1. EU and media policy: conceptualising media pluralism in the era of online platforms. The experience of the Media Pluralism Monitor

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1 INTRODUCTION

Starting the Handbook with an analysis of media pluralism clarifies our conclusion that this is the most fundamental target for any principled and relevant European media law and policy. However, media pluralism is, at the same time, one of the keys and one of the most complex concepts of contemporary media policies. At the level of European Union law and policy, media pluralism is recognised as one of the core values on which the European Union is founded.¹ It is seen as an indispensable condition for exercising citizenship and fostering participation in a democratic society by enabling media to fulfil their role in providing complete, balanced, and accurate information, and holding power to account.² For this reason, media pluralism is also one of the components examined under the renewed and deepened EU rule of law monitoring mechanism, as a sort of indicator of the health of a given democracy.³

In effect, all EU contemporary democracies acknowledge the importance of ensuring a plural media environment. Freedom of expression and its corollaries of freedom of the media and media pluralism are considered cornerstones of the rule of law and preconditions for a sound political debate. As stated in the Recommendation (2018) 1 of the Council of Europe on media pluralism and transparency of media ownership, they “ensure the availability and accessibility of diverse information and views, on the basis of which individuals can form and express their opinions and exchange information and ideas”.⁴

While undoubtedly acknowledged as a policy objective and widely agreed amongst academics and policymakers that media pluralism is a democratic value essential for the integrity of the democratic discourse and procedures, the definition of media pluralism itself is debated and has never been firmly established. This is understandable since it reflects the complexity

¹ Charter of Fundamental Rights of the European Union, Article 11; Treaty on European Union, Articles 2 and 6. Free and pluralist media reinforces the principle of democracy on which the Union is founded.

² European Parliament resolution of 3 May 2018 on media pluralism and media freedom in the European Union (2017/2209(INI)).

³ European Commission, *Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, Strengthening the rule of law within the Union – A blueprint for action* (COM/2019/343 final).

⁴ Council of Europe, *Recommendation CM/Rec(2018)1 of the Committee of Ministers to Member States on Media Pluralism and Transparency of Media Ownership*.

and volatility of the media environments, which are now being profoundly affected by the processes of digitalisation and platformisation.⁵

The Media Pluralism Monitor (MPM) is the EU-wide instrument that has operationalised the concept of media pluralism into areas, indicators, and variables that reflect principles against which to assess the state of play of pluralism in a given country.⁶ The MPM has been implemented since 2013 by the Centre for Media Pluralism and Media Freedom (CMPF) of the European University Institute in Florence. It is co-funded by the EU as an independent research and monitoring instrument. As such, its results are also feeding into the Commission's actions on media pluralism and freedom, set out in the European Democracy Action Plan and in the Media and Audiovisual Action Plan.⁷ In order to remain relevant in ever changing times and to evaluate the impact of the ongoing digital transformation on pluralism, the MPM is continuously being updated. Major advancements to the tool, concerned with the digital environment, have been carried out in 2019 and are carefully thought out so as not to downplay or overstate risks posed by the digital environment while balancing them with the risks that have been already acknowledged as regards legacy media.

This chapter presents the changes and challenges in defining and operationalising media pluralism concept, based on the recent MPM experience. The analysis is done within the framework of the MPM logic and its holistic understanding of the phenomenon, which takes into account both the changing practice and the regulatory/policy responses which promote certain standards at the EU level. The following sections first describe the dimensions and perspectives in conceptualising media pluralism. Then, the scope and the methodology of the MPM is discussed, more specifically the evolution of areas in the Monitor as a result of digital transformation and related trends. While carrying out this analysis, the chapter aims to propose a redefinition of the concept of 'media pluralism' taking into account the technological development, the rapid rise of digital platforms intermediating the online content, and the recent structural changes in the media sector.⁸

⁵ Thomas Poell, David Nieborg, José van Dijck, 'Platformisation' (2019) 8(4) Internet Policy Review, DOI: 10.14763/2019.4.1425.

⁶ The Media Pluralism Monitor has been first conceived by KU Leuven–ICRI, 'Independent Study on Indicators for Media Pluralism – Towards a Risk-Based Approach' (European Commission 2009). See also Peggy Valcke, Miklós Sükösd and Robert G Picard (eds), *Media Pluralism and Diversity: Concepts, Risks and Global Trends* (Palgrave Macmillan 2015).

⁷ European Commission, *European Democracy Action Plan* (COM(2020) 790 final); and European Commission, *Europe's Media in the Digital Decade: An Action Plan to Support Recovery and Transformation* (COM/2020/784 final).

⁸ This chapter builds on the Media Pluralism Monitor experience by the Centre for Media Pluralism and Media Freedom. See <<https://cmpf.eui.eu/mpm2020-results/>>. It also develops Elda Brogi, 'The Media Pluralism Monitor: Conceptualizing Media Pluralism for the Online Environment' [2020] El profesional de la información e290529.

2 THE CHALLENGES IN DEFINING THE CONCEPT OF MEDIA PLURALISM

Historically, approaches to defining and operationalising the concept have varied in academic literature, in policies and across different countries. From the “marketplace of ideas”⁹ of political liberalism, developed in the US, to the definition based on the notion of “public sphere”,¹⁰ the latter being the “metaphor” adopted by most EU member states, by the Council of Europe, and, in the end, by the European Union as well.¹¹ These models are based on different normative stances: the first one is founded on the liberal approach that the free market will provide room for competing free speech, and therefore focuses on competition and freedom of choice¹² amongst different competing voices; the second “emphasizes a broader defence of ‘principled pluralism;’ an attempt to serve the society in its entirety with various political views and cultural values”.¹³ These different approaches lead to partially different regulatory policies to preserve and guarantee media diversity and plurality: “the competition or market approach, endorsing economic regulation to prevent market failure, and the interventionist or public regulation approach”, involving positive actions by the state and a media policy that aims to boost the conditions for a plural environment and a plural political debate.¹⁴ As a sort of intersection of the two approaches, amongst all the interpretation of the notion of media pluralism, the one that focuses on diversity and transparency of media ownership has been the most exploited by policymakers. For many years and for many authors, media pluralism has meant just (external) plurality of ownership: concentration in the media market, or even a potential concentration in a market in which the operators share scarce resources and that naturally evolves towards oligopoly or monopoly, has been seen as a risk for the democratic debate as potentially limiting the diversity of voices offered by the market itself. In parallel, transparency of media ownership acquired importance as an instrument to evaluate, on one hand, the effective concentration of the market and, on the other, to unveil vested interests of media owners and potential bias in the editorial line of a media outlet.

Many are the different nuances in which the term media pluralism has been interpreted, mostly in the context of the European “public sphere” experience: while, as mentioned, the most exploited perspective focuses on the levels of concentration of media markets, others are the interpretations ranging from those stressing the importance of fair information and access to media during electoral periods, to those that emphasise fair representation of various social groups in the media contents and in the media environment; from those stressing the impor-

⁹ “Best test of truth is the power of the thought to get itself accepted in the competition of the market”. Dissenting opinion Justice Holmes in the US Supreme Court case *Abrams v. United States* (1919).

¹⁰ Jürgen Habermas, *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society* (MIT Press 1991).

¹¹ Council of Europe, *supra* note 4; and Commission of the European Communities, *Commission Staff Working Document, Media pluralism in the Member States of the European Union* (SEC(2007) 32).

¹² “The first approach equates diversity with freedom of choice and defends the viewpoint that diversity is best achieved when people can freely enter the ‘marketplace of ideas’ without any governmental constraints, a concept based upon classical economic market theory”. KU Leuven–ICRI, *supra* note 6.

¹³ *Id.*

¹⁴ *Id.*

tance of the guarantee of free press and an enabling environment for journalism, to those that consider the notion of pluralism as linked with the notion of public service media.

More recently, the notion of media pluralism in its traditional meanings has been, nonetheless, challenged as a principle and a policy goal, also due to the technological developments.¹⁵ Defining media pluralism in the age of new media services, of the Internet, of the World Wide Web, and of social media is proven as being a true challenge scholars and policymakers currently face. While information abundance has sparked an initial optimism as new technologies were allowing cheap and universal systems to disseminate any kind of information, the consolidation of (big) companies as intermediaries of the information and the way these platforms operate as gatekeepers¹⁶ of online information have sparked criticism on how the digital environment can be effectively open and plural and whether the democratic discourse really benefits from it.¹⁷ Online platforms prioritise certain content types and sources and personalise the offer to an individual user which increasingly affects information choices.¹⁸ As there are only a few leading platforms operating globally, the questions arise on the impact they may have on external plurality (platform market concentration and news media viability in relation to platform market dominance), on the internal diversity (content moderation, ranking, and recommendation systems), and on exposure diversity or the extent to which users make information choices autonomously today.

Against this background, a re-interpretation of the sense and meaning of media pluralism is necessary, which takes into account the specificities of the digital environment, starting from the assumption that, in this context, the scarce resource is the attention of the user.¹⁹ First of all the validity of the notion of “marketplace of ideas” and the logic of the free speech (and “counter-speech”), so rooted in the US interpretation of the First Amendment, seems to be particularly ineffective in this new context.²⁰ In an online environment, which is increasingly relying on personalised news recommenders, there is a concern that citizens are exposed mainly to content which reinforces or confirms their previously formed views (so-called

¹⁵ Karol Jakubowicz, ‘New Media Ecology: Reconceptualizing Media Pluralism’ in Peggy Valcke, Miklós Sükösd and Robert G Picard (eds), *Media Pluralism and Diversity: Concepts, Risks and Global Trends* (Palgrave Macmillan 2015).

¹⁶ Elia Powers, ‘My News Feed is Filtered?’ (2017) 5(10) *Digital Journalism* 1315. DOI: 10.1080/21670811.2017.1286943.

¹⁷ Martin Moore and Damian Tambini, *Digital Dominance: The Power of Google, Amazon, Facebook and Apple* (OUP 2018); Pier Luigi Parcu, *New Digital Threats to Media Pluralism in the Information Age* (Working Paper, EUI RSCAS, 2019/19, Centre for Media Pluralism and Media Freedom (CMPF), European University Institute).

¹⁸ Natali Helberger, Kari Karppinen, Lucia D’Acunto, ‘Exposure Diversity as a Design Principle for Recommender Systems’ (2018) 21(2) *Information, Communication & Society* 191. DOI: 10.1080/1369118X.2016.1271900.

¹⁹ Michael H Goldhaber, ‘The Attention Economy and the Net’ (1997) *First Monday* 2(4) <<https://journals.uic.edu/ojs/index.php/fm/article/view/519>> accessed 5 January 2021. Tim Wu, *The Attention Merchants: The Epic Struggle to Get Inside Our Heads* (Atlantic Books 2017).

²⁰ Philip M Napoli, *Social Media and the Public Interest: Media Regulation in the Disinformation Age* (Columbia University Press 2019). Alessandro Morelli and Oreste Pollicino, ‘Metaphors, Judicial Frames and Fundamental Rights in Cyberspace’ (Social Science Research Network 2019) SSRN Scholarly Paper ID 3422946 <<https://papers.ssrn.com/abstract=3422946>> accessed 4 January 2021.

“filter bubbles” or “echo-chambers”),²¹ while they are progressively²² less exposed to content of general public interest or, in any case, content that is relevant for a critical participation in the democratic life of a country. In this environment plurality cannot be assured by competing free speech only.²³ Based on these assumptions, the notion of “exposure diversity”²⁴ is becoming relevant in compiling a new definition of media pluralism: exposure to different voices is not anymore a matter of how many different media are provided by the market, but how the algorithms can be designed to expose the citizen to diverse content, and, in particular, to “public interest” content and not to just popular or personalised content.²⁵ Moreover, while it is widely acknowledged that plural information is what is needed in order to ensure integrity of democracy and of the forms in which democracy is deployed, the personalisation of messages to the audiences, the pulverisation of information, often polluted with disinformation, has posed the new dilemma of what type of communication can be considered relevant to the public discourse and what should be taken into account when evaluating the level of pluralism of the digital media environment.

3 THE METHODOLOGY OF THE MPM

The MPM peculiarity is that it does not privilege a specific component of the various definitions of media pluralism, but it builds on the different national and European traditions and definitions in order to elaborate a set of indicators that tend to cover all possible aspects involved in the definition of media pluralism in a broad and European sense. The tool embodies a thorough interpretation of media pluralism that is rooted in the European experience based on standards that are elaborated by the Council of Europe and the European Union, and widely shared amongst member states of the EU, as reflected in their constitutional traditions. Therefore, the MPM understands media pluralism in a holistic way: considering legal, economic, and socio-political aspects of the phenomena, and evaluating it along the dimensions of external pluralism, internal pluralism, and, to some extent, exposure diversity. The tool is designed primarily to identify the potential risks to media pluralism in a given country, and is tailored to the specific EU context, being implemented in all member states and candidate countries. This is not to say that the MPM loses its relevance if implemented in other parts of the world, but in order to adequately detect local risks it is important that the indicators are receptive of local conditions while maintaining international standards for freedom of expression and media pluralism.

The MPM organises the risks for media pluralism into four main areas: Fundamental Protection, Market Plurality, Political Independence, and Social Inclusiveness. This categorisation allows for an assessment that encompasses the different components and meanings of media pluralism. These areas are assessed according to the scoring of 20 indicators further

²¹ Eli Pariser, *The Filter Bubble: What the Internet Is Hiding from You* (Penguin Press HC 2011).

²² It must be noted, nonetheless, that in a hybrid media ecosystem, casual exposure to different content remains a likely possibility.

²³ A paradigmatic case can be retrieved in the case law and policy approach to disinformation. Morelli and Pollicino, *supra* note 20.

²⁴ Philip M. Napoli, ‘Exposure Diversity Reconsidered’ (2011) 1 *Journal of Information Policy* 246.

²⁵ Eleonora Mazzoli and Damian Tambini, *Prioritisation uncovered. The Discoverability of Public Interest Content Online* (Council of Europe study DGI(2020)19).

elaborated through 200 variables (questions) in total. The research design of the MPM is based on a questionnaire compiled by the national country teams, who are scholars and experts in media pluralism and media freedom. The questionnaire is composed of legal, economic, and socio-political questions, which take into account legal framework, its implementation, and the effective conditions of the media landscape. Legal and socio-political questions are closed (yes-no or 3-level choice: low, medium, high risk), while economic questions ask for a numerical value that is formally (based on the benchmark set) translated into a level of risk. The MPM is mostly informed by secondary data, and it is supplemented with primary data gathered through interviews and document analyses (e.g., of legal and academic texts).

Each answer or assessment must be motivated and supported with data and sources. If a topic is not relevant in a country (for example, if there is no strategy for media literacy it is superfluous to ask if the strategy is effectively implemented) the MPM allows for the Not Applicable assessment. If there is no satisfactory data or evidence to support certain assessment No Data coding is available. However, in this case the central team (CMPF) evaluates if this lack of data represents a risk in itself, in which case the risk is ultimately calculated (an example here is the lack of data on allocation of state subsidies to the media – the amounts and beneficiaries should be known, otherwise it is a risk; another example is the availability and reliability of market data, whose opacity might be a barrier to entry and therefore a risk for market plurality).

The final assessment per area of risk is carried out using a specific algorithm that was developed by the CMPF, based on which the risk assessment is calculated by the average of the average score of variables of the same type. The final results are risk assessments per sub-indicator, indicator, and area. This allows a scoring that is a balanced combination of legal, economic, and factual data: this is another interesting feature of the MPM, as the evaluations are a result of a combination of the assessments on the compliance to normative standards from a formal point of view (for example the existence of legal standards that comply with European or international standards on paper) and the reality of the implementation of the law, the economic structure and the socio-political situation.

For a number of particularly sensitive and complex variables, the MPM employs an external peer review system, called the Group of Experts. The Group of Experts, which includes national stakeholders and experts in the area, conducts a review of the answers given by a country team to questions that require a qualitative type of measurement and/or cannot be based on measurable and easily verifiable data. This minimises subjectivity and bias in the MPM results.

Being implemented several times since 2014, and considering also its geographical reach and holistic approach, the MPM is a useful and unique research methodology, as it collects a set of data based on normative standards. It covers different national cases and therefore the results should be interpreted based on the political, economic, and political national context, but the MPM dataset can be effectively used also as a comparative instrument. It gives relevance to some benchmarks that should be taken into account by policymakers at national level when defining policies to foster media pluralism itself. The methodology developed by the MPM project proved to be very effective, indeed, in determining different benchmarks that constitute the building blocks of the assessment of a broad and holistic notion of pluralism, which includes an analysis on the respect of fundamental rights, of competition in the media market, guarantees for fair political discourse and social inclusion.

The scope of the MPM analysis continues to focus on news and current affairs, more than on specific kinds of media. An evolving definition of media has been employed, taking into account new content forms and distribution platforms relevant in the news sphere. The MPM, thus, considers various services, online and offline, that offer news and current affairs and, in the end, contribute to the shaping of a public opinion.

While online platforms undoubtedly play an important role in shaping conditions for media pluralism, the academic debate over the extent of impact they may have in, for example, polarising the public debate²⁶ and facilitating the spread of disinformation,²⁷ is still lacking some empirical insights, especially in the non-Western context. There is also a lack of agreement on what should be the right approach(es) to ensure that the standards set to protect freedom of expression and media pluralism in traditional media systems are also respected online, and/or whether new standards are needed. This ambiguity has stood as a key challenge in redesigning the MPM tool. The sections below describe how each of the MPM's four areas has been updated and redesigned in order to better reflect current realities.

4 AREAS AND INDICATORS COVERED BY THE MPM 2020

The recent developments and fine-tuning of the MPM tool are particularly relevant as they introduce new standards and benchmarks for the new media environment, in an attempt to reflect the complexity of technological evolution and opening to the dimension of exposure diversity. The MPM tool has been developed and refined over the years having in mind that the EU and international media landscapes are dramatically changing and have been facing a disruption, due to the technological developments.

Consequently, there have been two main challenges of the MPM exercise since it was first operationalised: (1) to define the scope of the MPM exercise, considering the difficult definition of “media” in the new digital environment, when considering all the new forms of information production and delivery; (2) to evaluate whether the normative standards used to assess media pluralism could be re-proposed for the new media environment, given the specificities and the ontological differences between “old” and “new” means of information and communication.

The approach of the CMPF in that regard has been very practical, as well as both conservative and innovative. As regards the scope of the MPM, the CMPF has always considered “news and current affairs” as the core of the MPM analysis, focusing mostly on the type of content considered relevant in the public interest, more than on the specific type of media used to distribute the information. This is a practical solution that has proved useful to include in the MPM analysis all the media that have an impact on public opinion, regardless of the way they are distributed and regardless of whether they are considered “mass media” based on a traditional notion. This allows to take into account an evolving definition of media or, better, to include in the scope of the assessment all various services, online and offline, that offer

²⁶ See, for example: Philip Seargeant Caroline Tagg, ‘Social Media and the Future of Open Debate: A User-Oriented approach to Facebook’s Filter Bubble Conundrum’ (2019) 27 *Discourse, Context & Media* 41.

²⁷ Soroush Vosoughi, Deb Roy, Sinan Aral, ‘The Spread of True and False News Online’ (2018) 359(6380) *Science* 1146.

news and current affairs and, in the end, contribute to the shaping of a “public opinion” regardless of the means of distribution. As a consequence, the analysis and the scope of the MPM is not limited to mass media, but includes all new forms of targeted, algorithmically driven communication, as much as these could be considered relevant in shaping a public opinion or interfering in the democratic processes, including digital intermediaries and/or social media.

As regards the normative standards to be proposed, the CMPF started from the widely shared normative assumption that freedom and pluralism of the media are principles and values that constitute essential foundations of contemporary democracies. They are central to the functioning of a democratic society as they help to ensure the availability and accessibility of diverse information and views, on the basis of which individuals can form and express their opinions and exchange information and ideas. The “conservative” approach of the CMPF was to consider the normative standards already developed in the MPM even when addressing online phenomena, but – and this is the innovative part – to operationalise the principles they entail with regards to the new digital-related challenges. For instance, transparency is a standard that turned to be paramount in the analysis of “digital pluralism”. This standard has been re-interpreted and applied not only in the light of freedom of information and media ownership, but also as a desirable normative standard for freedom of expression online, considering opaqueness of the content moderation and content curation practices of online platforms, for instance. Likewise, transparency is an element that is relevant in determining the fairness of an electoral campaign and political advertising that increasingly takes place online and on online platforms. The standard of transparency was extended to a wider list of indicators in the MPM (so, not only limited to ownership transparency and administration transparency for the purpose of access to information) and broadly interpreted, including accountability of online platforms as regards all forms of content moderation and curation. In the case of the standard of competition, given that in the online media market it is important as in traditional media, the classical standard was kept, but the methodology to assess it was revised in order to take into account the specificities of the online media market. In the online sphere, and for the purpose of media pluralism measurement, the dominance of a certain service must be detected through alternative methodologies rather than in traditional media markets: for the purpose of the MPM, symptoms of concentration may be detected evaluating the competitive advantage incumbent online platforms have when disseminating targeted information based on massive use of personal and big data. It has proved very challenging, nonetheless, to define the benchmarks on pluralism as regards the online phenomena, considering the ontological diversity of the online environment from the traditional media system in which the media pluralism standards have been developed so far. Furthermore, there is no consensus, also at a policy level, on the solution proposed.

Against this background, in the MPM 2020 round, covering the analysis of the year 2018 and 2019), the four areas of the MPM (Fundamental Protection, Market Plurality, Political Independence, and Social Inclusiveness) have been integrated with several new indicators and variables that are related to the digital transformation, in order to obtain a balanced and updated picture of the characteristics of the present media systems in the EU and in selected candidate countries (Table 1.1). Furthermore, a special focus on the assessment of the digital variables has allowed the design of a preliminary evaluation of their specific contribution to the measurement of risks to media pluralism, and to extract a digital specific risk score, with the intention of advancing the agenda for public discussions and policy making in the EU (and

Table 1.1 Areas and indicators of the Media Pluralism Monitor

Fundamental Protection	Market Plurality	Political Independence	Social Inclusiveness
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 people with disabilities
Independence and effectiveness of the media authority	Media viability	State regulation of resources and support to media sector	Access to media for women
Universal reach of traditional media and access to the Internet	Commercial and owner influence over editorial content	PSM governance and funding	Media literacy

beyond) about the effects of the digital transformation on our democratic societies. In the next sections each of these areas are analysed in detail.

4.1 Fundamental Protection

In the MPM, the area of Fundamental Protection²⁸ originally was designed to assess the fundamental factors which must be in place in a plural and democratic society. This understands the existence and effectiveness of the implementation of regulatory mechanisms in order to safeguard the freedom of expression and the right to seek, receive, and impart information; the status and safety of journalists in each country; the independence and effectiveness of the media authority; the universal reach of traditional media and access to the Internet.

Within this context, the most relevant challenge in measuring the levels of media pluralism is defining the standards to assess how freedom of expression is safeguarded in the online environment. The Internet enables individuals to seek, receive, and impart information across national borders unlike any other medium. The online environment undoubtedly creates new opportunities for freedom of expression. However, it also poses new challenges in terms of ensuring that any potential interference with freedom of expression is, indeed, legitimate. Within this context, a highly relevant element in defining how freedom of expression is protected in the online environment is defining the standards for the non-arbitrary role of intermediaries (online platforms) who act as the gatekeepers of content distributed via the web. As such, intermediaries are in the spotlight when it comes to laws and policies on removing, blocking or filtering of online content and become a crucial kernel in determining the plurality of free speech. The extent to which Internet service providers are liable for illegal third-party content is, at EU level, generally set by the e-Commerce Directive.²⁹ The interpretation of this legislation has been extended to include digital platforms. Therefore, based on the

²⁸ In the future to be called Fundamental Protection, to underline the closeness between fundamental rights and media freedom and pluralism.

²⁹ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (‘Directive on electronic commerce’) L 178/1.

e-Commerce Directive, they are not liable where they do not initiate or have actual knowledge of the illegal activity or information and are unaware of the facts or circumstances from which the illegal activity or information is apparent. Based on the e-Commerce Directive, member states shall not impose a general obligation on providers to monitor information which platforms transmit or store. The rationale of the e-Commerce Directive, imagined to shield the new digital actors from liability and to boost new economy, has been challenged by the scope of diffusion of illegal content, hate speech, and disinformation online. In a conceptualisation of media pluralism that aims to guarantee a public sphere for public discourse, the EU has already put in place some forms of policy regulation that, whether confirming the neutral role of intermediaries, asks the platforms to put in place self-regulatory measures to better tackle hate speech and disinformation (Code of Conduct on countering illegal hate speech online, Code of Practice on Disinformation; Video Sharing Platforms in the new Audiovisual Media Services Directive). Further to the specific EU measures, restrictions on freedom of expression can be introduced by the law of a member state to block, remove or filter ‘illegal’ content, on grounds based on Article 10(2) of the ECHR. The MPM, therefore, assesses whether the states monitor, filter, or block online content in an arbitrary way, as well as whether private companies are arbitrarily limiting freedom of expression, based either on their Terms of Service, co-regulation, or hard-regulation. Transparency and accountability are the new standard to assess media pluralism, in this context: lack of accountability and transparency mechanisms, both for the state and the private operators, on the removed/filtered/monitored content can be interpreted as a risk.

4.2 Market Plurality

The Market plurality area of the MPM is designed to assess the risks to media pluralism related to the economic context in which relevant market players operate. As the MPM foundational study points out, “the economic aspects of media plurality have been a concern for about three decades, and three distinct waves of concern have arisen due to newspaper mortality, the subsequent growth of large media conglomerates, and most recently, by cross media activity”.³⁰ The digital transformation has raised a new and greater wave of concern, together with the new opportunities. In the economic perspective, the contrast between the initial promises of the information era and the reality of its evolution is blatant in the shift from the alleged realm of competition to a winner-take-all business model. The challenge of the MPM redesign was to define the risks to market pluralism in the new ecosystem of the news, and to measure them.

The literature review focused on studies carried on by scholars, international and EU institutions, national regulation and competition authorities, and civil society organisations, regarding the relation between market plurality and media pluralism, the digital challenges to competition and regulation (in general and specifically for the media sector), the impact of the platform economy on the media industries, the definition of “media” in the digital era and the evolution of the “attention markets”. The evolution of EC digital strategy and antitrust enforcement, as well as national courts and competition cases dealing with the new digital media market, have also been taken into consideration. Another field of investigation dealt with availability and reliability of data on the digital markets. The Market Plurality area in

³⁰ KU Leuven–ICRI, *supra* note 6.

the Monitor analyses legacy media and online platforms.³¹ It fully considers the digital news media in the framework of “old” measures, such as horizontal and cross-media ownership concentration; and furthers examination of media viability trends.

The crucial role of distribution of news was highlighted already in the MPM foundational study: “Not only the supply aspects but also distribution mechanisms and potential access to media represent areas to be assessed in order to develop economic indicators of media pluralism”.³² In the digital environment, the risks related to media access and distribution are to be observed through the gatekeeper roles of platforms. In a specific indicator on Online platforms and competition enforcement, the new MPM variables consider the way in which people access the news online, their exposure to algorithmic selection and data-driven consumption, and market dominance in gateways to news, measured by the share of online advertising market and audience share. Furthermore, the extent to which competition law and policies have evolved to face the digital challenge has also been taken into account.

The role of intermediaries, and the high concentration of the online advertising market, may have direct or indirect effects on news media production: direct, in terms of a decrease of media market resources and sustainability; indirect, pushing towards further concentration or influencing the content to fit the platform logic. At the same time, digital innovation reduces production costs, may allow journalistic start-ups and small enterprises to enter the market, may foster new forms of organisation and innovative products, may lower barriers to journalistic profession, and may encourage new business models. Both these risks and opportunities are captured by the revised MPM through the indicators on *transparency of traditional and digital media ownership, media viability, horizontal and cross-media concentration*, and on *commercial and owner influence over editorial content*. Specifically, the legal variables have been revised to assess if and to what extent the national laws and regulations include the digital media when setting the limits and threshold to concentration; if disclosure of ownership is publicly provided also for digital media; if the legislative and/or regulatory safeguards for journalistic independence from business influences exist and apply to the digital context as well. The economic variables have been updated to measure the actual Top4 index also for the digital news media market, and to assess separately the concentration index in the digital native news media market. The challenges to this part of the monitoring are of two types: on one side, there is a problem of metrics and transparency of audience measurement in the online environment, which makes it particularly difficult to assess market shares in the digital native news media sector; on the other side, the convergence process makes it quite impossible, for some legacy media, to measure separately digital revenues and audience.

The challenge in the MPM revision was to assess the specific risks related to the impact of digitalisation on news media industry sustainability.³³ Even if economic threats to the traditional news media business model are common and analysed globally, the degree of the

³¹ Online platforms as the intermediaries that are not considered, traditionally, as “media” but that affect and change media consumption and media production.

³² KU Leuven–ICRI, *supra* note 6, at 73.

³³ According to PwC Entertainment and Media Outlook 2015–2019, Europe print advertising (newspaper and magazine) revenue decreased by 40.1 per cent between 2010 and 2019. The Cairncross Review (2019) (*ibid.*) reports that between 2007 and 2017 revenues from advertising and sales of UK print dropped by 50 per cent; in the same period, including digital and non-digital, advertising in the press suffered a 65 per cent reduction.

disruption may differ between different news media and national contexts.³⁴ The MPM now contains questions about employment trends, in addition to the assessment of revenue trends, for each media sector, to have a more accurate view of the state of play of the journalistic profession in the new environment. Additional focus has also been given to the local media. The variables on the advertising market have been amended, to consider not only the growth (or the decrease) of offline and online advertising resources, but more specifically the amount of these resources that actually goes to news media production. New signals of economic resilience have been investigated, both in the market (with the variables on alternative business models) and in the regulatory framework (public support to the news media sector). The latter also explores the introduction of a digital service tax. This choice followed a review of the debate and policy evolution of the digital challenges to international taxation.³⁵ The idea is that digital taxation reform could have a direct and/or indirect impact on media viability, in two ways: as a remedy to unfair competition and regulatory imbalances; and directly, if a part of the digital taxation revenue were earmarked to support the news media.

4.3 Political Independence

Political pluralism is defined as “the fair and diverse representation of and expression by (i.e. passive and active access) various political and ideological groups, including minority viewpoints and interests, in the media”.³⁶ The potential to actively represent diversity of the political spectrum and of ideological views is an essential aspect of media pluralism and, as such, it is a crucial condition for democracy and democratic citizenship. The Political Independence area of the MPM has been designed with five main indicators that consider allocation of (infra) structural conditions for political pluralism (including spectrum allocation and state subsidies to the media); safeguards against extensive politicisation of media ownership; internal political pluralism as reflected through editorial autonomy, impartiality in media reporting and fair access to the media for various political groups; and the specific role and risks associated with the public service media. Structured this way, the MPM framework for the assessment of

³⁴ In its inquiry on Digital platforms, the Australian competition authority focuses on the relationship between digital platforms and the news media industry, arguing that the ubiquity of Google and Facebook platforms, and the lack of transparency in the operation of their algorithms, have had adverse effects on news publishers and their opportunities to monetise their content. Australian Competition and Consumer Commission, *Digital platforms inquiry – Final Report* (Commonwealth of Australia 2019), 39–56; see also Pier Luigi Parcu, *supra* note 17, at 7.

³⁵ The reform of international taxation on digital MNEs has been carried on at OECD level, at EU level, and unilaterally by some EU member states. So far, in the national law introducing the new DST there is no direct link to support of news media sector – only in the Austrian case, the government announced that part of the revenues should go to a “digitalization fund” to support Austrian media companies in the digital transformation process. Nevertheless, the destination of revenues collected from digital business to some form of support to the traditional businesses has been debated in the preliminary discussion of these measures, and it is not new in European media policy. See: OECD, *Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy*, OECD/G20 Inclusive Framework on BEPS (2019) <www.oecd.org/tax/beps/programme-of-work-to-develop-a-consensus-solution-to-the-tax-challenges-arising-from-the-digitalisation-of-the-economy.pdf> accessed 9 January 2021; European Commission, *A Fair and Efficient Tax System in the European Union for the Digital Single Market* (COM (2017) 547 final).

³⁶ KU Leuven–ICRI, *supra* note 6, 12. This reference is not cited before. The one in note 6 is from 2015 and not 2009.

political pluralism proved to be effective in indicating the traditional risk areas in a holistic and comparative way. However, it missed encompassing the digital sphere to which communication is rapidly shifting and creating new risks or amplifying the existing ones.

The exposure of citizens to online disinformation³⁷ and unlawful micro-targeting of voters³⁸ have been recognised by the European Commission as some of the major challenges for European democracies. Online micro-targeting is commonly defined as a political advertising tactic that employs data analytics and profiling to build voter models so as to provide them with tailored political messages.³⁹ Micro-targeting relies on the affordances and structures of social media platforms, which serve for both gathering data from citizens' online behaviour, as well as for targeting them with campaign messages. Political micro-targeting may be employed to deceive or manipulate public opinion if adequate safeguards are not implemented. Furthermore, as citizens increasingly use algorithm-driven sources in the process of getting informed, problems are emerging in relation to the impact that algorithmic recommenders have on citizens' exposure to diverse and accurate political content. Reuters' 2019 Digital News Report showed how technical and functional affordances of online environments increase political polarisation and encourage the growth of partisan agendas online, which together with disinformation, may contribute to further undermining of trust in media and other democratic institutions. Political communication in the environment of online platforms takes on different forms; is shared by a variety of actors, of which not all are political; entails different motivations; and can be highly personalised.⁴⁰

There have long been concerns about the increase and impact of media bias in particular during electoral periods. In traditional media systems, to ensure that citizens are given access to a variety of voices during a campaign, legal provisions are made to ensure access to media for parties and candidates, and to ensure that public media act in a non-discriminatory way and provide for equal treatment.⁴¹ It is not uncommon for political advertising to be prohibited, or at least restricted, so as to allow for fair and proportionate competition between political groups with different financial resources at their disposal.

In recent years, however, political communication is shifting online, and online platforms are taking precedence from traditional media as platforms for political advertising. At the same time, the platforms are not being subject to the same or similar levels of regulation and public oversight, and more fragmented and less transparent models of financing are used to push political advertising. The risks that emerge from these new conditions often cannot be addressed with measures designed for traditional media. This is reflected in the new MPM methodology, which now, in the area of Political Independence, seeks to evaluate the online conditions for political advertising and citizens' access to reliable and plural information.

Being a European monitoring tool, the MPM as a starting point and relevant standards takes measures promoted at the level of the EU. The protection of the electoral process and of media

³⁷ European Commission, *Tackling online disinformation: a European Approach* (COM(2018/236).

³⁸ European Commission, *Commission guidance on the application of Union data protection law in the electoral context. A contribution from the European Commission to the Leaders' meeting in Salzburg on 19-20 September 2018* (COM(2018) 638).

³⁹ Balázs Bodó, Natali Helberger, Claes H. de Vreese, 'Political Micro-targeting: a Manchurian Candidate or Just a Dark Horse?' (2017) 6(4) *Internet Policy Review*. DOI: 10.14763/2017.4.776.

⁴⁰ Iva Nenadić, 'Unpacking the "European Approach" to Tackling Challenges of Disinformation and Political Manipulation' (2019) 8(4) *Internet Policy Review*. DOI: 10.14763/2019.4.1436.

⁴¹ Venice Commission, 2010, para 148.

pluralism fall primarily within the competence of member states but there is a strong European component in it and the EU is expected to create the common principles to protect informed citizenship in light of an election. Against this background, the MPM seeks to understand the extent to which countries comply with the standards proposed at the EU level through different forms of interventions – ranging from direct regulation (GDPR) to voluntary self-regulation of platforms (Code of Practice on Disinformation). Variables are included to assess availability of a specific regulation to ensure equal opportunities and transparency of online political advertising during electoral campaign, as well as on the rules for political parties and candidates competing in elections to effectively and transparently report on campaign spending on online platforms. In line with the Commission guidance on the application of GDPR in the electoral context,⁴² which particularly emphasises the strengthened powers of authorities in cases of infringement, the MPM examines whether the data protection authority in member states take a sufficient account and monitor the use of personal data on individuals by political parties for campaign purposes. The MPM also assesses effectiveness of the Code of Practice self-regulation by platforms in each member state by examining whether political advertising on platforms has clearly been labelled as such and whether it was indicated who paid for it in all the cases.

4.4 Social Inclusiveness

The Social Inclusiveness area was originally designed to assess the range of media available to and representative of citizens across socio-demographic factors, geographic location, social class, age and gender. That is, one can think of Social Inclusiveness as “media reflecting the diversity of society”. For legacy media, the indicators took the approach of “diversity as pluralism” and the intent has been to assess directly and indirectly – risks to pluralism e.g.: active and passive access to the media of the various groups in society; absent or insufficient media representation, that is, stereotypical, unfair or discriminatory media portrayal of particular groups in society; a lack of diversity of viewpoints represented by media professionals; and absent or under-representation of journalists and media executives from diverse group. To measure these, the MPM has used five indicators for Social Inclusiveness: access to media for local/regional communities and for community media; access to media for minorities; access to media for people with disabilities; access to media for women; and media literacy.

The online environment challenges this approach, limiting our ability to capture this concept for several reasons. The online environment affects change at the core of the key issues of availability and accessibility because of the diffuse nature of the Internet and limits – or inadequacy – of regulatory oversight. Furthermore, it forces users to make quick, low-information decisions about the reliability of news stories. To sort through these, most people use familiarity⁴³ or congeniality⁴⁴ of news to their experience and/or attitudinal pre-dispositions. However,

⁴² European Commission, *supra* note 38.

⁴³ See: Amos Tversky and Daniel Kahneman, ‘Judgment under Uncertainty: Heuristics and Biases’ (1974) 185 *Science* 1124–30; Thomas Gilovich, Dale Griffin, and Daniel Kahneman, *Heuristics and Biases: The Psychology of Intuitive Judgment* (Cambridge University Press 2002); Gerd Gigerenzer and Wolfgang Gaissmaier, ‘Heuristic Decision Making’ (2011) 62(1) *Annual Review of Psychology* 451–82; Daniel Kahneman, *Thinking, Fast and Slow* (Penguin 2011).

⁴⁴ See: Ziva Kunda, ‘The Case for Motivated Reasoning’ (1990) 108(3) *Psychological Bulletin* 480–98; DJ Flynn, B Nyhan and J Reifler, ‘The Nature and Origins of Misperceptions: Understanding False and Unsupported Beliefs about Politics’ (2017) 38(Suppl 1) *Political Psychology* 127–50.

while both are common strategies to negotiate a flood of information and make decisions about them, both can lead to errors.⁴⁵

Digital media literacy, or media and information literacy, have been the terms assigned to describing more effortful searches and consumptions. The development of the Internet capabilities requires effort on behalf of its users. Media and digital literacy have already been recognised by the MPM as an individual immunisation from the intended effects of harmful and illegal content online through raising public awareness about the existence and dangers of disinformation and hate speech. People need to master media literacy skills so as to fully enjoy fundamental rights, such as freedom of expression and access to information.⁴⁶ The European Commission has highlighted the promotion of media literacy as one of the key follow-up actions to the Annual Colloquium on Fundamental Rights in 2016. Moreover, the revised European Audiovisual Media Services Directive (2018), as the central piece of specific media law in the EU, strengthens the role of (advanced) media literacy by explicitly asking member states to “promote and take measures for the development of media literacy skills in all sections of society, for citizens of all ages, and for all media and that progress in that regard is followed closely”.

The Monitor evaluates media literacy levels through two major dimensions: environmental (contextual and policy) factors, and individual competencies, which follow the logic of the categorisation used by the European Association for Viewers Interests'.⁴⁷ Individual competencies include individuals' capacity to exercise certain skills, including digital capabilities and critical thinking. The latter is difficult to measure within the scope of MPM considering that there is no available cross-country comparable data on individuals' capacity for critical thinking. The former is assessed through a composite variable on digital skills, merging digital use and digital communication as reported by Eurostat.

The protection against hate speech is also part of the Social Inclusiveness area assessment and is seen as strongly related to media literacy. It is deemed that the more media literate people are, the more resilient they should be to hate speech, and should also resist spreading it online by understanding better the potential consequences (including legal, social, and individual) of such activity. The protection against hate speech variables aims to assess whether there is a (self-)regulatory framework to counter hate speech online and whether it has been efficient in removing hate speech toward ethnic or religious minorities, people with disabilities and women from online platforms, while not presenting risk to freedom of expression. It further takes note on whether there are any media literacy or other educational initiatives in a country that aim to prevent or counteract hate speech.

⁴⁵ See: James H Kuklinski and Paul J. Quirk, 'Reconsidering the Rational Public: Cognition, Heuristics, and Mass Opinion' in A Lupia, MD McCubbins and SL Popkin (eds), *Elements of Reason: Cognition, Choice, and the Bounds of Rationality* (Cambridge University Press 2000) 153–82; Richard R Lau and David P Redlawsk, 'Advantages and Disadvantages of Cognitive Heuristics in Political Decision Making' (2001) 45(October) *American Journal of Political Science* 951–71; Logan Dancey and Geoffrey Sheagley, 'Heuristics Behaving Badly: Party Cues and Voter Knowledge' (2013) 57(2) *American Journal of Political Science* 312–25.

⁴⁶ UNESCO, *Global Media and Information Literacy Assessment Framework: Country Readiness and Competencies*. United Nations Educational, Scientific and Cultural Organisation (2013).

⁴⁷ EAVI (European Association for Viewers Interests), *Study on Assessment Criteria for Media Literacy Levels – A Comprehensive View of the Concept of Media Literacy and an Understanding of how Media Literacy Level in Europe should be assessed – Final Report* (2009), p. 5.

5 CONCLUSIONS

This chapter presented how the MPM has re-conceptualised different dimensions of media pluralism in the digital era and especially in context of online platforms. Digitalisation has profoundly impacted our political, social, and economic environment, changing our way of life and challenging different dimensions of our institutional framework. Digital challenges to media pluralism run from the fundamental protection of media freedom to the economic, political, and social fields. MPM's holistic approach permits to include the various dimension of risks and follow their evolution in the digital environment, without downscaling the “old” risks to pluralism. The recent implementations of the tool have considered the risks stemming from the online environment, while maintaining a normative approach in conceptualising standards and benchmarks for the indicators.

This reconceptualisation was operated also having in mind a practical purpose: the concrete implementation of the Media Pluralism Monitor in all EU member states and in candidate countries. In order to achieve this aim, the new standards added to the MPM tool have been limited to those that were considered measurable at the moment of the implementation, at least in some member states, balancing, therefore, what could have been measured with what it is possible to measure. In fact, considering the rapid evolution of the technology and the slow policy and research processes, the main challenge for this type of project is to rely on complete and standardised datasets from the platforms themselves, that could be used to give evidence to assess the various indicators in a comparative way across different member states and in EU as a whole. The opacity of platforms in allowing access to their data may be an obstacle for the research, as well as a limit for current policy choices: an EU policy on data disclosure that builds on what is sketched in the proposal of the Digital Service Act could be functional in better exploiting the research and analysis on digital media pluralism.⁴⁸

⁴⁸ European Commission, *Proposal for a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC (COM(2020) 825 final)*.