Media Pluralism in the Netherlands

A Test Implementation of the Media Pluralism Monitor 2015

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About the project

The Media Pluralism Monitor (MPM) is a research tool that was designed to identify potential risks to media pluralism in the Member States of the European Union. This narrative report has been produced within the framework of the second pilot test implementation of the MPM, which was carried out in 2015. The implementation was conducted in 19 EU Member States with the support of a grant awarded by the European Union to the Centre for Media Pluralism and Media Freedom (CMPF) at the European University Institute.

The Monitor's methodology is based on research carried out by national country teams in the 19 countries, except for Malta where data collection was carried out centrally by the CMPF team. The research is based on a standardised questionnaire and apposite guidelines that were developed by the CMPF. Moreover, to ensure accurate and reliable findings, a group of national experts in each country reviewed the answers to particularly sensitive questions (see Annexe I for the list of experts).

Risks to media pluralism are examined in four main thematic domains, which are considered to capture the main areas of risk for media pluralism and media freedom: Basic Protection, Market Plurality, Political Independence and Social Inclusiveness. The results are based on the assessment of a number of indicators for each thematic area. The Basic Protection domain consists of four indicators; Market Plurality has three, while Political Independence and Social Inclusiveness each contain six indicators.

Basic Protection	Market Plurality	Political Independence	Social Inclusiveness
Protection of freedom of expression	Transparency of media ownership	Political bias in the media	Access to media for different social and cultural groups, and local communities
Protection of right to information	Concentration of media ownership	Politicisation of control over media outlets	Availability of media platforms for community media
Journalistic profession, standards and protection	Concentration of cross-media ownership	Politicisation of control over media distribution networks	Access to media for the physically challenged people
Independence of national authority(ies)		State advertising	Centralisation of the media system
		Independence of PSM governance and funding	Universal coverage of the PSM and the Internet
		Independence of news agencies	Media literacy

The results for each domain and indicator are presented on a scale from negligible to 100%, a negligible risk being the lowest, and 100% risk being the highest score. Scores between negligible and 33% are considered low risk, 34 to 66% are medium risk, while those between 67 and 100% are high risk.

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Disclaimer: The content of the report does not necessarily reflect the views of the CMPF or the EC, but represents the views of the national country team that carried out the data collection.

1. Introduction [1]

The Dutch media landscape is characterised by a strong tradition in regard to the freedom of the press, a distinct public service media system consisting of various associations that represent different societal groups, and high levels of ownership concentration for commercial media.

Low risks are found in the Netherlands for the domains of ‘Basic Protection’, ‘Political Independence’, and ‘Social Inclusiveness’. A medium risk is indicated with regard to ‘Market Plurality’. Although the Netherlands does a good job in safeguarding media pluralism, there is room for improvement: recommendations are forwarded with regard to the decriminalisation of defamation, the review of media mergers, ownership transparency, and the position of local media.

[1] The author wishes to thank the panel of experts and consulted professionals, institutions and academics for providing information and insights.

2. Results from the data collection: assessment of the risks to media pluralism

For each of the domains, the results are discussed by indicator. Only those sub-indicators are addressed that show a medium or high risk, or those for which no data was available.

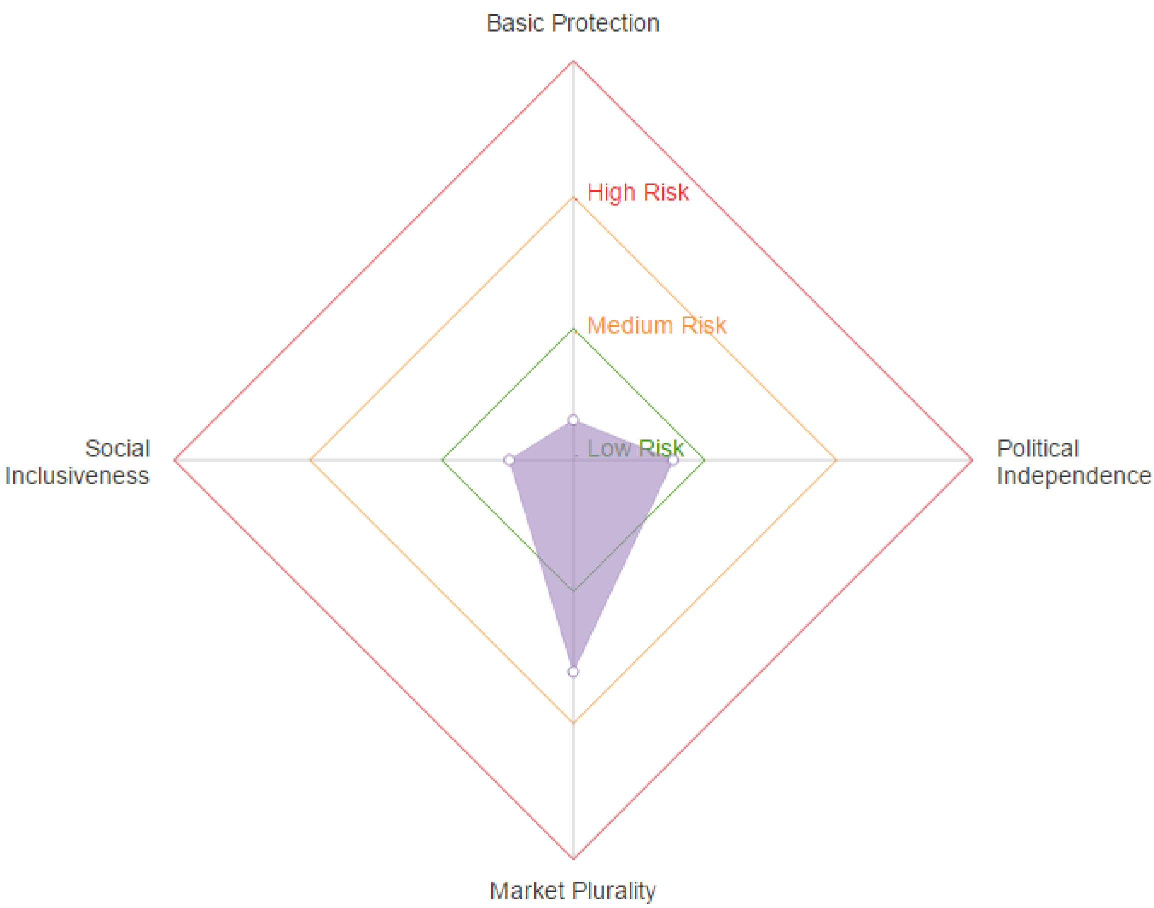

Figure 1 Media Pluralism Monitor 2015 – Netherlands, Results by Risk Domain

2.1

Basic Protection (10% risk - low risk)

The Basic Protection indicators represent the regulatory backbone of the media sector in every contemporary democracy and they measure a number of potential areas of risk, including the existence and effectiveness of the implementation of regulatory safeguards for the freedom of expression and the right to information; the status of journalists in each country, including their protection and ability to work; as well as the independence and effectiveness of the national regulatory bodies, namely, media authorities, competition authorities and communications authorities.

Indicator	**Risk**
Protection of freedom of expression	2% risk (low)
Protection of right to information	6% risk (low)
Journalistic profession, standards and protection	25% risk (low)
Independence of national authority(ies)	8% risk (low)

All of the indicators in the 'Basic Protection' domain indicate a low risk, implying a solid legal framework for media pluralism. However, there are some remarks. Although there is no reason for concern with regard to the 'Protection of freedom of expression' (2%), the Dutch government has not decriminalised defamation.

Abuse of the Act on the Openness of Governance (Wet Openbaar Bestuur, WOB), which led to the issuing of a new bill in 2014, is the main concern in regard to 'Protection of right to information' (6%). Under the current law, government bodies have to pay a fine if they do not respond in time to an information request. False information requests were submitted by individuals or legal consulting firms, merely with the aim of making the government body pay. Another criticism of WOB is that information is often only partly revealed by government bodies.

Different issues are addressed in regard to the indicator 'Journalistic profession, standards and protection' (25%). There have been a number of small cases of attacks, or threats to the physical safety of journalists, in recent years (i.e., 2013 and 2014). As for digital safety, different legal procedures are initiated in response to the revelation that the Dutch security services gather and share information (e.g., internet traffic, phone hacking) on citizens, including information on journalists. Another important issue is the protection of journalistic sources. This is not (yet) enshrined in statutory law; the government issued two bills on the protection of journalistic sources in 2014. The bills follow several cases against the Netherlands for violating Article 10 of the European Convention on Human Rights.

As for the indicator 'Independence and effectiveness of national authorities'[2] (8%), concerns exist in

[2] NB: It needs to be noted that this indicator has been found to be problematic in the 2015 implementation of the Media Pluralism Monitor. The indicator aimed to combine the risks to the independence and effectiveness of media

regard to the Dutch Media Authority's (Commissariaat voor de Media, CvdM) budget reduction. The adequacy of the budget of the newly established Authority Consumer and Market's (Autoriteit Consument en Markt, ACM) could not be evaluated because this convergent regulator was under review at the time of writing.

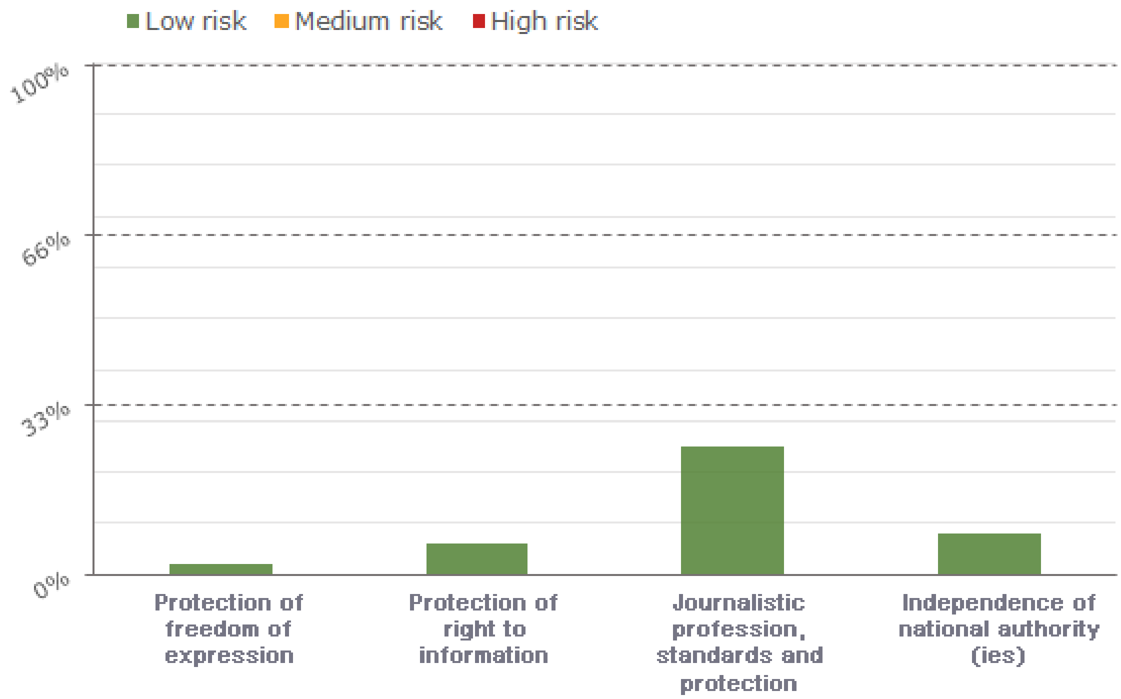

Figure 2 Media Pluralism Monitor 2015 - Netherlands, Basic Protection Domain, Results by Indicators

authorities, competition authorities and communication authorities, but it was found to produce unreliable findings. In particular, despite significant problems with regard to the independence and effectiveness of some of the authorities in many of the countries, the indicator failed to pick up on such risks and tended to produce an overall low level of risk for all countries. This indicator will be revised in future versions of the MPM (note by CMPF).

2.2 Market Plurality (53% risk - medium risk)

The Market Plurality indicators examine the existence and effectiveness of the implementation of transparency and disclosure provisions with regard to media ownership. In addition, they assess the regulatory safeguards against high concentration of media ownership and control in the different media, within a media market as well as cross-ownership concentration within the media sector.

Indicator	**Risk**
Transparency of media ownership	25% risk (low)
Concentration of media ownership	59% risk (medium)
Concentration of cross-media ownership	75% risk (high)

Of all the domains, the indicators with regard to 'Market Plurality' score, on average, the highest risk. A low risk is indicated for the indicator 'Transparency of media ownership' (25%). Based on Trade Law, companies have to file their annual accounts to the Chamber of Commerce (Kamer van Koophandel, KvK). The Mediamonitor reports annually on the main media companies' ownership structures and there are public registers of broadcasting licensees. Although the trade register is freely accessible, obtaining annual accounts is a paid service. This implies a barrier to the public in relation to information about the ownership structures of smaller media companies.

The 'Concentration of media ownership' indicator shows a medium risk (59%), for various reasons. First, media legislation does not contain specific provisions that restrict the concentration of horizontal (or cross-media ownership) in the markets for newspapers and online content. There are some restrictions with regard to broadcasting licenses. In 2011, the Temporary Act Media Concentrations (Tijdelijke wet media concentraties), which installed constraints to horizontal and cross-media ownership in the markets for radio, television and newspapers based on audience shares, was repealed. According to the legislator, the law restricted publishers' survival strategies through mergers and acquisitions (i.e. takeovers as a means to prevent termination of outlets) and publishers' cross-media development. Moreover, sufficient counterweight would be provided by the abundance of online news sources. Second, competition law does not contain specific provisions that restrict media ownership in any way. Third, indicators for the concentration of ownership in the radio, television and newspaper markets show a high risk, with joint audience shares of the four largest companies that are between 70% and 90% (in 2013). Furthermore, there are no data available on the indicators of ownership concentration based on market shares (i.e., based on operating turnover instead of circulation or audience rates).

High risk is indicated for the 'Concentration of cross-media ownership' indicator (75%). As mentioned, with the Temporary Act Media Concentrations repealed, no restrictions to cross-media ownership now exist. In terms of cross-ownership measures, the Top-3 firms in the market for newspapers, magazines, radio and television, have a joint operating turnover that equals about 80% of the net advertising revenue in the media market. This is considered to indicate a high level of cross-ownership.

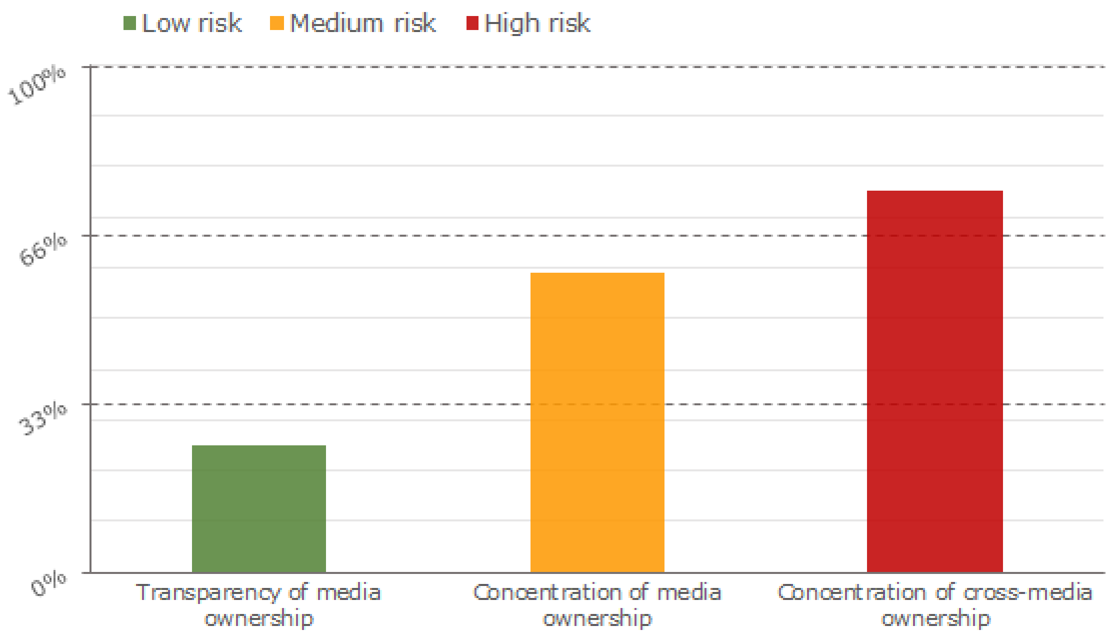

Figure 3 Media Pluralism Monitor 2015 - Netherlands, Market Plurality Domain, Results by Indicators

2.3 Political Independence (25% risk - low risk)

The Political Independence indicators assess the existence and effectiveness of the implementation of regulatory safeguards against the biased representation of the political viewpoints in the media, and also the extent of the politicisation over media outlets, media distribution networks and news agencies. Moreover, it examines the influence of the state on the functioning of the media market, with a focus on state advertisement and public service media.

Indicator	**Risk**
Political bias in the media	29% risk (low)
Politicisation of control over media outlets	25% risk (low)
Politicisation of control over media distribution networks	Negligible
State advertising	17% risk (low)
Independence of PSM governance and funding	29% risk (low)
Independence of news agencies	50% risk (medium)

Almost all indicators within the domain of ‘Political Independence’ indicate low risk. Both commercial and public media generally provide balanced coverage in their news and information programmes. Various regulatory safeguards exist in order to prevent political bias in the media. However, there are certain topics that are left to the market. First, there is no internal charter of PSM or other self-regulatory instrument that guarantees the access of political actors to the Dutch public broadcaster's (Nederlandse Publieke Omroep, NPO) news and information programmes. This is indirectly arranged through the design of the public service media system (e.g. many different broadcasting associations each with their specific profile and target group). Second, although airtime is allocated to electable political parties, this does not apply to regional and local elections or to referenda. Third, political advertising – other than the allocated airtime – is not regulated in any way, and, hence, political parties are free to buy advertising space. Although political parties buy more advertising space these days, the allocated air time is still used the most. Overall, the indicator assessing political bias in the media scores a low risk (29%).

As for the ‘Politicisation of control of media outlets’, there are no data available regarding audience shares of radio and television channels, and newspapers that are owned by politically affiliated entities. Politically affiliated ownership is argued not to be an issue in the Dutch media in the post-pillarised era (since the 1960s) according to the experts who were consulted (see also the indicator ‘independence of PSM governance and funding). Editorial independence is organised by means of self-regulation. In the Netherlands there exists a strong tradition concerning codes and codes of conduct and of ethics. The indicator ‘politicisation of control over media outlets’ scores as a low risk (25%).

A very low risk is also indicated for ‘Politicisation of control over media distribution networks’ (negligible risk). The leading distribution networks for print (i.e., newspaper publishers), radio and television (i.e., telco and cable companies) are not political affiliated.

‘State advertising’ is regulated at the national level in a clear and transparent way that contributes to a low risk assessment of this indicator (17%). Limited air time is allocated to the government and there is a reporting obligation. However, at the local and regional level there is limited transparency.

The ‘Independence of PSM governance and funding’ is laid down in many rules and regulations. The independence from government and/or a single political group of the NPO’s boards and management is the responsibility of the respective board concerned with the appointment procedure. Hence, there is no central body safeguarding independence. There is some indirect government influence on wages via the NPO’s code of conduct that includes a reward framework for, amongst others, the presenters. This framework attempts to curb exorbitant incomes. As for the extent of income that is derived from direct government funding relative to advertising income, the monitor indicates a high risk. Overall, the indicator assessing the risk for the political independence of the PSM scores at the upper end of low risk (29%).

As for the ‘Independence of news agencies’, the leading news agency is commercially owned and is not dependent on political groupings in terms of ownership. Following the most recent takeover, there is one main national press agency left (i.e., Algemeen Nederlands Persbureau). This is considered to be a medium risk (50%).

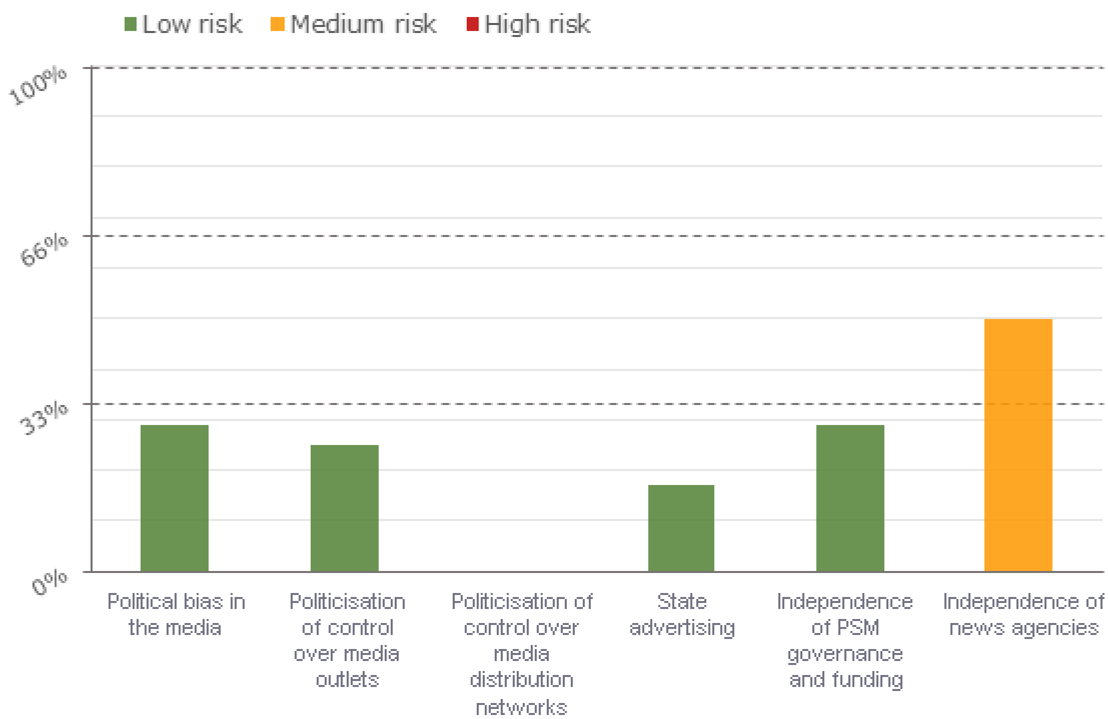

Figure 4 Media Pluralism Monitor 2015 - Netherlands, Political Independence Domain, Results by Indicators

2.4 Social Inclusiveness (16% risk - low risk)

The Social Inclusiveness indicators are concerned with access to, and availability of, media for different, and particularly vulnerable, groups in the population. They assess regulatory and policy safeguards for access to media by various cultural and social groups, by local communities and by people with disabilities. Moreover, they assess the centralisation of the media system, and the quality of the country's media literacy policy, as well as the digital media skills of the population.

Indicator	**Risk**
Access to media for different social and cultural groups, and local communities	19% risk (low)
Availability of media platforms for community media	17% risk (low)
Access to media for the physically challenged people	Negligible
Centralisation of the media system	42% risk (medium)
Universal coverage of the PSM and the Internet	Negligible
Media literacy	17% risk (low)

With the exception of the indicator for centralisation, all of the indicators in the 'Social Inclusiveness' domain show a low risk. The representation of religious and philosophical groups in society is guaranteed by the national public service media (i.e., NPO). Remarks about access to media for different social and cultural groups and local communities exclusively apply to the legal framework of the latter (indicator 'Access to media for different social and cultural groups, and local communities': 19%). Local public service media are obliged neither to have their own local correspondents, nor to employ journalists from different geographical areas. In practice, they do aim to have journalists from different areas. Although it is not mandatory to have national news available in local languages, programmes in dialect are also provided.

The 'Availability of media platforms for community media' (17% of risk in the connected indicator) applies to local public service media and minority media. In the Dutch Media Act, community media are not recognised alongside public or private media. Based on the character of most, though not all, local public service media (e.g., a strong reliance on volunteers, limited budget), they are approached as community media in this monitor. Moreover, the representative organisation (OLON) is associated with the Community Media Forum in Europe. Subsidies to minority media are limited and their share in the radio, television and newspaper market is unknown, due to a lack of data. The organisation that attempts a balanced reflection on the minorities in the media (Mira Media) stopped monitoring because of the growing importance of online platforms. To enable access to media for physically challenged people, most television channels provide subtitles and comply with the quota (negligible risk in the connected indicator).

The 'Centralisation of the media system' indicator shows a medium risk (42%) for various reasons. First, local public service media are supported through subsidies, but not all municipalities' subsidies meet the requirements (i.e., too little is paid). This makes the financial position of local PSMs worrisome and has led, in some cases, to the absence of local public media services in some municipalities (another explanation for the absence of local public media is a lack of applicants that actually meet the legal requirements). Second, with audience shares of between 10 and 15 percent for regional and local radio and television, centralisation is indicated as being at medium risk. The (de)centralisation test could not be performed for newspapers due to a lack of data. Third, local and regional public service media within the same geographical area are allowed to collaborate, and, under certain conditions, they are also able to do so with private institutions. Collaborations can jeopardise the local or regional character, and therefore, this can be interpreted as a risk. In the Dutch context, this should be understood as an important survival strategy for local PSMs and as a way to ensure local news coverage: teaming up enables continuity and professionalisation. Moreover, programming quotas exist that ensure a minimum of locally/regionally oriented content. Hence, centralisation is perceived to be an opportunity, rather than a threat.

With the full coverage of NPO's channels and broadband and high up- and download speeds, universal coverage of the PSM and the Internet is not perceived as being at risk (negligible risk in the connected indicator). Policies on 'Media literacy' (indicator 'Media literacy': 17%) are quite well developed, and both the internet usage and digital skills of the Dutch are rather high.

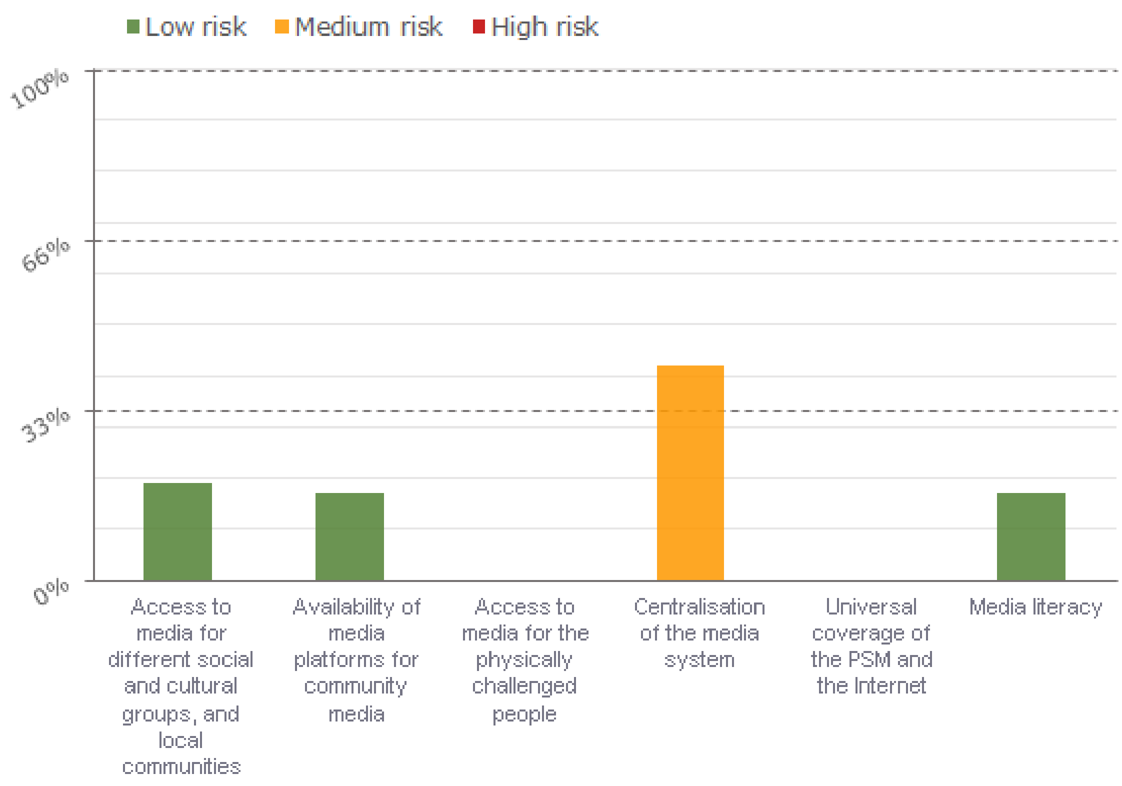

Figure 5 Media Pluralism Monitor 2015 - Netherlands, Social Inclusiveness Domain, Results by Indicators

3. Conclusions

Based on the findings of the MPM2015, the following issues have been identified by the country team as being more pressing or as deserving particular attention by policy-makers in order to promote media pluralism and media freedom in the country.

From a legal point of view, rules and regulations provide a solid base for media pluralism in the Netherlands. However, the Act on the Openness of Governance, and the protection of journalistic sources, continue to remain matters of concern. Although, in both cases, new bills are issued, existing concerns have not been solved and the Netherlands still does not live up to international standards. The expert consulted urges the speeding up of the process.

Regarding the decriminalisation of defamation, the experts consulted modify the recommendation of the International Press Institute (2015): it may be desirable from a journalistic point of view, but not necessarily from the perspective of individual citizens. On the one hand, recent cases show that prosecution is a rather drastic measure for journalists (see Openbaar Ministerie, 2010; Pasveer, 2015). On the other hand, in the case of severe insult, criminal law enables citizens a way into court that does not come with the administrative and financial barriers of civil law. For these reasons, the distinction between defamation in the private or professional (i.e., journalistic) sphere in the defamation provisions is suggested. Experts further agree that lèse majesté should be removed from the Penal Code (Wetboek der Strafrecht); it is a potential threshold to democratic debate about the royals as an institution.

From a market point of view, high levels of ownership concentration in the Dutch media markets and limited regulation result in the monitor indicating a medium to high risk. Putting constraints on ownership concentration by means of caps is not considered desirable; it is too inflexible and does not capture the complexity of a media company's economic interest and socio-democratic responsibility. However, some experts recognise that extra vigilance is needed. In countries like the UK, Ireland and Germany, the impact of mergers and acquisitions in the media industry are approached from the perspective of market and opinion power (see Komorek, 2013). The latter refers, for example, to the extent to which citizens consult content from different outlets, and, hence, from different owners. In this way, a company's share in a person's daily media diet, and potentially in his/her ideas and opinions, is evaluated before and after a merger. A wider and more comprehensive scope for merger control is considered desirable and this would be consistent with the ACM's consumer welfare standard, which underscores public interests (Van der Burg & Van den Bulck, 2015).

Improvements can be made with regard to public access to ownership information. Access Info Europe (2015) recommends the removal of pay walls for the disclosure of, at least recent, annual accounts. This is, for example, the case in Belgium (Flanders)[3].

[3] See: www.nbb.be/nl/balanscentrale

As for ‘Social inclusiveness’, concerns persist with regard to news supply in local communities: the weak financial position of (some) local public service media, and their independence from municipalities in this respect. There are local communities without local PSMs and/or local newspapers. The expert consulted emphasises the importance of collaboration between local and regional public service media. Moreover, it is argued that local PSMs can benefit from one central body that is responsible for both issuing licenses and subsidies. This potentially enables greater continuity and creates more distance between the municipality and local public service media. The latter is particularly important with regard to the watchdog role of local PSMs.

Annexe I. List of national experts who were consulted

Piet Bakker

Hogeschool van Utrecht

Thomas Bruning

Nederlandse Vereniging voor Journalisten

Madeleine de Cock Buning

Commissariaat voor de Media

Wouter Hins

Universiteit van Amsterdam, Universiteit van Leiden

Hans van Kranenburg

Radboud Universiteit

Anne-Lieke Mol

Nederlandse Publieke Omroep

Herman Wolfswinkel

NDP Nieuwsmedia

References

Access Info Europe 2015. *Transparency of media ownership in Europe: A report for the High-Level Group on Media Freedom and Pluralism*.

Komorek E 2013. *Media Pluralism and European Law*, Kluwer Law International, Alphen aan den Rijn.

International Press Institute 2015. *Background to reform of criminal defamation law in the Netherlands*.

Openbaar Ministerie [Public Prosecution] 2010, *Cartoons constitute an indictable offence, Nekschot will not be prosecuted*, Openbaar Ministerie, Arrondissementparket Amsterdam, viewed October 2015, <https://www.om.nl/actueel/nieuwsberichten/@28226/cartoons-constitute/>.

Pasveer, L 2015, ' Journalist niet gestraft om nazivergelijk' [Journalist not punished for nazi comparison], *Villamedia*, 23 March, viewed October 2015, <https://www.villamedia.nl/artikel/journalist-niet-gestraft-om-nazivergelijk>.

Van der Burg, M & Van den Bulck, H 2015, 'Economic, political and socio-cultural welfare in media merger control: An analysis of the Belgian and Dutch competition authorities' reviews of media mergers.', *Information Economics and Policy*, vol. 32, pp. 2-15.