

Risk-Based Regulation in the Media Sector: To Measure Is To Know

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Abstract. Recently, in Europe and elsewhere, a trend towards more evidence-based and risk-based regulation has been noticeable. Such an approach ensures that regulation is applied only where it is needed. In this light, the European Commission's strategy for media pluralism has shifted from regulating to monitoring. According to the European Commission, the development of a neutral and objective monitoring mechanism could enhance the auditability of media pluralism. This instrument would equip policy makers and regulatory authorities with the tools to detect and manage societal risks in this area and provide them with a stronger evidentiary basis to define priorities and actions for improving media pluralism within the EU. This paper will elaborate on the instrument that has been developed for such monitoring exercises: the EU Media Pluralism Monitor, which functions like a barometer and starts from a risk-based approach.

Keywords: risk-based regulation, freedom of expression, media pluralism, media pluralism monitor (MPM)

1 Introduction

Recently, in Europe and elsewhere, a trend towards more evidence-based and risk-based regulation has been noticeable. Such an approach ensures that regulation is applied only where it is needed. In this light, the European Commission's strategy for media pluralism, an essential element of the fundamental right to freedom of expression and information,¹ has shifted from regulating to monitoring. During the Barroso I mandate, Commissioner Reding, responsible for Information Society and Media, and Vice-President Wallström, responsible for Institutional Relations and Communication Strategy, launched their "three-step approach" for advancing the debate on media pluralism across the European Union (Rapid Press Releases, 2007). Step 1 was the publication of a Commission Staff Working Paper on Media Pluralism in the Member States of the European Union on 16 January 2007. In this document, the European Commission has emphasized that it would not be appropriate to submit a European Community initiative on pluralism, but at the same time acknowledged a need to closely monitor the situation (European Commission, 2007). Step 2 was an independent study to define and test concrete and objective indicators for assessing media pluralism in the EU Member States. The objective was to create an instrument that de-

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ffects risks to pluralism and shows the underlying causes, so that policy makers can take informed decisions when setting priorities and shaping policies. The goal of this instrument is not to regulate, but rather to monitor and collect data in a more systematic way offering a powerful instrument for guiding policy initiatives towards a more evidence-based and risk-based approach, ensuring that regulation is applied only where there is an actual need, hence, avoiding overregulation. The results of this study, including a prototype for a Media Pluralism Monitor, were presented to the public in June 2009 and are published on the Commission's website (ICRI et al., 2009a). Step 3 envisaged the adoption of a soft law instrument, a Commission Communication on indicators for media pluralism in EU Member States, and a follow up study which would systematically apply the media pluralism indicators to all EU Member States in order to measure the health of Europe's media pluralism. With the change of the Commission's mandate mid-2009, the operationalization of the third step is currently still under consideration (Valcke, 2011). This article will elaborate on the trend towards risk-based regulation and on a risk-based model, the EU Media Pluralism Monitor, for measuring threats to media pluralism in the Member States of the European Union.

2 Better Regulation in Europe

At the EU level, a trend towards 'Better Regulation' or 'Better Lawmaking' has been noticeable for a couple of decades (Commission of the European Communities, 1998; Commission of the European Communities, 1999). Particularly since the beginning of the 21st century, the simplification and improvement of the regulatory environment has been an essential item on the EU agenda (European Commission, 2006). The White Paper on European Governance (Commission of the European Communities, 2001) was adopted as an answer to the increasing loss of confidence of European citizens in the European Union (the so-called democratic deficit) (Commission of the European Communities, 2001a) and dealt with the manner in which this supranational organisation uses the power granted by its citizens (Commission of the European Communities, 2001b). It put forward certain principles which are important to take into account whenever the adoption of regulation is being considered.

One of these principles relates to the question whether (regulatory) action is required. It is very important when an issue arises to consider whether (regulatory) action is required at all, based on the analysis of its impact, costs and benefits. As the European Commission put it: "*Proposals must be prepared on the basis of an effective analysis of whether it is appropriate to intervene at EU level and whether regulatory intervention is needed. If so, the analysis must also assess the potential economic, social and environmental impact, as well as the costs and benefits of that particular approach*" (Commission of the European Communities, 2001b). This principle fits in with trends towards evidence-based and risk-based regulation, which will be discussed in the next section.

3 Assessing Risks as a Basis for the Adoption of Regulation

3.1 Introduction

In order to avoid unnecessary and/or inappropriate regulation, it has increasingly been stressed that, before adopting regulation, the questions ‘whether regulation is necessary’ and ‘what to regulate exactly’ are answered in a carefully considered manner. As the OECD put it in 1995: “*Government intervention should be based on clear evidence that government action is justified, given the nature of the problem, the likely benefits and costs of action (based on a realistic assessment of government effectiveness), and alternative mechanisms for addressing the problem*” (OECD, 1995). Risk-based regulation can be linked with this principle.² In its most recent Draft recommendation on regulatory policy and governance, the OECD encourages regulators to “[a]pply risk assessment, risk management, and risk communication strategies to the design and implementation of regulations to ensure that regulation is targeted and effective” (OECD, 1995). Black defines risk-based regulation as follows: “*In its idealised form, risk based regulation offers a systematic, evidence-based and politically defensible means of targeting resources at the issues and firms that pose the highest risks to the regulator’s objectives*” (Black, 2010a). A risk-based approach to regulation thus implies that regulatory action should be “*proportionate, targeted and based on an assessment of the nature and magnitude of the risks and of the likelihood that regulation will be successful in achieving its aims*” (OECD, 2010).

3.2 Terminology of Risk-Based Regulation

Before we go further, it is important to take a closer look at the terminology used in the context of risk-based regulation: risk, risk assessment, risk management, risk appetite, SMART test, indicator and risk profile.

A risk is the combination of the probability of an event occurring and the possible impact of that event (positive or negative) (ICRI et al., 2009b).

Risk assessment is “*a key analytical tool to identify and assess the extent of a likely hazard and to estimate the probability and consequences of negative outcomes for humans, property or the environment*” (OECD, 2011). In other words, risk assessment refers to a process to determine the probability (high, moderate or low) that an event will occur and the possible impact (high, moderate or low) if this event occurs. The objective of assessing risks is to identify which events are important enough and significant enough to be the focus of management attention (ICRI, 2009b).

Risk management refers to the identification of actions and measures in order to prevent particular risks from occurring and to limit or prevent their consequences if they occur. As the OECD put it “*Risk management refers to the design and implementation of actions and remedies to address risks through a consideration of potential treatments and the selection of the most appropriate course, or combination of courses, of action*” (OECD, 2011). The objective of risk management is to effectively re-

duce uncertainty related to a threat and its associated risk and opportunity, enhancing the capacity to deliver services more efficiently and economically, and to target them whilst taking into account predefined values (such as equity and justice, etc.). In order to realise this objective, risk management needs to be a structured approach and includes a sequence of activities such as risk assessment, and the development of strategies in order to manage risks and to mitigate risks. Ways to address identified risks (risk responses or strategies) include risk transfer, risk treatment, terminating activities and tolerating the risk:

- Transfer the risk: reduce the risk likelihood or impact by transferring or otherwise sharing a portion of the risk. This might be done by conventional insurance or by paying a third party to take the risk in another way. However, most risks will not be fully transferable.
- Avoid the risk: terminate or exit the activities giving rise to the risk (prevention strategies).
- Mitigate or reduce the negative impact of the risk: the greatest number of risks will be addressed in this way. Action is taken to reduce the risk likelihood or impact or both (mitigation strategies).
- Tolerate or accept one, some or all of the consequences of a risk: no action is taken to mitigate risk likelihood or impact. This response suggests that no cost effective response was identified that would reduce the impact and likelihood to an acceptable level or that the inherent risk is already within risk tolerances (coping strategies) (ICRI, 2009).

The whole point of risk management is to find a way of keeping risk at a level with which a company or a community is comfortable. This level is called the 'risk appetite'. It expresses the amount of risk on a broad level that an entity is willing to accept in seeking to achieve its objectives, thus functioning as a guiding post in setting strategy and assessing the relative importance of objectives. What types and level of risk the regulator is prepared to tolerate is the fundamental question in a risk based regime (Black, 2010a). This is a crucial and delicate question, which needs to be considered carefully. Both the probability and the impact of the risks need to be assessed in order to answer this question.

An indicator is a unit of measurement that provides relevant information to compare, to judge and evaluate data. In a risk based framework, indicators highlight trouble zones where actions or measures need to be taken.

The SMART (which is the abbreviation of Specific, Measurable, Achievable/Attainable, Result-oriented and Time-bound) test assesses whether indicators are specific (indicators have a sufficiently precise meaning and direct link with the objective), measurable (they can be expressed in a quantitative or qualitative score), achievable/attainable (data can be obtained at reasonable cost and within reasonable time), result-oriented (reliable border values can be defined on which there is broad consensus) and time-bound (data can be collected frequently enough to inform the progress and influence the decisions) (ICRI, 2009).

Risk profile is the final result after scoring the indicators, within one risk domain. This risk profile highlights the trouble-, follow up- and safe-zones.

3.3 Evaluation of risk-based regulation

Proponents argue that risk-based regulation facilitates robust governance, contributing to efficient and effective use of regulatory resources and delivering interventions in proportion to risk (hence, maximizing the benefits of regulation while minimizing the burdens on regulates by offering ‘targeted’ and ‘proportionate’ interventions) (Rothstein et al., 2006). On the other hand, others argue that there are risks associated with risk-based regulatory regimes. Black identifies these risks as follows: 1/ not all existing or newly emerging risks may be captured (model risk); 2/ the introduction of a risk-based regime implies a necessary change in culture, systems and processes (implementation risk); and 3/ choosing which risks (not) to tolerate (taking into account the political context) may result in being accused of over-regulation or may result in failure (political risk) (Black, 2010a). In any case, the adoption and the design of a risk-based regulatory framework necessitate careful consideration of a complex set of questions, regarding tolerable levels of risk, the identification of the risks that need addressing, the type of indicators that will be used to assess the risks that have been identified and the manner of dealing with high/low risk categories (OECD, 2010). These questions have also been addressed in the study on the EU Media Pluralism Monitor, which is discussed in detail below.

4 Risk-Based Regulation and Media Pluralism

4.1 Introduction

Originally, risk-based regulation was used for matters related to the environment or financial services (Rothstein et al., 2006). More recently, this type of governance has also been adopted in the field of media regulation, more specifically in the field of media pluralism. However, it is important to be aware that risks in this sector diverge substantially from risks in industries such as finance, health, and social security, due to their less quantifiable nature (ICRI, 2009b; Prosser, 2010).

While there is broad consensus in Europe about the importance of media pluralism for democracy and identity formation, there are still widely diverging views on how to regulate the matter. The Member States of the European Union (EU) have different cultural, political, and regulatory traditions – which explains their sometimes contrasting approaches towards media pluralism. Not surprisingly (especially in the light of the failed attempt to harmonize national media concentration rules in the 1990s (European Commission, 1992)), the European Commission has taken a prudent stance on media pluralism in recent years and shifted its strategy for media pluralism from regulating to monitoring (Valcke, 2011). In its Working Document on media pluralism, for example, the European Commission emphasized that it would not be appropriate to submit a European Community initiative on pluralism, but at the same time acknowledged a need to closely monitor the situation (European Commission, 2007). As a result, one area in which EU action is feasible and provides additional value, is the development of a neutral and objective monitoring mechanism, which could enhance the auditability of media pluralism. This instrument would equip policy makers

and regulatory authorities with the tools to detect and manage societal risks in this area and provide them with a stronger evidentiary basis to define priorities and actions for improving media pluralism within the EU. This would ensure a uniform basis for dealing with pluralism issues and provide a more objective basis for the often heated political and economic arguments regarding this issue.

As part of its three-step approach for advancing the debate on media pluralism across the European Union, the European Commission ordered a study with the aim of developing such a robust and multi-faceted monitoring system. This paper will elaborate on the instrument that has been developed for such monitoring exercises: the EU Media Pluralism Monitor, which functions like a barometer and starts from a risk-based approach. In this regard, the MPM distinguishes itself from existing monitoring mechanisms (see e.g. IREX Media Sustainability Index or Dutch Media Monitor). The preference for such an approach over alternative systems based on, for instance, achievements, objectives, best practices or benchmarks, has to do with the purpose for which the MPM was developed – namely to find approaches that will “*define and help manage the societal threat to pluralism*” (Valcke, 2011). And as already indicated earlier, it also links to the broader regulatory trend towards evidence-based and risk-based regulation, which fits within the European Union’s regulation discourse of recent years. At the stakeholder workshop in June 2009 where the MPM was presented, the European Commission referred to the advantages of risk-based regulation, in particular that it seeks to ensure that regulation is applied only where it is needed (de Cockborne, 2009).

4.2 Scope of the Risk-Based Instrument: Diagnostic versus Prescriptive Tool

The aim of the study commissioned by the European Commission was to develop a tool for “measuring” and “evaluating” media pluralism in each Member State, based on a methodology for risk assessment, in order to identify, measure and/or evaluate in an objective way the trends and developments in the media sector and to define priorities and actions for improving media pluralism within each Member State and within the EU. In other words, the focus of the measuring instrument had to be on its “signaling” function. Its goal was to provide a snapshot of a situation at a given moment in time, not solve threats within a given timeframe. This does not mean that the instrument cannot be used by Member States – on a voluntary basis – as a tool that allows indicating possible “remedies”, i.e. actions that the Member State might take in order to mitigate or neutralize the identified risk.

The MPM facilitates the collection of empirical data on various risks for media pluralism given the particular economic, socio-demographic and legal situation in each Member State. In other words, the MPM is designed to accommodate the diverging profiles of media landscapes throughout the EU by considering differences in market size, media development, cultural and regulatory traditions, and takes into account the impact that underlying realities such as population size and average income levels have on the level of media pluralism sustainable by commercial means.

The MPM does not prescribe specific remedies or actions for particular risk profiles. Thus, while it urges the application of the same analytical framework in all

Member States to ensure comparability of the results obtained, it is not a call for harmonisation of policies in this area. Given the far-reaching socio-cultural, economic and political importance of the media for the functioning of European democracies, the sensitive matter of how to protect media pluralism is ultimately left to the discretion of Member States and their authorities who, in defining their nation's risk appetite, are free to consider market-based, as well as regulatory, approaches to diversity. Member States that are prepared to accept a higher level of risk, will favor minimal regulation or reliance on the market, while those with a very low, or zero, tolerance risk appetite will favor a more extensive regulatory response. Despite being cast in dichotomous terms, policy makers tend to use both types of approaches simultaneously depending upon the type of media involved, their relationships to government, and the degree to which regulation is appropriate and effective in pursuing media and pluralism goals.

By bringing together a host of previously disparate concerns to offer a multi-faceted approach to media pluralism, the MPM provides decision-makers both in policy and in industry with the means to develop a wider and stronger evidentiary basis for defining priorities and actions in this important area.

4.3 Development and Structure of the MPM

The MPM is characterized as a risk-based analytical framework using six “risk domains,” three “risk areas,” and three types of indicators (a total of 166 quantitative and qualitative indicators) that can be used to create a unique, multi-dimensional media pluralism “risk profile” for each State.

Indicators

The MPM's aim is to assess risks for media pluralism in the EU Member States and to identify threats to such pluralism based on a set of indicators, covering pertinent legal, economic and socio-cultural considerations:

- Legal indicators (L): indicators on the legal and regulatory context, assessing the presence and effective implementation of policies and legal instruments that promote media pluralism; these include a wide range of measures, going beyond the scope of ownership restrictions and ranging from state regulations and state policy measures toward co-regulation to self-regulatory instruments (at both the sector and company level);
- Socio-demographic indicators (S): indicators on the socio-demographic situation, assessing the range of media available to citizens in different Member States and the socio-demographic factors having an impact on that range (including, for instance, geographic factors or the existence of professional associations of media workers/journalists);
- Economic indicators (E): indicators on the economics of the media, assessing the number of media companies in a particular Member State (or within a linguistic region within a Member State), the number of newspapers and magazines per head of population, comparable indicators in relation to electronic media, together with ratios or other relevant indicators

that would convey an understanding of the health of the sector, including profitability.

The three sets of indicators were compiled in a general inventory. On the basis of the general inventory, each individual indicator was subjected to the SMART-test (*supra*). From the original set of indicators, only 166 remained.

The risk-based approach had a fundamental impact on the design of the MPM by shaping the reflection on the formulation of indicators. The ways in which indicators are formulated, measured, and evaluated always start from the question: What situation could possibly represent risks or threats to media pluralism? This does not imply that opportunities for enhanced media pluralism, resulting for instance from new technologies, have been disregarded. The MPM includes indicators on, for example, broadband coverage (which can be seen as offering a new distribution channel) and on-demand services (which increase the scope for diversity and narrow-interest content). These indicators have also been formulated in terms of threats – low broadband coverage representing high risk, for instance, which in this case is synonymous to a lost opportunity.

Risk Areas

In order to facilitate the integration of the various indicators in the risk framework, a common structure for the development of the respective sets of indicators was agreed upon. This common structure was based on three areas of risk assessment corresponding with the following levels of the media value chain:

- Supply (S), i.e. the structures, processes, and outcomes of the production and packaging of content for various media types;
- Distribution (D), i.e. any mechanism, means or network used for distributing media content to the public, such as, in the case of print media, individual distribution systems, retail points and postal services, or in the case of electronic media, electronic communication networks, services and associated facilities;
- Use (U), i.e. the abilities and skills of citizens that allow them to access and actually consume or actively use media, taking into account the notion of accessibility to the media by all segments of society and looking at issues such as media literacy and digital skills, and the availability of subtitling and audio-description services, etc.

Boarder Values

For each individual indicator, border values have been defined. These border values are measurement units and are expressed quantitatively (numbers, percentages, fractions, etc.) or qualitatively (assessments). Based on an analysis of national and European policy documents and academic literature to determine what is commonly perceived as a positive or negative situation for media pluralism, border values have been divided into three ranges or zones, reflecting high risk, moderate risk, or low risk. These three ranges are associated with the colors red, orange, and green respec-

tively (these colours will be displayed automatically), to produce the effect of a traffic light.

Each indicator has different, individually defined border values. This is necessary as not every level of measurement of the indicator corresponds with the same risk level (high, moderate or low): For a certain indicator, a score in the range of 0-20% could correspond with a high risk level while, for another indicator, it could correspond with a low risk level.

- High risk (associated with the color red in the MPM): Threats to media pluralism occur and immediate actions or measures are required in the short term.
- Moderate risk (associated with the color orange in the MPM): Immediate follow-up is necessary, actions or measures are possibly required, depending on the range between the orange and the red zone.
- Low risk (associated with the color green in the MPM): Safe zone, no immediate follow-up is required, no immediate actions are required.

Please note that if data cannot be obtained, the user of the MPM can leave the score at the default result 'data not available', and the colour next to the score will remain blue.

The legal indicators have the following border values:

- Green/Safe zone = 'Existing' (i.e. regulatory safeguards exist and are effectively implemented);
- Orange/Follow up-zone = 'Existing, non-effectively implemented' (i.e. regulatory safeguards exist, but there are major implementation problems);
- Red/Trouble zone = 'Non-existing' (i.e. regulatory safeguards are not in place).

The economic and socio-demographic indicators have a variety of border values, either of a qualitative or of a quantitative nature.

Risk Domains

The 166 indicators used to assess risks for media pluralism in a Member State are grouped into the following risk domains: pluralism of media ownership and/or control; pluralism of types and genres; cultural diversity in the media; political pluralism in the media; and diversity of local and regional interests or geographical pluralism. These domains refer to those dimensions of media pluralism that are most commonly accepted as its constituting elements in policy documents and in the academic literature. A sixth risk domain, the basic domain, consists of indicators assessing general factors that have an important impact on pluralism and that are not confined to a single aspect of media pluralism, notably freedom of expression, independent supervision and media literacy.

As indicated in Table 1, within every risk domain, relevant risks were selected on the basis of a combination of traditional methods of risk identification (objectives-based) and risk assessment (educated opinions and literature review) with sector-specific methods:

	Risks
	Basic Domain
B1	Freedom of speech and related rights and freedoms are not sufficiently protected
B2	Insufficiently independent supervision in media sector
B3	Insufficient media (including digital) literacy
	Pluralism of Media Ownership & Control
O1	High ownership concentration in terrestrial television
O2	High ownership concentration in radio
O3	High ownership concentration in newspapers
O4	High ownership concentration in Cable/Sat/ADSL/TV
O5	High ownership concentration in magazines
O6	High ownership concentration in internet content provision
O7	High ownership concentration in book publishing
O8	High concentration of cross-media ownership
O9	High vertical concentration
O10	Lack of transparency in ownership structures
	Pluralism of Media Types & Genres
T1	Lack of/under-representation of/dominance of media types
T2	Lack of/under-representation of/dominance of media genres
T3	Lack of sufficient market resources to support range of media
T4	Lack of sufficient resources to support public service media
T5	Insufficient engagement of PSM in new media
T6	Insufficient attention paid to public participation
	Political Pluralism in the Media
P1	Political bias in the media
P2	Political bias in the media during election periods campaigns
P3	Excessive politicisation of media ownership/control
P4	Insufficient editorial independence
P5	Insufficient independence of PSM
P6	Insufficient pluralism of news agencies
P7	Insufficient pluralism of distribution systems
P8	Insufficient citizen activity and political impact in online media
	Cultural Pluralism in the Media
C1	Insufficient media representation of European cultures
C2	Insufficient media representation of national culture
C3	Insufficient proportion of independent production
C4	Insufficient proportion of in-house production
C5	Insufficient representation of world cultures
C6	Insufficient representation of the various cultural and social groups in mainstream media content and services
C7	Insufficient representation of the various cultural and social groups in

	PSM
C8	Insufficient system of minority and community media
C9	Insufficient representation of different cultural and social groups in HR in the media sector
C10	Limited accessibility by disabled people
	Geographic Pluralism in the Media
G1	High centralisation of the national media system
G2	Insufficient system of regional and local media
G3	Insufficient representation of regional and local communities in media content and services
G4	Insufficient representation of regional and local communities in HR in the media sector
G5	Dominance of a limited number of information sources for local issues
G6	Insufficient access to media and distribution systems due to geographic factors

Table 1. Inventory of Risks

In the end, all the indicators have been connected with one of the identified risks. Every indicator was linked to one risk only (to avoid double measurements, which would blur results). For each risk, at least one indicator was identified (although most risks have been combined with a cluster of economic, socio-demographic and legal indicators).

By means of an illustration, table 2 contains an overview of the risks and corresponding indicators for the risk domain ‘pluralism of types and genres’.³

N°	ID	RISK	TYPE INDICATOR	AR EA	KEY INDICATOR
145	T1.1	T1 Lack of/under-representation of/dominance of media types	E	D	Audience parity between the TV channels of commercial broadcasters and of PSM
146	T1.2	T1 Lack of/under-representation of/dominance of media types	E	S	Financial parity between the TV channels of commercial broadcasters and of PSM
147	T1.3	T1 Lack of/under-representation of/dominance of media types	E	D	Audience parity between the radio channels of commercial broadcasters and of PSM
148	T1.4	T1 Lack of/under-representation of/dominance of media types	E	S	Financial parity between the radio channels of commercial broadcasters and of PSM

149	T1.5	T1 Lack of/under-representation of/dominance of media types	E	U	Percent of GDP per capita required for an individual to obtain TV and radio reception, newspaper subscription, magazine subscription, or Internet Service
150	T1.6	T1 Lack of/under-representation of/dominance of media types	L	D	Regulatory safeguards for the distribution of public interest channels on cable, DSL and/or satellite platforms
151	T2.1	T2 Lack of/under-representation of/dominance of media genres	E	S	Ratio of news/public affairs, education and entertainment programmes on terrestrial TV to total programmes on terrestrial TV
152	T2.2	T2 Lack of/under-representation of/dominance of media genres	E	S	Ratio of news/public affairs, education and entertainment programmes on radio to total programmes radio
153	T2.3	T2 Lack of/under-representation of/dominance of media genres	E	S	Ratio of news/public affairs, education and entertainment magazines to total number of magazines
154	T2.4	T2 Lack of/under-representation of/dominance of media genres	E	S	Ratio of Cab/Sat/ADSL-TV channels dedicated to news/public affairs, education and entertainment to total number of Cab/Sat/ADSL-TV channels
155	T2.5	T2 Lack of/under-representation of/dominance of media genres	L	S	Regulatory safeguards for the presence of a diversity of media genres on the channels and services of private (commercial and non-profit) audiovisual media
156	T2.6	T2 Lack of/under-representation	L	S	Regulatory safeguards for the public's access to

		of/dominance of media genres			major events on free television
157	T2.7	T2 Lack of/under-representation of/dominance of media genres	L	S	Regulatory safeguards for short news reporting on events of high interest in case of exclusive broadcast rights
158	T2.8	T2 Lack of/under-representation of/dominance of media genres	L	S	Regulatory safeguards for a varied and pluralistic offer on PSM channels and services
159	T3.1	T3 Lack of sufficient market resources to support range of media	E	U	Ratio of consumer spending on different media per capita to GDP per capita
160	T3.2	T3 Lack of sufficient market resources to support range of media	E	U	Ratio of advertising expenditures per capita to GDP per capita
161	T4.1	T4 Lack of sufficient resources to support public service media	L	S	Regulatory safeguards for the objective and independent allocation of (adequate, consistent and sufficient) resources to PSM
162	T5.1	T5 Insufficient engagement of PSM in new media	L	S	Regulatory safeguards for the engagement/presence of PSM in/on new media
163	T5.2	T5 Insufficient engagement of PSM in new media	S	S	Proportion of employees dedicated to new media services
164	T5.3	T5 Insufficient engagement of PSM in new media	S	S	Amount of financing invested in new media by the PSM
165	T6.1	T6 Insufficient attention paid to public participation	S	S	Proportion of online media offering space for publicly available comments and complaints

Table 2. Overview of the risks and corresponding indicators for the risk domain ‘pluralism of types and genres’

4.4 Interpretation of the results

When the different indicators in the six risk domains have been scored, the results will be represented in a report that looks like a “barometer” and which shows a country’s risk assessment profile for a particular risk domain (see figure 1).

RISK	INDICATOR	TVI	ABI	SCORE	Comment
01 High ownership concentration in terrestrial television	01.1	Ownership concentration in terrestrial television (horizontal)	E S	3%	
	01.2	Audience concentration in terrestrial television	E D	5%	
	01.3	Regulatory safeguards against high concentration of ownership and/or control in television (horizontal)	L S	existing, non effective	
02 High ownership concentration in radio	02.1	Ownership concentration in radio (horizontal)	E S	4%	
	02.2	Audience concentration in radio	E D	5%	
	02.3	Regulatory safeguards against high concentration of ownership and/or control in radio (horizontal)	L S	existing and effective	
03 High ownership concentration in newspapers	03.1	Ownership concentration in newspapers (horizontal)	E S	2%	
	03.2	Readership concentration in newspapers	E D	5%	
	03.3	Regulatory safeguards against high concentration of ownership and/or control in newspapers (horizontal)	L S	existing, non effective	
04 High ownership concentration in Cable/Sat/ADSL-TV	04.1	Ownership concentration in Cable/Sat/ADSL-TV (horizontal)	E S	data not available existing existing and effective	

Fig. 1. Example of score sheet

These results have to be interpreted with great care. For example, it is important to note that the indicator type should be considered carefully before drawing conclusions from negative (red) scores for individual indicators. This is especially relevant for the legal indicators: a critical score on a legal indicator assumes particular relevance in those situations where the corresponding economic and/or socio-demographic indicators for the same risk have also received a negative score (as a rule of thumb we suggest at least 50% red or 75% orange). In short, users of the MPM should not infer an inevitable need for regulatory intervention on the basis of the red score of a single legal indicator alone. Drawing such a conclusion prematurely in a situation where the economic and/or socio-demographic context is not problematic from the perspective of media pluralism, indicated by a majority of positive (green) scores obtained for the corresponding indicators, may lead to overregulation. In other words, the legal indicators fulfill a ‘serving role’ in the sense that the absence or non-effectiveness of regulatory safeguards for media pluralism should be considered most significant if they occur in conjunction with actual or imminent risks caused by economic or socio-demographic factors. Hence, users should contrast the scores for legal indicators with those of related economic and/or socio-demographic indicators, before drawing conclusions. They should keep in mind that the absence of regulatory safeguards should not necessarily be remedied by the adoption of state regulations, when related economic and/or socio-demographic indicators give no reason to do so, i.e. in case the scores for the latter indicators display only low (or even medium) risks. Moreover,

they should be aware that the presence of regulatory safeguards does not automatically 'release' the Member State from taking a closer look at medium or high risks in relation to economic and/or socio-demographic indicators. The combination of medium or high risks for economic and/or socio-demographic indicators with low risks for legal indicators may be a sign that the regulatory safeguards in place do not address the appropriate problems or do not address these problems in the most effective or adequate way. It could also mean that the indicators in question effectively address different problems. This is what the study calls the *ex post* interpretation or profiling.

In addition, it should be noted that the MPM offers the possibility to do an *ex ante* profiling before starting the actual scoring of indicators with regard to the population size and GDP/capita. Given the important impact of the size and wealth of a nation on its media market structures and regulatory possibilities to protect and promote media diversity, the MPM offers the possibility to account for the population size of the country concerned (large versus small) and its GDP/capita (high versus low) before starting the actual scoring of indicators. This will result in an automatic adjustment of border values for a number of (predominantly economic) indicators of risks of concentration and limitations to the range of media types for these nations. When a nation is, for instance, designated as small and low GDP/capita, the border values of the indicators of concentration and media range threats should be increased by one-third (thus accounting for the fact that their small size and low GDP/capita would be expected to produce a greater level of concentration and a lower range of media). Thus, the value should be multiplied by 1.33 (increasing the border values for green, yellow, red).

4.5 Evaluation of the MPM

Considerations of practicability, transparency and user-friendliness led to the decision to give equal weight to all 166 indicators when calculating average scores. First of all, giving more weight to certain indicators would lead to complex discussions about the selection of the indicators that should be given more weight in the calculation of average scores. Second, such a selection would have to be done at Member State level since the situation may differ from Member State to Member State. The latter would undermine the objective of having a common monitoring tool for the EU and would also open the door for manipulation. A system of equal weight for all indicators ensured, in the view of the study team, the largest possible degree of transparency and, ultimately, comparability of scores, at the stage of measuring the indicators. However, this equal weight approach has been criticised by the sector.

In order to deal with this criticism, mathematical modeling could be applied. Mathematical modeling would allow to differentiate between and to attribute a different weight to the 166 indicators. A mathematical model would determine which indicator or combination of indicators would be more important for the safeguard of media pluralism. Or, in other words, the model could indicate which indicator or set of indicators would represent more risks or threats to media pluralism than others. For example, in the MPM, legal indicators were given the same weight as the economic and socio-demographic indicators. Consequently, when no regulatory safeguards exist,

this may cause a negative ('high risk') average score, even though the related economic and/or socio-demographic indicator(s) display only low or medium risks. In some cases, this could wrongly send out the signal that regulation is required under all circumstances and could possibly result in rewarding states simply for having regulation in place even if this regulation is disproportionate to the problem, no longer adequate and perhaps even stifling innovation. When the MPM was developed, a technical solution to overcome this problem was explored; taking into account the type of indicator in the calculation of average scores, in such a way that medium or high risk scores for legal indicators would only be integrated in the calculation in cases where the related economic and/or socio-demographic indicator(s) were also displaying a medium or high risk score. Unfortunately, such encoding turned out to be technically unfeasible. Moreover, it seemed doubtful whether the exclusion of negative scores for legal indicators from the calculation of average scores would be appropriate in all circumstances, as this would demand a precise match between the problems addressed by the regulatory safeguards under scrutiny, on the one hand, and those assessed by the economic and/or socio-demographic indicators, on the other hand; which often cannot be assumed. It was therefore decided to stick to the system of equal weight for all indicators, and instead put up a warning sign for users, urging prudence when drawing conclusions from negative scores for legal indicators.

5 Concluding Remarks: towards a MPM 2.0

Notwithstanding the fact that at first sight risk-based regulation might not be the obvious choice to guarantee the protection of a basic right, the monitor provides a powerful tool to improve the auditability of media pluralism – to map the risks – across the Member States, and to provide decision-makers both in policy and in industry with the means to develop a wider and stronger evidentiary basis for proactively defining priorities and actions in this important area – rather than having to assess the damage afterwards. Whereas risk regulation techniques might not be used in the same way as in sectors where risks are much more quantifiable (e.g. the financial sector), this does not exclude the media sector, or any other sector where human rights are at stake, from their potential scope of application.

To conclude, it must be noted again that risk based frameworks are very complex by nature, since a multifaceted set of elements must be taken into account. This also implies that such frameworks must be evaluated on a regular basis and must be adapted if necessary. With regard to the Media Pluralism Monitor it has been noted that the fact that indicators have been attributed an equal weight when calculating the average scores might be subject to improvement in the future. Research into whether mathematical modeling could be a potential remedy would be valuable in this context.

REFERENCES

- Beck, U. (2006). Living in the world risk society. *Economy & Society*, vol. 35, no. 3, 329-345.
- Black, J. (2010). The role of risk in regulatory processes. In R. Baldwin et al. (Eds.). *The Oxford handbook of regulation*, Oxford: Oxford University Press, 302-348.
- Black, J. (2010). Risk based regulation. in: Legal Services Board, *The future of the legal services: emerging thinking*, 2010, London.
- Commission of the European Communities (1998). Commission report to the European Council: Better lawmaking 1998 A shared responsibility, COM (1998) 715 final.
- Commission of the European Communities (1999). Commission report to the European Council: Better lawmaking 1999, COM (1999) 562 final.
- Commission of the European Communities (2001a). *European Governance – A White Paper*, COM (2001) 428 final.
- Commission of the European Communities (2001b). Communication from the Commission ‘Simplifying and improving the regulatory environment’, COM (2001) 726 final
- de Cockborne, J.E. (2009). Opening Remarks at the Stakeholder Workshop of the Independent Study on Indicators for Media Pluralism in the Member States – Towards a Risk-Based Approach”, Brussels, June 8, 2009.
- Dutch Media Monitor, <http://www.mediamonitor.nl/>.
- European Commission (1992). Green Paper on Pluralism and Media Concentration in the Internal Market: An Assessment of the Need for Community Action, Commission Green Paper, COM (92) 480 final.
- European Commission (2007). Commission Staff Working Paper: Media Pluralism in the Member States of the European Union, SEC (2007) 32.
- European Commission (2006). Better regulation: simply explained, retrieved from http://ec.europa.eu/governance/better_regulation/documents/brochure/br_brochure_en.pdf.
- European Court of Human Rights (1976). *Handyside v UK*, 7 December 1976.
- ICRI et al. (2009a). Indicators for Media Pluralism in the Member States: Towards a Risk-Based Approach,” Final Report and Annexes: User Guide, MPM, Country Reports (Brussels: European Commission, 2009), accessed May 30, 2011, http://ec.europa.eu/information_society/media_taskforce/pluralism/study/index_en.htm.
- ICRI et al. (2009b). Indicators for Media Pluralism in the Member States: Towards a Risk-Based Approach - Final Report, retrieved from http://ec.europa.eu/information_society/media_taskforce/doc/pluralism/study/final_report_09.pdf.
- IREX Media Sustainability Index, <http://www.irex.org/msi/>.
- OECD (1995). Recommendation of the Council on improving the quality of government regulation, retrieved from

<http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=128&InstrumentPID=124&Lang=en&Book=False>.

OECD (2010). Risk and regulatory policy: Improving the governance of risk, retrieved from http://www.oecd.org/document/60/0,3343,en_2649_34141_44840828_1_1_1_1,00.html.

OECD (2011). Draft recommendation on regulatory policy and governance, retrieved from <http://www.oecd.org/dataoecd/49/43/48087250.pdf>.

Prosser, T. (2010). Risk and regulation: one size doesn't fit all. *Risk & Regulation*, Autumn 2010, 11.

Rapid Press Releases (2007). Media pluralism: Commission stresses need for transparency, freedom and diversity in Europe's media landscape, IP/07/52.

Rothstein, H. et al. (2006). A theory of risk colonization: the spiraling regulatory logics of societal and institutional risk. *Economy and Society*, vol. 35, no. 1, 91-112.

Valcke, P. (2011). A European Risk Barometer for Media Pluralism: why assess damage when you can map risk? *Journal of Information Policy*, vol. 1, 185-216

ENDNOTES

¹ European Court of Human Rights, *Handyside v UK*, 07.12.1976, para. 49: "*Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10 (Art. 10-2), it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'*".

² For an extensive overview and analysis of risk-based regulation, cf. OECD, 2010.

³ N: Number of the line where the indicator is listed in the 'basic data sheet'. ID: Unique ID-number for the indicator, consisting of the combination of a letter (referring to the risk domain) and two numbers, the first of which refers to the risk number (within the risk domain) and the second to the indicator number (within that risk). Type: Type of indicator, which can be legal (L), socio-demographic (S) or economic (E). (Risk) Area: Supply (S), distribution (D), use (U). Key indicator: Description of the indicator.