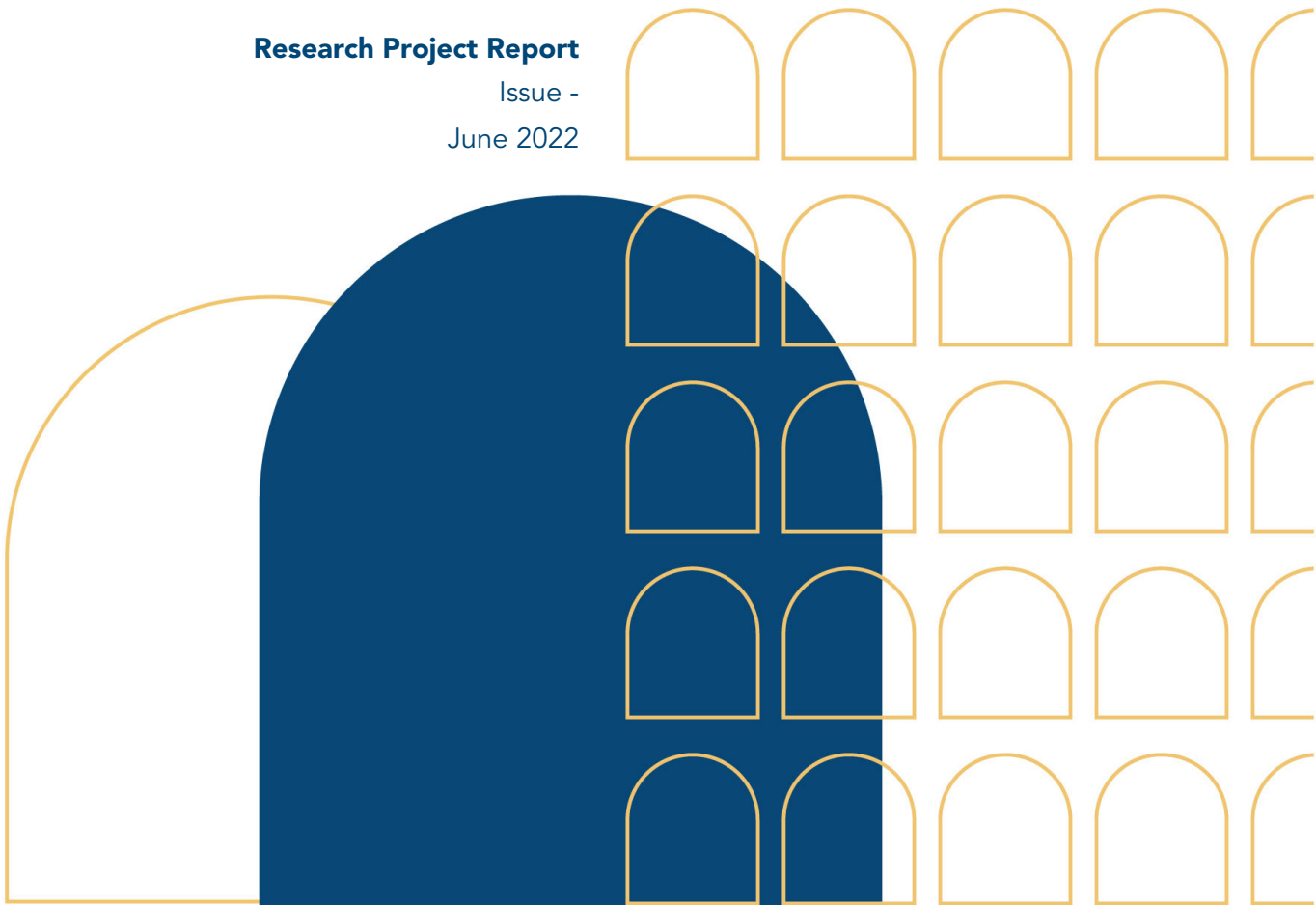
Country report: Austria

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**Research Project Report**

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# TABLE OF CONTENTS

<b>1. About the project</b>	<b>4</b>
1.1. Overview of the Project	4
1.2. Methodological notes	4
<b>2. Introduction</b>	<b>6</b>
<b>3. Results of the data collection: Assessment of the risks to media pluralism</b>	<b>8</b>
3.1. Fundamental Protection (31% - low risk)	10
3.2. Market Plurality (63% - medium risk)	12
3.3. Political Independence (49% - medium risk)	15
3.4. Social Inclusiveness (46% - medium risk)	18
<b>4. Pluralism in the online environment: assessment of the risks</b>	<b>23</b>
<b>5. Conclusions</b>	<b>28</b>
<b>6. References</b>	<b>30</b>
<b>Annexe I. Country Team</b>	
<b>Annexe II. Group of Experts</b>	

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# 1. About the project

## 1.1. Overview of the Project

The Media Pluralism Monitor (MPM) is a research tool designed to identify potential risks to media pluralism in the Member States of the European Union and in candidate countries. This narrative report has been produced on the basis of the implementation of the MPM carried out in 2021. The implementation was conducted in 27 EU Member States, as well as in Albania, Montenegro, The Republic of North Macedonia, Serbia and Turkey. This project, under a preparatory action of the European Parliament, was supported by a grant awarded by the European Commission to the Centre for Media Pluralism and Media Freedom (CMPF) at the European University Institute.

## 1.2. Methodological notes

### Authorship and review

The CMPF partners with experienced, independent national researchers to carry out the data collection and to author the narrative reports, except in the case of Italy where data collection is carried out centrally by the CMPF team. The research is based on a standardised questionnaire that was developed by the CMPF.

In Austria the CMPF partnered with Josef Seethaler (Austrian Academy of Sciences, Institute for Comparative Media & Communication Studies), Dr. Maren Beaufort (Institute for Comparative Media and Communication Studies (CMC) at the Austrian Academy of Sciences and the University of Klagenfurt), who conducted the data collection, scored and commented on the variables in the questionnaire and interviewed experts. The report was reviewed by the CMPF staff. Moreover, to ensure accurate and reliable findings, a group of national experts in each country reviewed the answers to particularly evaluative questions (see Annex II for the list of experts). For a list of selected countries, the final country report was peer-reviewed by an independent country expert.

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

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

Table 1: Areas and Indicators of the Media Pluralism Monitor

## **The digital dimension**

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

## **The calculation of risk**

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

*Scores between 0 and 33%: low risk*

*Scores between 34 and 66%: medium risk*

*Scores between 67 and 100%: high risk*

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

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

## 2. Introduction

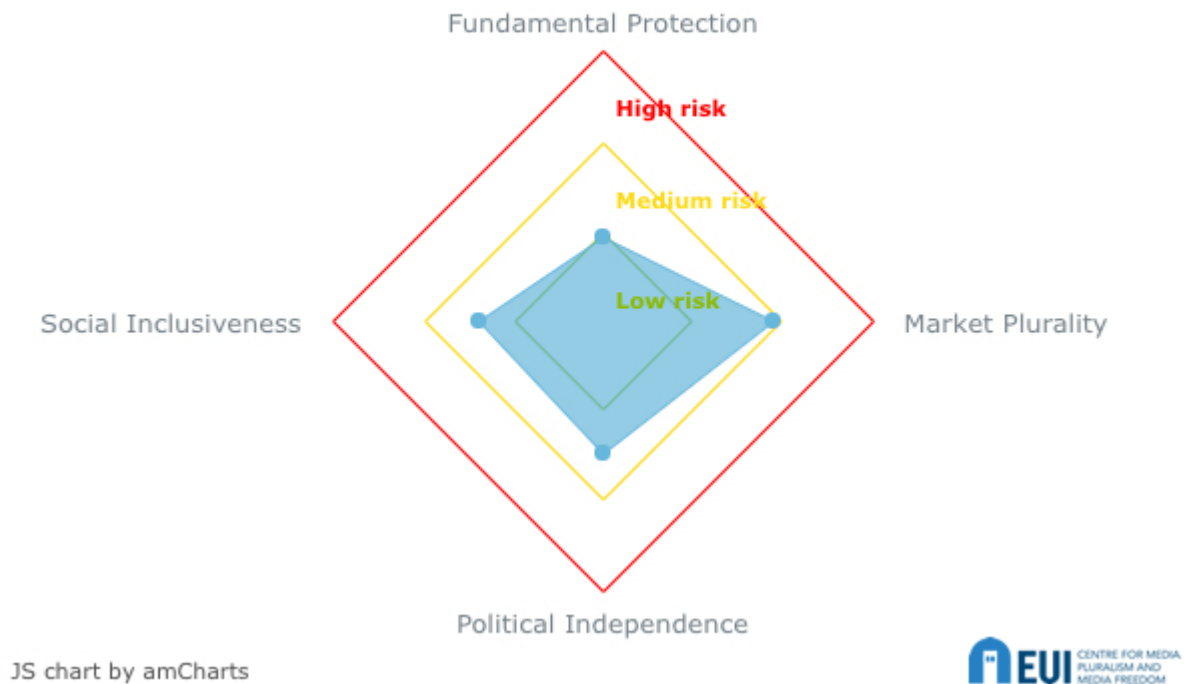
- **Country overview:** Population: 8,932,664 (January 1, 2021); geographic area: 83,878 square kilometres
- **Languages:** German; in some regions, Burgenland-Croatian, Slovenian and Hungarian are recognised as official languages of autonomous population groups
- **Minorities:** 20.1% of the population are born in countries other than Austria, 17.1% are citizens of other countries (data from January 1, 2021). These include Germany (2.3%), Romania (1.5%), Serbia (1.4%), Turkey (1.3%) and Bosnia and Herzegovina (1.1%). People with migration background (= 1st and 2nd generation) = 25.4 % (annual average 2021) (data from [Statistics Austria](#)).
- **Economic situation:** After the sharp economic downturn in 2020, GDP grew by 4.5% in 2021 (in real terms). Economic growth was thus well above the rate of 1.5% in the year before the pandemic (data from Statistics Austria, [www.statistik.at](http://www.statistik.at)). According to the national definition, the unemployment rate was 6.3% in 2021 (according to ILO: [World Bank](#), according to the national definition: 8.0%, compared to 9.9% in 2020; data from the [Austrian PES](#)).
- **Political situation:** Since 2019, Austria has been governed by the conservative Austrian People's Party (ÖVP), which has been part of the government since 1986, and the Greens, who are in a federal government for the first time. In autumn 2021, both Sebastian Kurz resigned as Austrian chancellor (due to corruption investigations) and his successor, Alexander Schallenberg. The new chancellor, Karl Nehammer, faces resurgent right-wing parties: the Freedom Party (FPÖ) and the MFG ("Menschen Freiheit Grundrechte"), which are profiting from ongoing protests against the COVID-19 measures.
- **Media market:** Two-thirds of the Austrian population are highly interested in news. Television remains the most significant source of information, and the public service broadcaster has maintained a relatively high market share of about one-third of the television market. Although numerous radio stations and news sites have their origins in newspapers, printed newspapers are losing importance both as an advertising medium and a source of information, even among the 55+ generation. For 36% of people under 24 years of age, social media is the most significant daily news source, and almost two-thirds of people under 35 use it as one of their sources. In general, traditional media use is declining, the trend toward using online media is steadily increasing, and, for all age groups, smartphones are the primary way to access news online (Gadringer et al., 2021).
- **Regulatory environment:** Since January 1, 2021, new laws aimed at combating hate speech on the Internet ([Bundesgesetz, mit dem Maßnahmen zur Bekämpfung von Hass im Netz getroffen werden, 2020](#) [Federal Law on Measures to Combat Hate on the Internet]) and placing responsibility for (illegal) content posted by users to some extent on platform operators have been in force ([Federal Act on Measures to Protect Users on Communication Platforms, 2020](#)). Austria implemented parts of the AVMSD (European Parliament and Council, 2018) by amending the Audiovisual Media Services Act, the KommAustria Act, the ORF Act and the Private Radio Act at the end of 2020. The most significant changes concern the extension of the Audiovisual Media Services Act to video-sharing platforms as well as some improvements in the protection of minors and accessibility of media content for people with disabilities ([Bundesgesetz, mit dem das Audiovisuelle Mediendienste-Gesetz, das KommAustria-](#)

[Gesetz, das ORF-Gesetz und das Privatradiogesetz geändert werden](#)). Consumer representatives criticized that the legislator did not stipulate stricter provisions, as would have been possible under the AVMSD for media service providers subject to the jurisdiction of a member state. The EU Copyright Directive (European Parliament and Council, 2019a) was transposed into national law in December 2021, but Austria missed the deadline for implementing the EU Whistleblower Directive (European Parliament and Council, 2019b) on December 17, 2021. While, in February 2021, the government had agreed on a draft law on Freedom of Information (which has been the subject of wrangling for decades!), it is unfortunately currently on hold again (Republik Österreich – Parlament, 2021).

- **COVID-19:** The crisis led to higher use of traditional media (albeit mainly in their online versions) and temporarily to greater trust in the media in general. The extraordinary state support schemes for media companies established in 2020 are widely seen as effective in compensating for the decrease in revenues due to the COVID-19 pandemic, but – like the Austrian media support system as a whole – not appropriate and fair because the primary beneficiaries of these special subsidies were (again) high-circulation tabloids and free newspapers. So far, job security measures seem to have prevented significant waves of layoffs; however, this cannot yet be said definitely. Despite creating a "hardship fund", it must be assumed that the economic conditions of freelance journalists have worsened. Another problem associated with the pandemic is online disinformation. Although the Austrian Press Agency APA, civil society organizations (e.g. [Mimikama](#)), and some media outlets have started initiatives to combat online disinformation, no well-developed policy framework exists.

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

#### Austria: Media Pluralism Risk Areas



The implementation of the MPM 2022 indicates (like the MPM 2021) that media pluralism in Austria is at medium risk in all but one of the areas of investigation (**Market plurality, Political independence, Social inclusiveness**). Only the area of **Fundamental protection** shows a low risk. Three out of twenty indicators represent a high risk, thirteen a medium risk, and four a low risk.

It has to be emphasised that the foundations of the democratic media system are intact and robust:

- Freedom of expression is well protected.
- Access to journalism is free and journalistic work is legally protected in many ways.
- Media authorities work independently.
- The media market has largely recovered from the consequences of the COVID-19 crisis (although the print sector remains battered for several reasons).
- During election times, the public service broadcaster ORF does a reasonably good job of representing the parliamentary parties.
- The ORF also feels responsible for providing access to media for people with disabilities.
- Equally important, there is a rich and varied supply of regional and local media services, including a lively community media sector.

Risks to media pluralism in Austria are primarily due to



- the failure of countless governments to pass a Freedom of Information Act,
- horizontal and cross-media concentration,
- a lack of sufficient reflection on the changes in the media landscape in the competition law,
- the outflow of advertising revenues to a few globally operating online platforms,
- threats to the independence of PSM governance and funding,
- endangered editorial autonomy,
- some shortcomings in the provisions on transparency of media ownership (information on the ultimate ownership structures of media companies is not generally available),
- limited access to media for women and minorities,
- spread of disinformation,
- and a missing policy (and missing resources) for promoting media literacy.

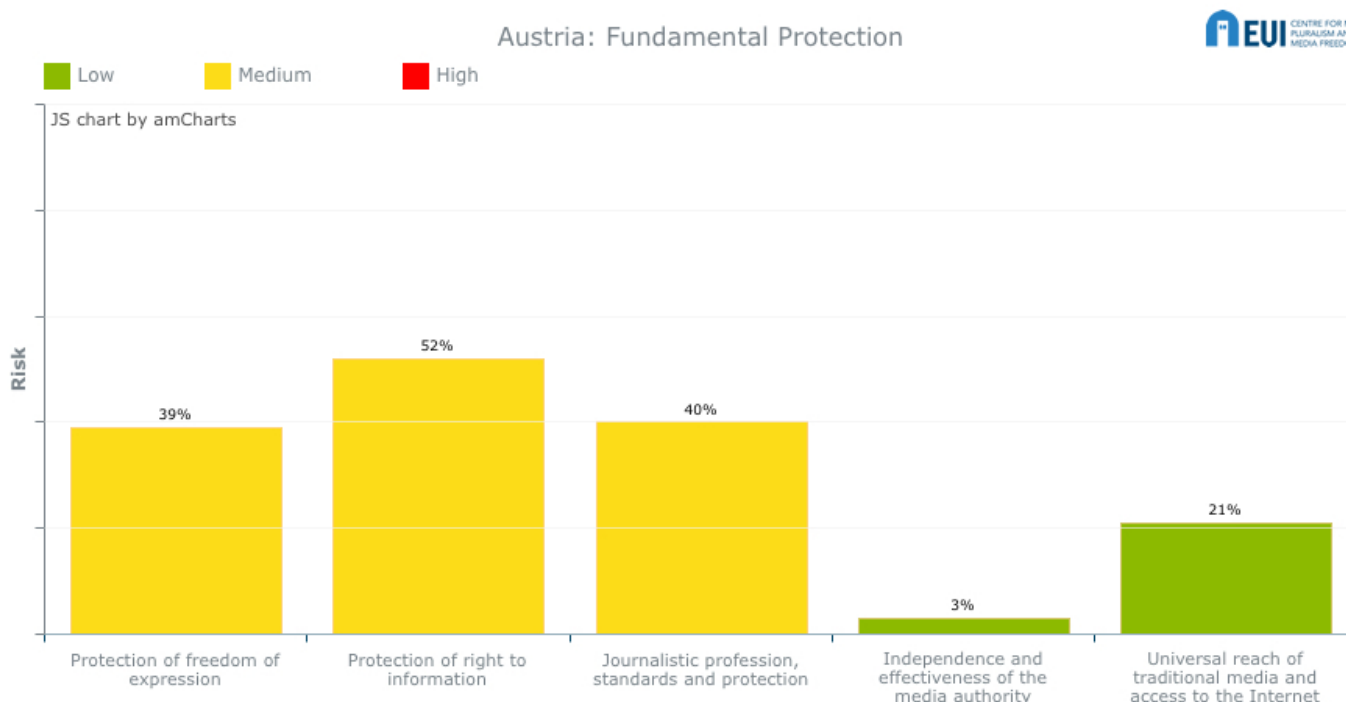
There are, however, two particularly alarming developments:

- First, the growing number of physical attacks and online threats against journalists, in recent times, particularly in the context of demonstrations organized by COVID-19 denialists, opponents of vaccination, the Austrian Freedom Party (FPÖ) and other right-wing groups, and the missing of a comprehensive policy framework to ensure physical and digital safety of media professionals.
- Second, the extraordinarily high amount of state advertising expenditures (about five times the amount of regular media subsidies!) and the lack of transparency in the allocation criteria. The details of the Economic and Corruption Prosecutor's Office's corruption investigations, which have become public and forced Austrian Chancellor Sebastian Kurz to resign in October 2021, have exposed unhealthy ties between some politicians, polling companies, and media organisations. According to a representative [survey conducted by the Gallup Institute](#), these incidents have badly shaken trust in the media and underscored the urgency of reforming the system of media subsidies which should be exclusively dedicated to supporting the media in performing their democratic functions.

In view of all these risk factors (see also Hoeller, 2021), Austria was only 17th in the [World Press Freedom Index](#) 2021 and slipped – as a result of a revision of the index – to 31st in 2022 (Reporters Without Borders, 2022). In 2019, it had already lost its long-term status as one of the countries where press freedom is best protected.

### 3.1. Fundamental Protection (31% - low risk)

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



**Fundamental Protection** of the media is largely, but not completely, guaranteed in Austria. Freedom of expression has been enshrined in Austria's constitution since 1867 ([Federal Constitutional Law, 1930/2020](#), Art. 149, referring to Staatsgrundgesetz, 1867, Art. 13). In 1958, Austria ratified the European Convention on Human Rights (which was given constitutional status six years later) and in 1978 the International Covenant on Civil and Political Rights (ICCPR). By and large, remedies against violations of freedom of expression can be considered effective, but it is primarily the legal provisions on defamation that raise the risk with regard to the indicator on **Protection of freedom of expression** (35%) slightly above the medium-risk threshold.

In particular, Section 111 of the Criminal Code ([Bundesgesetz vom 23. Jänner 1974 über die mit gerichtlicher Strafe bedrohten Handlungen](#) [Federal Act of January 23, 1974, on Acts Punishable by Law]) allows for an increased prison sentence for up to one year for defamation when it has been made accessible to a "broader public" by means of the mass media (compared to six months in cases without a "broader public"). Section 116 explicitly extends the provisions of Sections 111 and 115 (regarding insults) to national and regional parliamentary bodies, the army, and state authorities, and Section 248 to the Republic of Austria, Austria's flag, emblem, and anthem as well as the federal provinces and their anthems. Even when the Austrian Supreme Court generally applies ECtHR case law, the longer these provisions are in force, the more they shape journalistic action. Even a recent U.S. Department of State (2020) report states that Austrian "strict libel and slander laws created conditions that discouraged reporting of

governmental abuse".

**Protection of the right to information**, recognized since the Age of Enlightenment as the necessary counterpart of freedom of expression, is at medium risk (52%). In one and the same Article of the [Federal Constitution \(1930/2020\)](#) the right to information is guaranteed (Art. 20, para. 4) and the obligation of administrative authorities (at a national, regional and local level) to maintain secrecy is stipulated (Art. 20, para. 3). Information is only disclosed upon request, and such requests are difficult to file. Not surprisingly, Austria ranks last in a worldwide survey of 128 countries on the right to information conducted by Access Info Europe and the Centre for Law and Democracy (2020). On February 22, 2021, the Austrian government submitted a draft Act on Freedom of Information to Parliament, whose public consultation ended on April 19, 2021 (Republik Österreich – Parlament, 2021). Since then, the legislative process has stalled again. A two-thirds majority in parliament is needed to approve the necessary amendment to the Constitution and pass the implementing law.

Austria still lacks a specific whistle-blower protection law, but existing laws include partial provisions and procedures for whistle-blowers in the public and private sectors. The deadline for implementing the EU Whistleblower Directive 2019/1937 was December 17, 2021, but Austria's legislative process is still pending. The preliminary draft suggests that the government is taking a minimal approach to transposition, not extending protection beyond breaches of EU law, despite serious concerns from civil society, legal experts, and direct encouragement from the Commission to do so (see, for example, Transparency International and Whistleblowing International Network, 2021). On January 27, 2022, the European Commission has decided to open infringement proceedings against Austria.

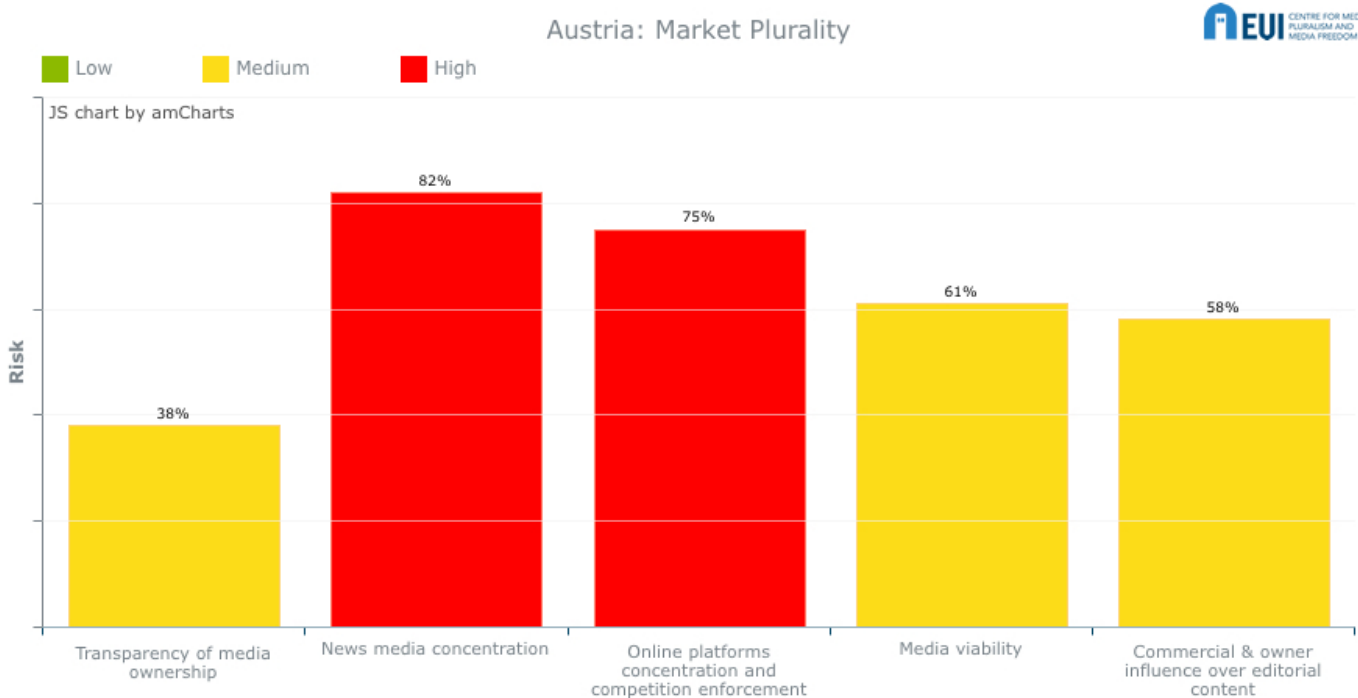
The indicator on **Journalistic profession, standards and protection** is no longer classified as low risk, but for the first time as medium risk (40%). While access to the profession is free and open and Section 31 of the Media Act provides strong protection to the confidentiality of journalists' sources ([Federal Act on the Press and other Publication Media, 1981/2020](#)), the social and socio-demographic situation of journalists is worsening. The number of journalists working at least 20 hours a week is decreasing, freelance journalists face uneasy social conditions, and the average age of journalists is increasing (Kaltenbrunner et al., 2020). Particularly worrying is the rising number of SLAPPs (and the lack of any specific anti-SLAPP legislation; Bayer et al., 2021) and the growing threat to the safety of journalists (Seethaler, 2021). In 2021, [Mapping Media Freedom](#) and the [Council of Europe Safety of Journalists Platform](#) recorded a growing number of threats and physical assaults against journalists, particularly in the context of demonstrations organized by COVID-19 denialists, anti-lockdown protesters, the Austrian Freedom Party (FPÖ), and other right-wing groups (see also chapter 4.1).

The indicator on **Universal reach of traditional media and access to the internet** shows a low risk (21%) – public TV and radio signals reach almost everyone (see also chapter 4.1) – and the indicator **Independence and effectiveness of the media authority** shows even a very low risk (3%). The 2001 established Austrian Communications Authority (KommAustria) is legally distinct and functionally and effectively independent from the government and any other public or private body. No governmental individual or body has the power to issue instructions to the media authority ([Federal Act on the Establishment of an Austrian Communications Authority \('KommAustria'\), 2001/2021](#), Section 6). Its competencies, powers, and accountability are clearly defined by law. The powers of sanction include warnings, monetary fines (for advertising violations and violations of programming principles such as the protection of minors), the publication of decisions (typically for infringements of the regulations on product placement or sponsoring), and the revocation of licenses or the prohibition of further broadcasting activities

in severe cases of infringement by private broadcasters. In media matters, KommAustria is operationally supported by the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR), a non-profit state-owned company.

### 3.2. Market Plurality (63% - medium risk)

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



**Market Plurality** continues to be under threat. Although a risk level of 63% still falls within the middle range, it is close to high risk and - as in 2021 - it shows the highest risk level across all four MPM areas. The risks are mainly related to market concentration in both sectors, traditional news media and online platforms.

The indicator **News media concentration** shows a high risk of 82%. Horizontal concentration, measured by Top4 indexes for market revenues and audience, is between 72 and 87% in the audiovisual, radio and newspaper sectors (data from 2021), and the market share of the Top4 news media owners across different media markets is 63% (based on 2020 data on the twenty largest media companies tax-registered in Austria). The numbers are not officially provided by the Austrian media authority but represent own calculations based on data provided by [Österreichische Auflagenkontrolle](#), [RMS Austria](#), [AGTT](#) and Fidler (2021). If one considers the legal provisions, two weak points become apparent. The first problem here is that only legislation for the audiovisual and radio sectors contains specific restrictions regarding areas of distribution and market shares to prevent horizontal and cross-media concentration; such restrictions do not

exist for other media sectors. The second problem is that even these restraints are not very tight (Seethaler & Beaufort, 2019). As a result, Austrian media and cartel laws, although they give market plurality a guiding priority, have been ineffective in preventing mergers of media companies – from the Mediaprint deal in 1988 (a joint venture of the owners of the two biggest newspapers at the time, *Kronen Zeitung* and *Kurier*) to the 2017 merger of the two biggest private TV stations, ATV and PULS 4, both of which are now owned by the German ProSiebenSat.1 group. Moreover, changes in the media landscape have not yet been significantly incorporated into competition law. Thus, the indicator **Online platforms concentration and competition enforcement** is given a similarly high-risk rating (75%; see chapter 4.2).

The other three media plurality indicators show a medium risk. Although media law ([Federal Act on the Press and other Publication Media, 1981/2020](#), Section 25) contains provisions to ensure transparency of media ownership, information on the ultimate ownership structures of media companies is not generally available (Berka et al., 2019), partly due to a vague formulation in the 2011 amendment to the law (the German word *Inhaber* can be interpreted as '100% owner'). Moreover, foreign media are only covered by the provisions mentioned above when they are "completely or almost exclusively" distributed in Austria ([Federal Act on the Press and other Publication Media, 1981/2020](#), Section 50). Similar exclusions apply to foreign state publications and publications of Austrian public authorities. For these reasons, the indicator on **Transparency of media ownership** shows a medium risk of 38%.

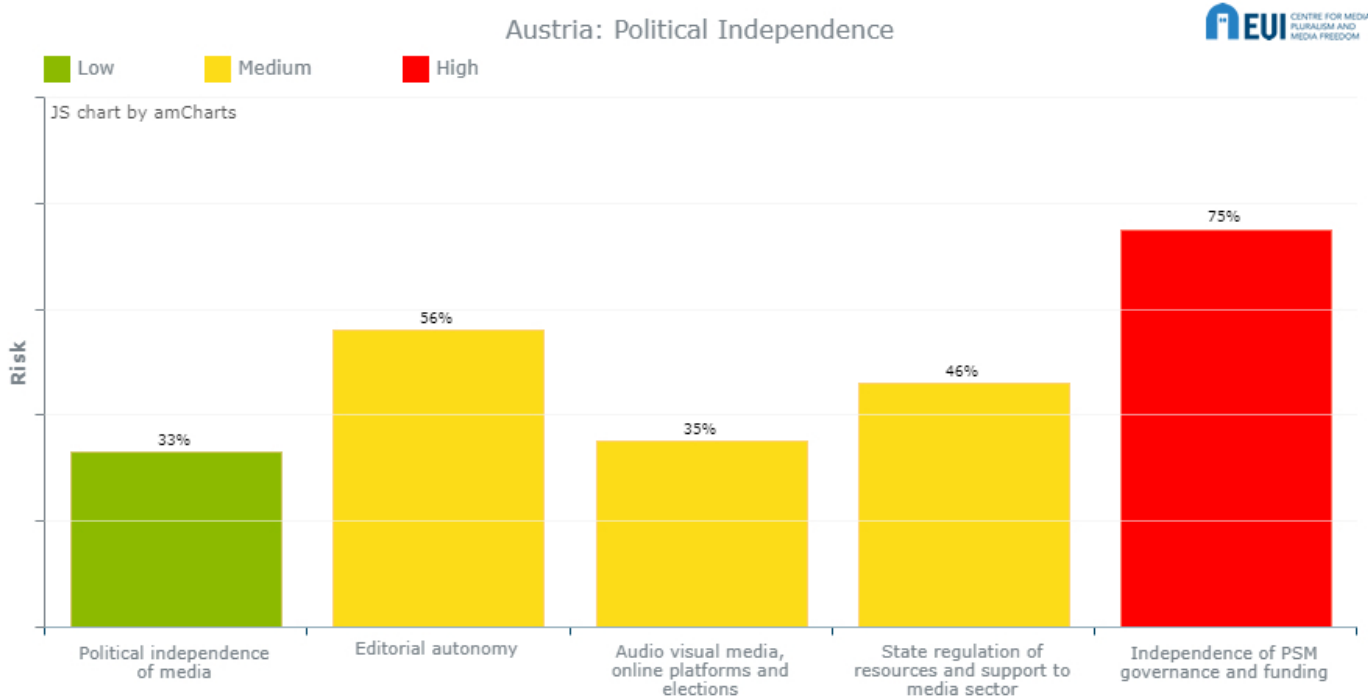
The indicator on **Media viability** points to a risk of 61%, which is 5 percentage points higher than in 2021. It seems that despite a re-bump of the advertising market, economic difficulties persisted, as the recovery did not benefit all the media to the same extent. However, it is difficult to assess the viability of markets in times of crisis, mainly because definitive data on annual revenues for 2021 are not yet available in most cases (data for this report was collected at the beginning of 2022). The few available data indicate that profits were made again in the TV and online sectors after the slump in 2020 (ORF: Fidler, 2022a; ProSiebenSat.1: see [Geschäftsbericht 2021](#) [Business report]), while the print sector is suffering persistently – and probably not only as a result of the crisis (Reuters Institute, 2021). This interpretation is supported by data on advertising revenues (Focus Marketing Research, 2022). On the one hand, gross advertising volume increased by 9.8%. This increase is mainly attributable to the TV and online sectors. The public service broadcaster and private television companies increased their gross advertising revenues by more than 18%. Online media (without search engines, social media, YouTube, etc.) showed an increase of 12%. On the other hand, the rise in advertising revenues of daily and weekly newspapers lagged behind that of GDP (3.8%, compared to 4.5%), and that of regional weeklies was even far behind at 1.9%. In the radio sector, the corresponding figure of 5.4% is only slightly higher than the GDP increase. In this context, it is worth noting that all major newspaper companies operate radio stations and run successful online news sites. Thus their profits in these sectors may have compensated to a certain extent for their loss of advertising revenues in the print sector. Nevertheless, cost-cutting measures can be observed in several companies, and they are probably one of the main reasons why the number of employed journalists has been declining for years, and why this decline is primarily attributable to the print sector, where most journalists traditionally work (Kaltenbrunner et al., 2020). There seems to be more of a creeping reduction in jobs than significant waves of layoffs. The [Austrian Press Agency \(APA\) announced](#) that 25 full-time positions in the editorial department would be cut by the end of 2022, and the [media group 'Österreich' notified](#) 43 employees of their dismissal at the end of December 2021. Even a long-established system of state subsidies covering all traditional media sectors cannot stop this development. The system is, at best, partly effective and in urgent need of reform (see chapter 3.3).

Concerning the indicator on **Commercial and owner influence over editorial content** (which indicates a

58% risk), cases of influence by commercial entities were informally reported again and again. Recently it was revealed that Sky fired a TV sports host for failing to comply with management interference (Redl, 2021). The Austrian Press Council ruled several cases that did not sufficiently label paid content as advertising (Österreichischer Presserat, 2021). There are also discussions about the fact that some editors-in-chief are acting as managing directors or publishers, which makes it difficult to distinguish between economic interests and editorial independence. Little is known of future consequences of relatively new phenomena such as content marketing, brand journalism, corporate publishing, and native advertising. For example, the Austrian energy drink company Red Bull owns and operates a TV station, online platforms, magazines, a film and video production company, and a record company. Some researchers (Kaltenbrunner et al., 2020) argue that economic interests intentionally influence editorial content in such arrangements. According to the most recent Worlds of Journalism survey, more than 80% of Austrian journalists perceive an increase in economic pressure on editorial content during the last decade, and more than 70% say the same of advertising pressure (Hanitzsch et al., 2019). Considering the legal provisions, several media laws contain provisions that aim to prevent the use of advertorials and stipulate that the journalistic profession is incompatible with activities in the field of advertising ([Federal Act on the Austrian Broadcasting Corporation \(ORF Act\), 1984/2021](#), Sections 13 (3), 14 (10) and 16 (5); [Federal Act on Audiovisual Media Services, 2001/2020](#), Sections 32 (2) and 37 (1); [Federal Act Enacting Provisions for Private Radio Broadcasting, 2001/2020](#), Sections 19 (4c) and 19 (5b)). Legal mechanisms dating back to 1920 grant social protection to journalists in case of changes of ownership or editorial line ([Gesetz über die Rechtsverhältnisse der Journalisten \[\[Law on the Legal Conditions of Journalists\], 1920/2007](#)), and a short clause in the [Journalistic Code of Ethics](#), Art. 4.4, stipulates that the economic interests of the media company's owner should not influence editorial work. However, no explicit regulatory safeguards ensure that decisions regarding appointments and dismissals of editors-in-chief have to be made independently of the commercial interests of media organizations.

### 3.3. Political Independence (49% - 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.



The ambivalence of the relationship between media and politics, typical of Austria (Hallin & Mancini, 2004; Seethaler & Melischek, 2006), is reflected in the MPM scores assessing the risks in the area of **Political Independence**. On the positive side, there are regulatory safeguards in place in the audiovisual and radio sector that preclude government officials and political parties from media ownership ([Federal Act Enacting Provisions for Private Radio Broadcasting, 2001/2020](#), Section 8 (1) and (2); [Federal Act on Audiovisual Media Services, 2001/2020](#), Section 10 (2)). Moreover, the mandate of the public service broadcaster ([Federal Act on the Austrian Broadcasting Corporation \(ORF Act\), 1984/2021](#), Section 4 (6)) stipulates that, for journalistic and programming staff, independence from government, political parties and political lobbies is not only a right but also an obligation. Even though there is no similar legal provision in place in the print sector, there is generally no overlap in personnel with the political realm. It should also be noted that the only big news agency in Austria, the [Austrian Press Agency \(APA\)](#), which is owned by twelve Austrian newspapers and the ORF, is largely independent of political groupings.

Though their scope is far from comprehensive, the existing regulatory safeguards aim to counteract media control by the government and politicians. These safeguards – and the far-reaching withdrawal of the political parties from the newspaper market – keep the risk to the **Political independence of media** in the low category. However, some other factors push it to the higher end of this category: at 33%, it is on the verge of medium risk. This is mainly because of the 'politics-in-broadcasting' system established by the ORF Act ([Federal Act on the Austrian Broadcasting Corporation \(ORF Act\), 1984/2021](#)), which opens up

opportunities for the government and political parties to exert influence. But also in the private broadcasting sector, the spirit of the law and reality do not always match up. In this context, it is worth mentioning that, in the last years, MediaForEurope (MFE), formerly known as Mediaset and controlled by the family of former Italian Prime Minister Silvio Berlusconi, has increased its stake in the German private television group ProSieben.Sat.1 several times and is now the company's largest shareholder and just below a blocking minority (ProSiebenSat.1 Media SE, 2021). In March 2022, it became known that MFE is preparing to seek regulatory clearance to raise its stake in ProSiebenSat.1 beyond the 25 percent threshold (e.g., Peitsmeier & Schubert, 2021; Pollina, 2022). ProSiebenSat. 1's portfolio in Austria comprises eleven TV stations, including Puls 4 and ATV.

A medium risk can be observed for **Editorial autonomy** (56%) because the framework of regulatory and self-regulatory measures that guarantee freedom from interference in editorial decisions and content is underdeveloped. Firstly, no regulatory safeguards are in place to prevent political influence over the appointment and dismissal of editors-in-chief. While the editorial statute of the public service broadcaster stipulates that the editorial committee must at least be informed and heard during appointment procedures (ORF, 2002), even this minimum requirement does not exist anywhere else. Secondly, only TV and radio stations are obliged to have editorial statutes; all other media are allowed to establish such statutes but not required to do so. Thus it comes as no surprise that the two largest newspapers (*Kronen Zeitung* and *Heute*), which are among the primary beneficiaries of state advertising spending, initially refrained from any self-regulatory measures. The *Kronen Zeitung* is still refraining, while *Heute* joined the Austrian [Press Council](#) in May 2021. Unfortunately, only print media and their online platforms, news agencies, and – since 2021 – community radio and television stations may belong to the Austrian Press Council. The Press Council lacks the power to impose penalties and compensation measures and has to rely on 'soft' sanctions such as naming, shaming, and blaming. In general, accountability mechanisms at all levels – industry, sector, and company – are underdeveloped. This facilitates political influence. How endangered editorial autonomy is in Austria is proven by the unhealthy ties between some politicians, polling companies, and media organizations uncovered by corruption investigations by the Economic and Corruption Prosecutor's Office (Wirtschafts- und Korruptionsstaatsanwaltschaft). They led to the resignation of Austrian Chancellor Sebastian Kurz in October 2021 and are currently being examined by a parliamentary investigative committee.

The indicator on **Audiovisual media, online platforms and elections** is again at medium risk (35%). In Austria, public service media are obliged by law to cover political matters unbiased and impartial ([Federal Act on the Austrian Broadcasting Corporation \(ORF Act\), 1984/2021](#), Section 1 (3)), and KommAustria is responsible for legal supervision. However, there are no legal provisions explicitly relating to election campaigns. In practice, all parties with parliamentary representation have the right to participate in unbiased debates. This can "be seen as an obstacle to new parties", as the Bertelsmann Stiftung (2020) states in its evaluation of the electoral process in Austria. Nevertheless, for at least the last two decades, the ORF has, to a considerable extent, offered a fair representation of the various parliamentary parties during election campaigns (Seethaler & Melischek, 2014, 2019; OSCE, 2019). Recent studies on the role of private broadcasters in election campaigns are lacking.

Since 2002, political advertising in PSM has not been allowed during election campaigns. It may only be bought from private TV stations and must be identified as paid advertising ([Federal Act on Audio-visual Media Services, 2001/2020](#), Section 31 (1)). Moreover, media companies are urged to provide all parties with equal conditions for advertising because of Article 7 of the [Federal Constitution \(1930/2020\)](#), which refers to the principle of equal opportunities for all political parties. However, no specific measures guaranteeing equal conditions and rates of payment have been implemented in media law. Again, it can be



argued that this "gives established parties, parties with better access to funding and especially government coalition parties an advantage" (Bertelsmann Stiftung, 2020).

The indicator on **State regulation of resources and support to the media sector** shows a medium risk (46%). Again, an ambivalent situation can be observed. Section 54 of the Telecommunications Act ([Bundesgesetz, mit dem ein Telekommunikationsgesetz erlassen wird. 2003/2021](#)) guarantees impartial, transparent and non-discriminatory spectrum allocation in accordance with EU requirements. Also, the rules for the distribution of direct media subsidies can be considered transparent. However, they are not entirely fair. For example, the Private Broadcasting Fund is about seven times higher than the Non-Commercial Broadcasting Fund, and high-circulation tabloid newspapers benefit disproportionately from the funding, while regional weekly newspapers face disadvantages. For years experts have criticized the system for failing to ensure media pluralism and have demanded a reform that supports democratic qualities (e.g., Buschow, 2020; Grünangerl et al., 2021; Seethaler, 2020) instead of supporting traditional distribution channels, high circulation and reach. In March 2022, the parliament agrees on amendments of the KommAustria Act and the Digital Tax Act, which stipulate that parts of the digital tax (amounting to 134 million euros) will be used from 2022 to 2027 (and retroactively for 2021) to promote the digital transformation of media. Unfortunately, the awarding of the subsidies follows the traditional logic and excludes online-only media from funding eligibility (Horizont Redaktion, 2022).

Since 2012, the Media Transparency Act ([Federal Act on Transparency in Media Cooperation. 2011/2018](#)) forces the government, public bodies and state-owned corporations to disclose their media collaborations if the total amount of payments exceeds 5,000 euros per quarter. The Court of Audit estimates that at least one-third (!) of public advertising contracts are not published due to this threshold (Oswald, 2021). Moreover, no rules ensure a fair distribution of state advertisements among media outlets. In 2021, state advertising expenditures reached a new record high. While regular subsidies for the media amounted to approx. 44 million euros, 225 million euros were spent on state advertisements ([according to research at the University of Applied Sciences Joanneum, Graz](#)). A recent academic analysis concludes that the state "influences the market, its design and thus the possibilities of journalism more strongly than ever before" (Kaltenbrunner, 2021, p. 95).

**Independence of PSM governance and funding** is at high risk (75%). There are two fundamental problems concerning the independence of PSM governance: (1) The [ORF Act](#) (Section 20 (1) and (3)) seems to provide objective and transparent appointment procedures for the management and board functions in PSM by prescribing a variety of qualifications and detailed incompatibility rules for being elected as a member of the "Stiftungsrat" (Foundation Council), the main management body of the ORF, which appoints all high officials, approves the budget, and controls the financial conduct. However, the incompatibility of numerous political functions, ranging from ministerial office to employment with a political party, with a membership to the Foundation Council relates only to the four years preceding the appointment. But most importantly, Section 20 (1) gives the federal government and the provincial governments much power in appointing the foundation council members: Fifteen of its 35 members are appointed by the federal government, six of which in consideration of the proportionate strength of the political parties represented in parliament. Moreover, each of the nine Austrian federal provinces nominates a representative. A further six members are delegated by the Audience Council, the majority of whose members are in turn appointed by the Federal Chancellor (ORF Act, § 28 para. 3). Overall, these appointment rules enable the government to appoint at least a simple majority of the 35 members of the Foundation Council. Such a simple majority is sufficient for most of the decisions of the Foundation Council, including the appointment of the Director-General and the directors. This 'politics-in-broadcasting system' is the basis for the entanglements between PSM and political actors and is highly questionable from a

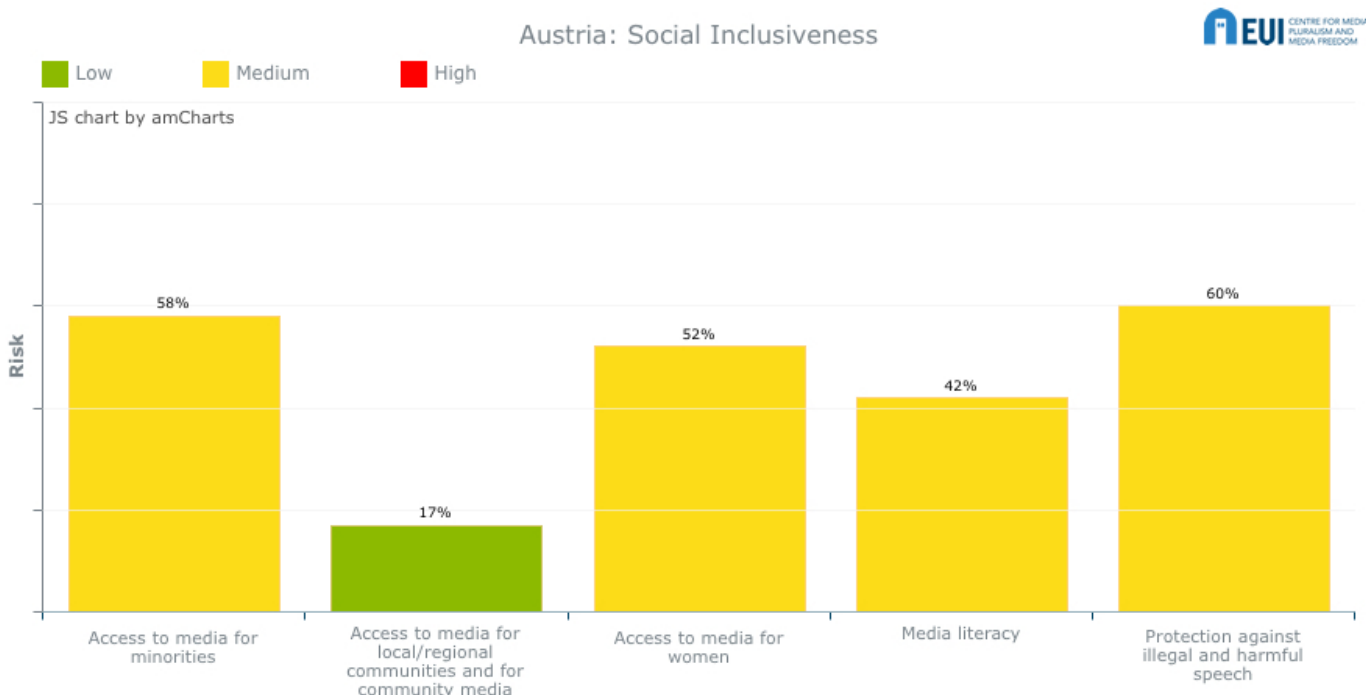
democratic perspective. Thus, the appointment procedures for the Foundation Council are, in practice, strongly impacted by political parties, particularly governmental parties (Beaufort, 2022; Fidler, 2022a).

(2) The law ([Federal Act on the Austrian Broadcasting Corporation \(ORF Act\), 1984/2021](#), Sections 20 (6), 21 (1) and 24 (1)) aims to provide fair and transparent appointment procedures for the Director-General, the four directors, and the nine regional directors of the PSB. There is, however, criticism of the provision that resolutions of the "Stiftungsrat" (Foundation Council) "shall be passed by open vote" (Section 20 (6)). In practice, this allows political actors to directly influence the appointments and dismissals of all directors, as it is to be expected that the so-called "circles of friends" of the various political parties vote along the respective party line. The most recent election of the Director-General, which took place in August 2021, was perceived by large parts of the public as an example of party influence on ORF (Vogt, 2021).

The procedures for determining the level of TV licence fees (for five years), together with the control mechanisms, are detailed in Section 31 of the [Federal Act on the Austrian Broadcasting Corporation \(1984/2021\)](#). The provisions have always worked well and secured PSM financing. The fees are an essential financing factor because ORF is subject to time and content restrictions on advertising revenues ([Federal Act on the Austrian Broadcasting Corporation, 1984/2021](#), Sections 13 and 14). In addition, advertising may be broadcast by the ORF only if the ordering party proves that it has ordered or will order commercial communication for the subject matter of the advertising to at least an equal extent from other media undertakings complementary to broadcasting ([Federal Act on the Austrian Broadcasting Corporation, 1984/2021](#), Section 14 (5a)). Furthermore, it is becoming increasingly questionable whether fee increases alone can compensate for the losses due to unsubscriptions as a result of the free use of ORF's streaming services.

### 3.4. Social Inclusiveness (46% - medium risk)

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



In the area of **Social Inclusiveness**, the indicator on **Access to media for minorities** is ranked as being at medium risk (58%). PSM law guarantees the representation of the six legally recognized minority groups and requires an 'appropriate' share of airtime ([Federal Act on the Austrian Broadcasting Corporation, 1984/2021](#), Sections 5 (1) and 4 (1)). Albeit the law does not provide any framework for the assessment of 'appropriateness', the public service broadcaster complies with the spirit of the law to a considerable extent. During the COVID-19 crisis, the regional channel 'Radio Wien' and its social media site provided some information on behavioural measures in Turkish, Kurdish, Bosnian/Croatian/Serbocroatian, Arabic, Spanish, and English. It is to be hoped that this will not remain an isolated case but will represent a beginning of a broader consideration of the information needs of minorities that are not recognized by law, which are currently almost not served at all. In the private broadcasting sector, commercial television and radio stations do not provide any airtime for minorities, whereas the much smaller and financially weaker non-commercial community TV and radio stations broadcast programmes in 41 different languages, making no differences in access to airtime for legally recognized and not recognized minorities. About a third of all community programme producers are from a migrant background (Verband Freier Radios Österreich, 2019). This potential and know-how would deserve more significant financial support because access to airtime for non-legally recognized minorities is more a matter of editorial focus than of legal instruments such as 'reserved airtime' (as for legally recognized minorities). Considering that non-Austrian citizens make up 17.1% of the total population, more should be done to safeguard proportionate access to media for minorities.

The policy framework on access to media for people with disabilities also has room for improvement. Both public service broadcasters ([Federal Act on the Austrian Broadcasting Corporation, 1984/2021](#), Section 5 (2)) and private broadcasters ([Federal Act on Audiovisual Media Services, 2001/2020](#), Section 30 (3)) are required by law to provide access to media content. Still, only the public service broadcaster has continuously improved the accessibility of media content for visually and hearing-impaired people – though there is an imbalance between the extent of media access for hearing impaired people (relatively well developed) and visually impaired people (rather poorly developed) (ORF, 2021). Non-profit community broadcasters work towards including people with special needs by making studios and equipment accessible. The legal provisions were written in vague and hardly measurable terms for a long time. They did not stipulate specific requirements and actions to provide access to media content for people with disabilities. Therefore, the Global Initiative for Inclusive Information and Communication Technologies (G3ict) rated the level of implementation of ICT accessibility policies and measures in TV and multimedia as 3 on a 5-point scale (G3ict, 2020). In accordance with the AVMSD, amendments to both laws mentioned above passed by parliament in December 2020 aim to improve the accessibility of TV and video content. They cover a wide range of audiovisual media content (broadcast, on-demand services, video sharing platforms) and provide a gradual but continuous increase in accessibility (sign language, written or spoken subtitles, audio description). The new provisions require all but small operators to draw up phased plans for the implementation of accessibility measures ([Bundesgesetz, mit dem das Audiovisuelle Mediendienste-Gesetz, das KommAustria-Gesetz, das ORF-Gesetz und das Privatradiogesetz geändert werden](#) [Federal Act amending the Audiovisual Media Services Act, the KommAustria Act, the ORF Act and the Private Radio Act] 2020). The Regulatory Authority for Broadcasting and Telecommunications (RTR) serves as a service centre for complaints on the topic of accessibility of audiovisual media services ([Federal Act on the Establishment of an Austrian Communications Authority, 2001/2021](#), Sections 17 (6a) and 20b).

The indicator on **Access to media for local/regional communities and for community media** represents a low risk (17%). There are four reasons for this:

- A significant number of television and radio frequencies are related to regional or local service areas ('Versorgungsgebiete'), and access to these frequencies is regulated via public tendering ([Bundesgesetz, mit dem ein Telekommunikationsgesetz erlassen wird, 2003/2021](#), Sections 30 (1) and 54 (1b)).
- Subsidies for private radio and television companies are explicitly contingent upon providing local or regional programmes and promoting local and regional identities (Seethaler & Beaufort, 2017).
- The public broadcaster operates regional broadcasting studios in all nine federal states, which provide nine regionally broadcast radio programmes and TV newscasts ([Federal Act on the Austrian Broadcasting Corporation, 1984/2021](#), Sections 3 (2) and 5 (5)).
- Austria has a well-developed system of community media, currently consisting of fourteen radio stations and three TV stations.

Broadcasting laws, however, still lack consistent legal recognition of community media as a third broadcasting sector in terms of function, mode of operation and financing – even though they perform a wide range of valuable public functions, they are firmly anchored in their respective local environment and operate without political interference (Peissl & Seethaler, 2020). Unfortunately, the Telecommunications Act ([Bundesgesetz, mit dem ein Telekommunikationsgesetz erlassen wird, 2003/2021](#), Section 54) does not provide sufficient details about licensing processes and criteria for community media, and the political guidelines for awarding subsidies are therefore only partially appropriate and, above all, not fair. While state subsidies for private-commercial broadcasting were increased by 33% in 2019 and have since amounted to 20 million euros per year, subsidies for non-commercial broadcasting have remained unchanged at a very low level (3 million per year) – although the funding conditions place higher demands on non-profit broadcasting than on commercial broadcasting in terms of democratic functions (Seethaler & Beaufort, 2017).

The indicator on **Access to media for women** is ranked as being at medium risk (52%). Austrian PSM law ([Federal Act on the Austrian Broadcasting Corporation, 1984/2021](#), Section 4 (1)) provides a (rather vague) policy regarding equal rights of several groups like women, disabled persons, acknowledged religious groups, etc. Consequently, gender equality in programming content has not been monitored internally at ORF for a long time. In 2020, the former General Director introduced the so-called '50:50 challenge', which aims to encourage programme-makers to voluntarily measure the share of women and men in their programmes, with equal representation as a goal (ORF, 2020). According to a study based on a representative sample of news stories in news and current affairs programmes of three PSB channels in 2018 (ORF 1, ORF 2, Ö3), women accounted for only 13.5% of all people who appeared in news stories as main actors (Beaufort, 2020). Focusing on the speaking time of politicians, the speaking time of female politicians in the two main ORF TV news broadcasts in 2021 was 25% (Fidler, 2022b) – in 2020, women's share of speaking time had reached an all-time high of 27% (Mark et al., 2021). No data exist for private broadcasting, and little is known about the role of female experts in TV news programmes; in newspapers, women account for only 40% of all experts presented in photos (Pernegger, 2021). In recent years, several databases of women with expertise in several fields have been established, for example, [FEMtech](#), [Frauendomäne](#), [Die Expertinnen](#), and [Frauennetzwerk Medien](#).

With regard to personnel issues, the Austrian PSM law ([Federal Act on the Austrian Broadcasting Corporation, 1984/2021](#), Section 30a, et seq.) provides a framework for actively ensuring gender equality. This framework requires implementing a gender mainstreaming plan and stipulates that the ORF must

assess the status quo of gender equality in the organization every other year. In 2019, ORF reached the set target of 45% of its total staff made up of women. However, the gender pay gap still amounts to 13.5% (ORF, 2020). If one considers the leading private broadcasting companies, the share of women among the members of the management board or team is between 33 and 50%, but there are no women among the executive board members. Only 25% of the editors-in-chief of the eight most relevant media across all four sectors (audiovisual, radio, newspapers, digital native) are female.

The indicator on **Media literacy** shows a medium risk (42%). In the formal education sector, one first important step was the 'Grundsatzterlass Medienerziehung' [Basic Decree on Media Education] which was developed in 2012 to cope with contemporary media requirements in the educational context. Starting with the school year 2017/2018, several so-called '[Education Innovation Studios](#)' have been established, and more than 130 schools have become '[eEducation Austria](#)' member schools. Although interest in media literacy has increased in recent years among both teachers and young people (as can be seen, for example, in the increasing number of participants in the 'Media Literacy Award' for the best and most innovative educational media projects in schools), experts criticise the low budget available for media education. There are a lot of initiatives fostering media competence among all age groups and improving media-pedagogical work (sponsored and/or hosted by the [Federal Ministry for Education, Science and Research](#), but also by the [City of Vienna](#), several NGOs such as '[Digitaler Kompass](#)', various community broadcasters and the [Verband Österreichischer Zeitungen](#)). However, a comprehensive governmental strategy fostering the development of media literacy in all sections of society (as recommended by the Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010) is missing in both the formal and the non-formal education sector. A new curriculum for primary and lower secondary education – albeit postponed until 2023 – is intended to raise the status of media education, but it remains to be seen whether this will happen. In line with the Audiovisual Media Services Directive, Rundfunk und Telekom Regulierungs-GmbH (RTR) has published the most important legal principles and a few selected online services on its [homepage](#) since fall 2020.

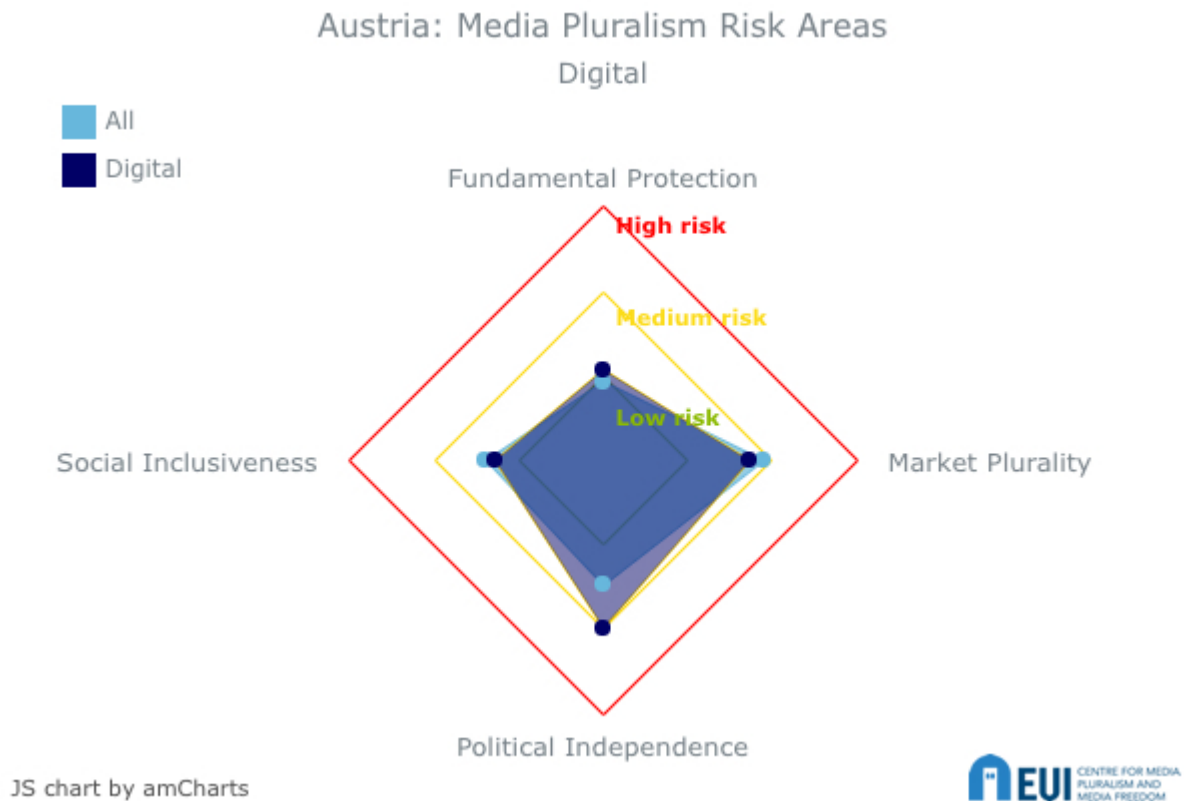
**Protection against illegal and harmful speech** is at medium risk (60%). The risk is higher than in the previous year (42%), but the increase is mainly due to the fine-tuning of the questionnaire. In general, the situation is ambivalent. For example, the Austrian government supports the EU Action Plan against Disinformation but has failed so far to develop a comprehensive policy framework for countering disinformation. Since January 2021, a new law aiming at combating hate speech on the Internet has been in force ([Bundesgesetz, mit dem Maßnahmen zur Bekämpfung von Hass im Netz getroffen werden \(Hass-im-Netz-Bekämpfungs-Gesetz – HiNBG\)](#) [Federal law taking measures to combat hate on the Internet (Hate on the Net Prevention Act)], 2020). However, there is still no complete and systematic collection of data on hate speech and hate-motivated violence available (see chapter 4.4). In media practice, most newsrooms lack structures and clearly communicated guidelines for dealing with these problems; only a few media outlets have taken measures recently to professionalize their community management departments.

Concerning disinformation, four out of ten users express general concerns about distinguishing between facts and false reports on the Internet (Gadringer et al., 2021). According to a panel survey on the impact of the COVID-19 crisis conducted by the Vienna Center of Electoral Research at the University of Vienna in April 2020, only 40.7% of the respondents (N=1,559) were able to identify all five statements presented to them correctly as disinformation. In late 2021, the researchers speak of a "problem for society as a whole" since the "fragmentation of the public sphere" and the "polarisation of public discourse" has progressed to such an extent that it is "no longer possible to agree on basic pandemic facts or perceptions". Not only social media but also traditional media are involved in the formation of these "alternative COVID realities"

(Eberl & Lebernegg, 2021). In December 2021, the Press Club Concordia filed a complaint against the private broadcaster Servus TV to the media authority KommAustria because Servus TV regularly disseminates disinformation about COVID-19 and the vaccines used. In Concordia's view, Servus TV is thus violating journalistic due diligence rules stipulated in the [Audiovisual Media Act](#), Section 41 (5).

There are a few initiatives to fight disinformation. In the media sector, the [Austrian Press Agency APA](#) (in cooperation with the Deutsche Presse-Agentur dpa), the news magazine [profil](#) and the newspaper [Kleine Zeitung](#) have established fact-checking platforms. One of the most impressive and informative platforms is operated by [Mimikama](#), a civil society association founded in 2012. The platform not only sets the record straight about fake news on social media sites but encourages users to report fake news. In the area of education, the Austrian software company Polycular developed the game '[Escape Fake](#)', which uses augmented reality techniques to motivate young people to become aware of fake news and deal with this topic in more detail.

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



### 4.1 Fundamental Protection – Digital (36% – Medium Risk)

In the **Fundamental Protection** area, all constitutional guarantees concerning the **Protection of freedom of expression** also apply to freedom of expression online. There have been no arbitrary violations of freedom of expression online in Austria in recent years. Websites are not blocked or filtered in Austria due to official decrees (except for illegal or unlawful content and in case of infringements against intellectual property rights, which is in line with EU law); in accordance with the TSM Regulation of the European Union, the regulatory authority RTR monitors net neutrality; and individuals have access to adequate legal remedies to address violations of rights by state or non-state actors in the online environment. Based on 2020 data, the [Varieties of Democracies project](#) (V-Dem) of the University of Gothenburg ranks Austria among the countries with unrestricted Internet access.

Nevertheless, the online environment needs better protection compared to the overall situation. This is mainly because of the results of the indicator on **Journalistic profession, standards and protection**. On the one hand, regarding the digital safety of journalists, the Austrian legislator has formulated Section 9 in the Data Protection Amendment Act 2018 ([Bundesgesetz, mit dem das Datenschutzgesetz 2000 geändert wird, 2018](#)) to comply with Directive (EU) 2016/680 of the European Parliament and of the Council (2016), which aims to prevent the illegal monitoring of journalists by law enforcement authorities. On the other hand, however, this section only refers to journalistic activities within the framework of a media company. Even more worrying is that offensive and threatening speech against journalists is on the rise and fuelled by right-wing politicians. In interviews, journalists – and particularly female journalists – consistently say that online intimidation is now the order of the day, but there is no new sufficient data available (for an overview of the current situation, see Seethaler, 2021). Therefore, in May 2021, the [Association ZARA – Civil Courage & Anti-Racism Work](#), together with the [Press Club Concordia](#), put online a reporting tool for journalists who are threatened.

Concerning the **Universal reach of traditional media and access to the Internet**, 86.6% of the population is covered by broadband (which leaves room for improvement), and the average Internet connection speed is 37.99 Mbps. Regarding net neutrality, it has to be noted that the Top4 Internet service providers constitute 95% of the market (RTR, 2021) – which can be characterized as highly concentrated.

#### 4.2 Market Plurality – Digital (57% – Medium Risk)

**Market Plurality** for online media shows a medium (similar to the risk assessment for media in general). **Transparency of media ownership** is largely provided. Ownership details must be publicly available and easily accessible ([Federal Act on the Press and other Publication Media, 1981/2020](#), Sections 24 and 25) – with the limitations mentioned in chapter 2.3. A limited disclosure obligation applies to small websites that serve exclusively to present the personal sphere of life.

A more worrisome picture is shown by the indicators on **News media concentration** and **Online platforms concentration and competition enforcement**. The leading online *news* media owners (in terms of audience share) are also occupying leading positions in other sectors: Mediaprint, ORF, and Styria Media Group (according to 2020 data on unique users, [www.republika.com](http://www.republika.com)). These three media companies are mainly responsible for the high cross-media concentration in Austria (see chapter 3.2). The changes in the media landscape have not yet been incorporated into media law. For example, legislation for the audiovisual and radio sectors does contain some provisions to prevent cross-media and horizontal concentration, but these provisions do not apply to the digital market (only the public service broadcaster is subject to regulations that substantially restrict its internet presence and social network pages). The only existing media-specific merger control provisions are in cartel law ([Bundesgesetz gegen Kartelle und andere Wettbewerbsbeschränkungen, 2005/2021](#), Section 13). However, a recent academic report on the role of antitrust authorities in the digital economy argues that "so far, the BWB [= Bundeswettbewerbsbehörde (Austrian Federal Competition Authority)] has not initiated sector inquiries concerning online advertising. In general, traditional media undertakings (publishing houses, free tv channels) but also traditional advertising undertakings claim that online advertising more and more suppresses traditional advertising in print titles or free tv. Following such comments, the previous approach which defines separate product markets, e.g., for advertisement in newspapers, magazines, classified ads or in free tv would be arguably too narrow." (Fussenegger & Robertson, 2020, p. 18) The Copyright Directive has been transposed into [national law](#) in December 2021. [Google](#) has announced to enter into negotiations with press publishers in Austria to license their content under the new ancillary copyright for press publishers (Art. 15). But it is too early to assess the situation.

The audience share of the Top4 online competitors is a considerable 69% (unique users, data from 2020, [www.republika.com](http://www.republika.com)). This reflects the dominant position of a few global players like Alphabet (which owns Google and YouTube, among others) and Meta (Facebook, Instagram, WhatsApp). In this context, it must be considered that about 53% of people access news online through side-door channels, i.e. news aggregators, search engines, social media, messaging, email, etc. (Gadringer et al., 2021). As a consequence, the online advertising revenue share of international platforms is growing extraordinarily fast. Based on projections of revenues from the digital tax, their advertising volume in Austria increased from 862 million euros in 2020 to 1,604 in 2021 and now accounts for around four-fifths of the whole online advertising market (Fidler, 2022). By comparison: The increase in domestic online players' advertising volume was only 11.8%, from 292 million euros in 2020 to 322 in 2021 (Focus Marketing Research, 2022). Keeping this threat to **Media viability** in mind, it has to be noted that no substantial subsidies are available



for digital native media. Even for a new fund financed by the revenues of the 2020 Digital Tax Act and aiming to promote digital transformation (!), online-only media are not eligible to apply. (There is only one small exception: A media support initiative launched by the City of Vienna in 2019 and endowed with 7.5 million euros for three years aims to support journalistic quality of legacy *and* digital media.) 12% of the population spent money on online news in 2020, compared to 10.6% in the year before. The trend is not only rising but encompasses more and more age groups: 17.2% of 18- to 24-year-olds, 16.1% of 25- to 35-year-olds, and even 14.4.% of 35- to 44-years olds are willing to pay. Nevertheless, Austria is below the EU average of 15% (Gadringer et al., 2021).

Concerning the indicator on **Commercial & owner influence over editorial content**, the provisions in legacy media laws stipulating that the exercise of the journalistic profession is incompatible with activities in the field of advertising only apply to the online platforms of legacy media, not to all digital news media ([Federal Act on the Austrian Broadcasting Corporation, 1984/2021](#), Sections 13 (3), 14 (10) and 16 (5); [Federal Act on Audiovisual Media Services, 2001/2020](#), Sections 32 (2) and 37 (1); [Federal Act Enacting Provisions for Private Radio Broadcasting, 2001/2020](#), Sections 19 (4c) and 19 (5b)). Contrary, provisions on the separation and labeling of advertising and journalistic contributions also apply to native advertising and influencer marketing (Berka et al., 2019). Even for tweets and posts, there are guidelines for labeling advertising, which the PR Ethics Council describes in its online code of conduct (PR Ethik Rat, 2018).

#### 4.3 Political Independence – Digital (68% – High Risk)

In the **Political Independence** area, the risk is higher for online media than for the media in general and it is in the high risk band. This can, in part, be attributed to a lack of data, as there is still a dearth of studies on political control over digital native media. Moreover, the indicator on **Political independence of media** shows that recently more and more new media offerings have been emerging on the Internet that have one thing in common: a certain more or less transparent closeness to political parties (#doublecheck, 2021). It seems that the 'media-party parallelism', which is typical of democratic-corporatist countries like Austria (Hallin & Mancini, 2004; Seethaler & Melischek, 2006), is experiencing a revival. However, this time, they do not necessarily have to aim for a high frequency of use to make an impact but frequent sharing of their content through social media.

Concerning the indicator on **Independence of PSM governance and funding**, the PSM's Internet presence is subject to extensive restrictions ([Federal Act on the Austrian Broadcasting Corporation, 1984/2021](#), Sections 4e and 4f). For legal reasons, ORF is not allowed to offer online content without a copy of the content in traditional channels, and most formats may not be online for longer than one week (this latter restriction may be abolished in 2022). Under current ORF law, the media authority rejected an application for a Youtube channel in 2018. Two (minor) versions of the news programme 'Zeit im Bild' for mobile use via Instagram and Tiktok have been in operation since 2019 and 2021, respectively. Still, private media houses are already working on a complaint. A similar project for Facebook had to be discontinued in 2020. In the future, the lack of contemporary online formats and content will lead to a legitimacy problem for a public service broadcaster.

Referring to the indicator on **Online platforms and elections**, a 2020 amendment of the [Audiovisual Media Services Act \(2001/2020\)](#) stipulates that transparency of political advertising as safeguarded by Section 31 (1) also applies to all audiovisual media services, among them video-sharing platforms such as YouTube and Dailymotion and social media such as Facebook and Instagram (Berka et al., 2020). Also, Article 7 of the [Federal Constitution \(1930/2020\)](#), which refers to the principle of equal opportunities for all political

parties, must be observed by online media. Only concerning the online platform of the Public Service Broadcaster, self-regulation is in place that aims to ensure fairness of online political advertising during electoral campaigns (ORF Enterprise, 2019).

The 2012 [Federal Act on the Financing of Political Parties \(2012/2021\)](#) restricts campaign expenses and makes it mandatory for parties to disclose their income (including sources of income) as well as their expenditure. Nevertheless, not all parties comply with this obligation to the full extent. Since campaign spending on social media and other online platforms is not explicitly mentioned in the law, parties rarely provide information on this. Google's Transparency Report and Meta's Ads Library were implemented in March and April 2019, respectively, just before the 2019 European Parliament and 2019 Austrian Parliament elections. These reports provide online ad repositories which allow for regulatory monitoring of political advertising activities.

#### **4.4 Social Inclusiveness – Digital (42.5% – Medium Risk)**

The digital aspects of **Social Inclusiveness** are at medium risk but slightly below the overall risk value for this area. Regarding **Media literacy**, only 66% of the Austrian population has basic or above basic overall digital skills (with 21% having low overall digital skills; Eurostat Data for 2019). Nevertheless, digital literacy – as the Austrian Federal Ministry for Digital and Economic Affairs (Bundesministerium für Digitalisierung und Wirtschaftsstandort, 2018) has pointed out – not only refers to technical skills, but also to cognitive and emotional skills such as being able to use digital media reflectively, becoming conscious of misconduct against others, and developing an awareness of implicit effects (Beaufort, 2019), which are becoming more prevalent in today's media environment.

Concerning **Protection against illegal and harmful speech**, a new [Federal Act on Measures to Protect Users on Communication Platforms](#) (2020) has been in force since January 2021. As part of a bundle of new and amended legal provisions aiming to combat hate speech on the Internet and designed after the German NetzDG-law, it forces platforms to delete any illegal content (such as defamation, harassment, pornography involving minors, racist, discriminatory, or national-socialist content, unauthorised photographs, stalking by means of telecommunication, etc.) within 24 hours if the illegality is "obvious to a legal layman", or within seven days if a detailed examination is necessary (Section 3 (3)). Provisions such as the mandatory providing of an online reporting form by the platforms and the announcement of a German-speaking representative who is available for the authorities are intended to make the enforcement of rights on the internet faster and more efficient. Note that journalistic offerings on platforms hosted by media companies that the Media Act governs are not affected (Section 1 (3)), and video content on video-sharing platforms is governed by Audiovisual Media Services Act rules (Section 1 (4) and 12(1)). Unlike in Germany, platforms must disclose not only what criminal postings they have deleted – or not deleted – but also those that were deleted due to 'community guidelines' (Section 4 (2)). These reports must be made two times a year (Section 4 (1)). The law applies to platforms with more than 100,000 users and a turnover of more than 500,000 euros (Section 1 (2)). The regulatory authority must compile and keep a list of platforms governed by the new rules (Section 1 (6)). Among others, a new provision in the Media Act ([Federal Act on the Press and other Publication Media, 1981/2020](#), Section 36b) permits courts in proceedings related to the act to directly order hosting service providers (not just media owners!) to remove content from a platform or to publish a verdict on such website, if the media owner is based in another country or cannot be prosecuted for any other reason.

Although some provisions have been criticized as potentially restricting freedom of expression and there

have been fears of a stronger impact on small European players than on global companies (e.g. ARTICLE 19, 2020), the new law represents a first comprehensive attempt to combat hate speech on online platforms. Three platforms have filed a complaint with the Federal Administrative Court because the new law would violate the EU's e-Commerce Directive (European Parliament and Council, 2000). The Federal Administrative Court dismissed the complaint but left open the possibility of an appeal. Meta (Facebook, Instagram) nevertheless adhered to implementing the legal provisions from the very beginning. From day 1, there has been a reporting option for users, and Meta published its first transparency report on time at the end of October. It shows that users objected to a total of over 18,000 pieces of content. Insult and incitement were the most frequently reported offences. A total of around 2,700 deletions are reported in the period from April 1 to September 30, 2021. According to Google's transparency report, YouTube has not had any deletions due to Austrian law. One possible reason for this is probably that YouTube, unlike Facebook or Instagram, does not offer an easy-to-find button to report content. Moreover, a user must cite the particular sections of the law believed to have been violated. TikTok, LinkedIn, Xing, and Pinterest also provided [reports](#). Twitter ignores the legal requirements.

Two years ago, the European Commission against Racism and Intolerance (ECRI) (2020) criticized Austria because of the lack of comprehensive and systematic data on hate speech and hate-motivated violence (even if a few studies are available). Perhaps the quality of the databases changes with the establishment of the [Zentrale Abfragestelle für Social Media und Online-Provider](#) (ZASP; Central Interrogation Service for Social Media and Online Providers) at the Federal Criminal Police Office, which started regular operations in February 2022. In cooperation with platform operators, information about various forms of online hate and crimes such as "dangerous threats," child pornography, and "extortion" should be able to be obtained by the police and judiciary more efficiently and quickly than before. The first partner is Meta; others are to follow in the course of the year.

## 5. Conclusions

The MPM 2022 found the Austrian media system to be basically in good condition. However, the findings also indicate that there is ample room for improvement.

In the **Fundamental Protection** area,

- all political and societal organizations are called upon not only to refrain from but to publicly condemn physical violence, threatening speech, and smear campaigns against journalists.
- These organizations are also urged to support the demands made by numerous NGOs for rules to protect journalists and public watchdogs from abusive lawsuits (SLAPPs).

In the **Market Plurality** area,

- lawmakers should incorporate the changes in the media landscape into media and competition law, with a particular focus on preventing a further increase in cross-media concentration. This is all the more important as horizontal ownership and audience concentration rates are far higher than acceptable from a democratic perspective.
- Moreover, the shortcomings in the provisions on transparency of media ownership (concerning the disclosure of the ultimate ownership structures and some currently existing exceptions to the rules) should be rectified.
- A plural media system must be built on three pillars: public service media, private commercial media, and non-profit community media. Ensuring the financial sustainability of community media and increasing their numbers (for example, according to the number of NUTS 3 regions) must be considered a priority. This is in line with Recommendation CM/Rec(2018)1 of the Committee of Ministers to the Member States on media pluralism and transparency of media ownership (Council of Europe, 2018).

Concerning the **Political Independence** area,

- political actors should refrain from any intervention or attempt to influence media outlets' management policies and editorial decisions. Notably, a new regulation of the appointment procedures of the ORF's Foundation Council members, which restricts governmental interference and partisan political influence, is urgently needed.
- Editorial statutes should be mandatory for all media outlets, and overarching self-regulation instruments (similar to the Press Council but in charge of all sectors) should be established. The ability of such a 'media council' to impose sanctions should be improved.
- The current system of media subsidies should be financially upgraded and revised to support democratic functions of all types of media (including digital native media and with a particular focus on local and regional media), ranging from informing the public and acting as a watchdog to providing a forum for public debate and empowering civic engagement and community building.

- When it comes to state advertising, there needs to be significantly more transparency in allocation criteria and data management.

To promote **Social Inclusiveness**,

- the granting of state subsidies should be related to the existence of safeguards (e.g. corporate policies and editorial statutes) that ensure mandatory quotas for women among executives and in management boards and an adequate representation of persons belonging to minority communities on editorial staffs.
- The ongoing changes in the media environment underline the need for comprehensive political efforts to establish media literacy as an integral part of the mandatory school curriculum. In accordance with the Directive (EU) 2018/1808 of the European Parliament and the Council (2018), additional measures are needed to promote a reflective, creative and self-determined use of media throughout life.
- Considering the spread of fake news and conspiracy theories, the most important national measures are to support fact-checking initiatives, especially carried out by civil society organizations, to promote content moderation systems in newsrooms, and - again - to strengthen media competence in all age groups to be able to tell the difference between disinformation and legitimate criticism.

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## ANNEXE I. COUNTRY TEAM

First name	Last name	Position	Institution	MPM2022 CT Leader
<i>Josef</i>	<i>Seethaler</i>	<i>Deputy Director</i>	<i>Austrian Academy of Sciences, Institute for Comparative Media &amp; Communication Studies</i>	X
<i>Maren</i>	<i>Beaufort</i>	<i>Postdoc researcher</i>	<i>Institute for Comparative Media and Communication Studies (CMC) at the Austrian Academy of Sciences and the University of Klagenfurt</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>Alfred</i>	<i>Grinschgl</i>	<i>Former Managing Director</i>	<i>Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR)</i>
<i>Helga</i>	<i>Schwarzwald</i>	<i>Management</i>	<i>Association of Austrian Community Broadcasters</i>
<i>Daniela</i>	<i>Kraus</i>	<i>General Secretary</i>	<i>Press Club Concordia</i>
<i>Daniela</i>	<i>Zimmer</i>	<i>Legal expert in the Consumer Policy Department at the AK Vienna</i>	<i>Chamber for Workers and Employees, AK Vienna/Viewers' and Listeners' Council ORF</i>
<i>Michael</i>	<i>Holoubek</i>	<i>Professor</i>	<i>Institute for Austrian and European Public Law, Vienna University of Economics and Business</i>

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