



***Independent Study on  
Indicators for Media Pluralism  
in the Member States – Towards  
a Risk-based Approach***

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*by*

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**Final Report - Annex III**

**COUNTRY REPORTS**

**Luxembourg**

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**Important Notice**

By K.U.Leuven, Jönköping International Business School, Central European University and Ernst & Young Consultancy Belgium

The country reports are not in any way intended to be an implementation of the Media Pluralism Monitor in the Member States. They were drafted during the initial stages of the study, with the intention of obtaining a better view of regulatory measures in the broad sense – including co- and self-regulatory measures – adopted in the Member States to promote or safeguard, directly or indirectly, pluralism in the media. The intention was to obtain a high-level snapshot of possible implementation problems and not to express any value judgements on existing rules. The resulting overview facilitated the development of methods for assessing the effective implementation of regulatory safeguards, which had to be, according to the Terms of Reference for the study, an intrinsic element of the legal indicators. We strongly recommend that you also download the file containing our Introduction as it sets out our approach to the initial stages of the project in detail and includes a short manual on how to read the country reports. We draw your attention to the Overview file as well.

Please note that the country reports were finalized in the middle of 2008 and do not therefore reflect progress made with the transposition of the Audiovisual Media Services Directive or any subsequent initiative by Member States. They are made available not as final deliverables of the study, but as interim deliverables, intended to illuminate part of the route taken by the study team and thereby to contribute towards the full transparency of the MPM project.

## 17. Overview of legal and policy measures promoting/supporting media pluralism

### [LUXEMBOURG]

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#### **National regulations relevant in the area of media pluralism**

- **Legislation**

- *Sector specific legislation*

Law on Free Expression in the Media (8 June 2004)

Law on Electronic Media (27 July 1991)

Law on the Promotion of the Written Press (3 August 1998)

Law on Networks and Electronic Communication Services (30 May 2005)

Law on the Protection of Conditional Access Systems (2 August 2002)

Grand-Ducal Decree of 5 April 2005

Grand-Ducal Decree of 19 June 1992

Internal Code of the Press Council

- *General legislation*

Constitution of Luxembourg

Competition Law

- **Codes of conduct**

Ethical Code of the Press

- **Other**

Annual report of the National Programs Commission of 200

23<sup>rd</sup> EPRA Meeting, Elsinore, Denmark, 17-19 May 2006, Background paper: Political advertising: case studies and monitoring, EPRA Secretariat

**TABLE 1. Constitutional protection of press and communication freedoms**

Measure	Source	Scope of application	Key features
<b>1.1. Freedom of expression</b>	Art. 24 Constitution		In all matters freedom of speech and press is guaranteed. Prohibition of censorship.
<b>1.2. Freedom of /right to information</b>	Art. 6, para. 1 Law on free expression in Media (Press Law) (2004)		The liberty of expression in the mass media entails the right to receive and seek out information; the right to decide to communicate such information to the public through freely chosen means, as well as to comment on and critically assess them.
<i>Is there – besides constitutional provisions – a specific act dealing with citizens’ or journalists’ access to public sector information?</i>			
<i>Are there specific rules dealing with journalists’ access to events for news reporting?</i>			
<b>1.3. Explicit recognition of media pluralism</b>	Art. 1 Law on Electronic Media (Media Law)		Objectives of broadcasting legislation: assuring free access of the population to a multitude of sources of information and entertainment, by guaranteeing the freedom of expression and of information, as well as the right to receive and retransmit on the Luxembourg territory all programs complying with the law. Organisation of broadcasting is to be based upon the principles of a free and pluralistic audiovisual communication, independence and pluralism of information, respect of the human person and dignity, highlighting of the cultural heritage and of contemporary creation, promotion of communication, intercultural exchange and integration of immigrants, safeguarding of a pluralistic written press.
	Art. 10 Media Law		"...respect for pluralism in the presentation of news and ideas" (as a condition in the book of specification linked to a broadcasting concession).
<b>1.4. Protection of journalistic sources</b>	Art. 7-8 Press Law		Journalists and all persons who gain information due to their professional relation with journalist can not be obliged to reveal information or sources by administrative or judicial bodies except in case of investigations to certain crimes (crimes against individuals, drug traffic, money laundering, terrorism, crimes against the State).
	Art. 7a Ethical Code of Press		Right to not disclose sources cf. the law.
<b>1.5. Right of reply</b>	Chapter VIII Press Law		Every physical or legal person, named

			explicitly or implicitly in a publication has the right on a distribution of a reply, free of charge. Detailed procedure to claim the right. Possible grounds for refusal (limited list).
<b>1.6. Ratification of international instruments:</b> - CoE's Framework Convention For The Protection Of National Minorities - UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (Oct 2005)	No		

**TABLE 2. Editorial independence**

Measure	Source	Scope of application	Key features
<b>2.1. Journalists</b>	Art. 5 Press Law		In case of change of editorial line that is incompatible with the journalist's personal beliefs, he can break his contract with the editor without losing his right on unemployment benefit.
	Art.23, 2 Press Law		two tasks of Press Council related to independency: -PC works out deontology code -PC studies all questions relating to freedom of expression in the media
	Art. 6 Ethical Code of Press		Refusal of bribes, no abuse of professional influence, and no acceptance of benefits, no submitting to pressure or promises from third parties.
<b>2.2. News / information programmes</b>			
<b>2.3. Other media content</b>	Art. 7 Media Law		Broadcasted programs can contain advertisement within the limitations of the Media Law and its decrees. A Grand-Ducal Decree stipulates volume and nature of advertisement in programs.
	Media law		Possibility to impose limits on advertisement in the book of charges linked to broadcasting concessions.
<b>2.4. Subsidies/ Training of journalists (independence, ethic, recruitment, etc.)</b>			
<b>2.5. Consultative programming structure for participation of the public/citizens to media (i.e. a mechanism to allow citizens to participate in editorial decisions, under the form of e.g. an ombudsman, ethics or liaison committee, "Société des rédacteurs"...)</b>			

**TABLE 3. Cultural pluralism**

Measure	Source	Scope of application	Key features
<b>3.1. Structural rules (guaranteeing or promoting access by the various cultural groupings to media companies' bodies, structures...)</b>			
3.1.1. Special representation requirements in media company structures			
3.1.2. Special representation requirements in media advisory bodies			
3.1.3. Legal or policy measures either prohibiting discrimination in recruitment or promoting equal opportunities (ethnic minorities, gender, age, disabled...)			
<b>3.2. Representation of the various cultural groupings in the media</b>			
3.2.1. Access to airtime for cultural groupings	Art. 14 Media Law j. book of conditions of the socio-cultural radio		One radio frequency for high power broadcasting is reserved for the programme of the socio-cultural radio. A public body is created to exploit and organize the programming (the socio-cultural radio). The socio-cultural radio receives a permit for broadcasting through high power emitter without application. The State concludes a long-term agreement with the socio-cultural radio defining its mission of public service and its financing. The programmes of the socio-cultural radio provide a broad access to the radio to “socio-cultural organizations” of Luxembourg.
<i>Note: But there is no legal provision in Luxembourg containing explicit measures to support non-profit, community broadcasters and minority programming. Therefore no minority programming is required from mainstream commercial broadcasters. Such an implementation would be difficult as there is no tradition for minority programming on commercial broadcasters. There is however a radio station that caters for the Portuguese minority called Radio Latina. A certain presence of other minorities in the programs is usual. Another national radio station, Radio ARA, is owned by NGOs and can be considered as a community radio station.</i>			
<b>3.2.2. Content obligations</b>			
3.2.2.1. Promotion of European works	Art.27 Media Law j. Grand-Ducal Decree 5 April 2005		Majority proportion of transmission time dedicated to European works (i.e. at least 50 %) (wordings of the European Directive AVMS).
3.2.2.2. Promotion of European independent works	Art.27 Media Law j. Grand-Ducal Decree 5 April 2005		At least 10% of transmission time dedicated to independent productions.
3.2.2.3. Promotion of national/regional works			
3.2.2.4. Language requirements			
3.2.3. Representation of minorities on the screen (e.g. presenting the news, in drama, movies...; can be engagement in an internal charter or can be imposed statutory)			

3.2.4. Subsidies (apart from general PSB funding)	Law on the promotion of the written press (1998)		Large amounts of subsidies for written press, both for bigger and smaller newspapers. Many eligibility criteria to be granted subsidies (general-interest newspaper, residing in Luxembourg, distributed nationwide, in official languages,...). Granted by special commission.
<b>3.3. Accessibility</b> <i>(i.e. special measures to promote access to media contents by special needs groupings in society, like the elderly, disabled...)</i>	Annual report of CNP (Commission National de Programmes) 2007		French and German subtitles for news broadcast on RTL since September 2007.

**TABLE 4. Political pluralism**

Measure	Source	Scope of application	Key features
<b>4.1. Structural rules (relating to the organization and structures of media companies/advisory bodies)</b>			
4.1.1. Restrictions to politicians’ ownership/control of media (avoid one dominating voice)			
4.1.2. Requirements of independence from political parties / politicians			
4.1.3. Incompatibility of political mandate with membership in media advisory or regulatory bodies			
4.1.4. Representation requirements in media companies’ bodies (board of directors...)	Art. 31 Media law		National Programme Council, composed of up to 25 members nominated on the proposals of representative organisations of social and cultural society, including church, political parties, trade unions, employers organisations and national federations of NGOs active in the areas of culture, sport, family, charity, environment, youth and immigration. CNP submits proposals to ensure increased and equilibrated choice in programming in PSM.
4.1.4. Representation requirements in media advisory bodies and/or regulators			
<b>4.2. Content rules (relating to media programmes, press articles, other content)</b>			
4.2.1. (Equal/proportionate) Access to airtime for political groupings			
4.2.1.a. Non-paid access, e.g. right to insert own programmes or messages on the public channels	23 <sup>rd</sup> EPRA Meeting, Elsinore, Denmark, 17-19 May 2006  Background paper – Plenary Political advertising: case studies and monitoring EPRA Secretariat		PSM has the obligation to grant free airtime to political parties to present their program.
4.2.1.b. Paid access: rules on political advertising	23 <sup>rd</sup> EPRA Meeting, Elsinore, Denmark, 17-19 May 2006  Background paper – Plenary Political advertising: case studies and monitoring EPRA Secretariat		
4.2.2. Government announcements	Art. 10, 1, M Media Law		Books of conditions can stipulate the obligation of the broadcaster to grant free use of its infrastructure to the State in order to broadcast official communications or information regarding the safety of human life. This broadcast shall be granted on first demand and have priority status.



4.2.3. Impartiality obligations			
4.2.4. Fair representation of political viewpoints; special rules in election periods	Art. 12, 14 Media law		Book of charges may foresee provisions regarding respect of pluralism in the presentation of current affairs and ideas.

**TABLE 5. Geographical pluralism**

Measure	Source	Scope of application	Key features
<b>5.1. Licensing policy fostering local/regional types of media</b> (for instance: is part of the spectrum explicitly reserved for regional/ local media; are there any rules safeguarding the local character of these media once they are operating, e.g. restrictions to cooperate or centralize programming/advertising decisions...)	Art. 17 Media Law		A number of frequencies are reserved for local radio stations; licences awarded to non profit organisations.
<b>5.2. Structural measures: access of various localities to media (e.g. obligation to have branches throughout country)</b>			
<b>5.3. Content obligations: requirements to cover local events, etc.</b>			
<b>5.4. Regional State Aids</b>			
<b>5.5. Rules on national minorities</b>			
<b>5.6. Rules on social inclusion of remote areas (Aménagement du territoire)</b>			

**TABLE 6. Pluralism of ownership/control**

Measure	Source	Scope of application	Key features
<b>6.1. Sector specific rules limiting media ownership</b>			
6.1.1. Moment of intervention			
6.1.1.1. <i>At moment of market entry (licensing procedure)</i>			
6.1.1.2. <i>At the moment of mergers &amp; acquisitions</i>			
6.1.1.3. <i>Other (constant monitoring/supervision)</i>			
6.1.2. Scope (i.e. trying to prevent one of the following forms of concentrated ownership and/or control)			
6.1.2.1. <i>Monomedia</i>	Art. 18, 2 Media Law		No legal or physical person may own parts in more than one limited liability company having been granted the allowance to distribute a program via a radio transmission network (low power/local radio), nor may he or she hold more than a 25% share of such a society or of its voting rights, including indirect participations.
6.1.2.2. <i>Crossmedia</i>			
6.1.2.3. <i>Vertical integration with networks</i>			
6.1.2.4. <i>Integration with advertising sector</i>			
6.1.2.5. <i>Integration with other (e.g. energy) sectors</i>			
6.1.2.6. <i>Control over both commercial and public media</i>			
6.1.3. Criteria used to define thresholds for maximum ownership and/or control			
6.1.3.1. <i>Number of licences</i>			
6.1.3.2. <i>Market shares</i>			
6.1.3.3. <i>Circulation and audience shares</i>			
6.1.3.4. <i>Capital shares</i>	Art. 18, 2 Media Law		
6.1.3.5. <i>Voting shares</i>			
6.1.3.6. <i>Advertising revenues</i>			
6.1.3.7. <i>Involvement in number of media sectors</i>			
<b>6.2. Sector specific rules preventing cooperation between media companies</b>			
<b>6.3. (Sector specific or general) rules preventing foreign (non-EU) ownership</b>			
<b>6.4. General competition rules</b>			
6.4.1. Antitrust			
6.4.1.1. <i>Specific provisions for media sectors (e.g. public interest test...)</i>			
6.4.1.2. <i>Case law in media sectors (examples of leading cases; any specificities?)</i>			

6.4.2. Merger control			
6.4.2.1. Specific provisions for media sector (e.g. possibility for government to overrule NCA decision, public interest test...)			
6.4.2.2. Case law in media sectors (examples of leading cases; any specificities?)			
<b>6.5. Transparency obligations</b>	art. 67 Press Law		Where two or more legal entities have control of a publication, both the name, surname, country of residence and the profession of those persons controlling these legal entities have to be made known to the public, when they hold more than 25 percent of shares therein, are members of their administration or board of governors or if they are involved in the daily management of these legal entities.
6.5.1. Transparency towards consumer (e.g. identification obligation; cf. Art. 3a AVMS Directive)			
6.5.2. Transparency obligations towards regulator or in general (info on capital structure, balance sheets, either in specific media laws or in general company laws...)	Media law		Book of charges attached to different broadcasting licences rights for licensing authority with regard to ownership of licensed companies.

**TABLE 7. Pluralism of media types and genres**

Measure	Source	Scope of application	Key features
<b>7.1. Minimum service in a number of programme strands for commercial / community / public service media</b>	Media Law		Book of charges linked to the different broadcasting licences may contain obligations concerning the promotion of culture and art.
7.1bis. Special framework for community media (“medias associatifs”): Is there a special legal framework granting protection to community media (including rules determining the criteria - e.g. being independent of political parties, non-profit, respecting the law, etc. - in order to qualify as community media; granting certain privileges to that type of media, like guaranteed access to spectrum or networks, etc.).			
<b>7.2. Events list</b> (please indicate what type of events are listed, e.g. only sports events or also cultural, political events...)	Art. 28bis Media Law		Possibility to create list of major events. No exclusive rights over these events (limitations cf. European Directive).
<b>7.3. Short news reporting</b>			
<b>7.4. Fixed book price</b>			
<b>7.5. Public service media</b>			There is no public broadcaster as such but the private organisation ‘CLT-UFA’ is entrusted (to some extent) with a public service mission. In 1995, CLT-UFA committed - as a counterpart for the granting of licences (relating to programmes and frequencies) by the government – to provide certain public service broadcasts on its Luxembourg radio (‘RTL Radio Lëtzebuerg’ - see above) and television programmes, (‘RTL Télé Lëtzebuerg’). These stations must broadcast, for a determined minimum of time in their ordinary schedule, programmes devoted to news, culture, sports, and foreign speaking communities and transmit a number of events of national interest.
	Art. 10, 1, E Media Law j. art. 14 Media Law j. Grand-Ducal Decree of 19 June 92		Public Service Radio station for socio-cultural broadcasts “100,7”. The conditions under which this station is operation can be determined in a book of specifications.
<b>7.5.1. Structural rules - organization</b>			
7.5.1.1. <i>Independence (from government, political powers, economic powers; is this explicitly guaranteed, how?)</i>			
7.5.1.2. <i>Election of management, composition of board members... (government? Parliament? Other?)</i>			
7.5.1.3. <i>Specific representation requirements for board of directors, other bodies</i>			
7.5.1.4. <i>Advisory bodies: ensured broad representation of cultural, political and geographic groupings</i>			

7.5.1.5. <i>Employment: ensured broad representation of cultural, political and geographic groupings</i>			“Diversity” is mentioned as one of the core values of the RTL group. It remains unclear if this is diversity in content or in employment.
7.5.2. Structural rules - funding			
7.5.2.1. <i>Source of funding (state / tax money, public / licence fees, advertising, merchandising...)</i>			
7.5.2.2. <i>Sufficiency of resources(taking into account the missions and new media activities)</i>			
7.5.3. Definition of public service remit			
7.5.3.1. <i>Obligation to provide a varied and pluralistic offer</i>			
7.5.3.2. <i>Obligation to engage in new media activities</i>			
7.5.4. Content obligations (not yet mentioned in table 3, 4 or 5)			
7.5.5. Universal coverage obligations			

**TABLE 8. Distribution (networks/network facilities/print distribution)**

Measure	Source	Scope of application	Key features
<b>8.1. Guarantees for 'public contents' to be distributed (must carry or other)</b>			No must carry for any platform, but some obligations foreseen in some laws: - Title II in the authorisation regime of the Telecommunication package of 30 May 2005 - in art. 22(5) of the law on electronic media which provides for a possibility to set up (through a grand ducal decree) a list of programmes which might benefit from a priority of retransmission on cable networks.
<b>8.2. Guarantees for network operators to distribute 'public contents' (must offer or other)</b>			No must offer
<b>8.3. Ex ante regulation (in electronic communications): SMP market analysis for broadcasting transmission</b>			
8.3.1. Implementation of market analysis procedure in ECNS Directives			No analysis yet.
8.3.2. Result of (first) round of market analysis of market 18			
<b>8.4. Ex ante regulation for associated facilities of networks, so-called 'bottleneck facilities'</b>			
8.4.1. Conditional access	Art. 28 Law on networks and electronic communication services (Telecom Law)		Obligations for CAS providers towards cable networks: allowing control obligations for CAS providers towards broadcasters: equal conditions obligations for patent holders of CAS: licensing at equal conditions, licence can not discourage interoperability/open technology with other systems.
	Law on the protection of Conditional Access Systems (2002)		Special law prohibiting the fabrication or importation, possession, installation and maintenance (for commercial purpose) of systems that will offer access to CAS without the authorization of the CAS-provider.
8.4.2. EPG (or other search tools)	Art. 26 Telecom Law		Possibility for ILR to determine obligations for the providers of API and EPG related to equitable, reasonable and non-discriminatory conditions.
8.4.3. API	Art. 26 Telecom Law		Cfr. <i>supra</i>
8.4.4. Other			
<b>8.5. Interoperability requirements</b>			
<b>8.6. Specific rules for distribution systems in print media</b>			
<b>8.7. General competition law</b>			
<b>8.8. Policies fostering distribution systems (libraries,</b>			

<b>broadband networks...)</b> - are these in line with EU state aid rules?			
<b>8.9. State Aids to distribution platforms and/or schemes (can be based on one or more of the following criteria:</b> - Regional - Linguistic/minority - National )			

**TABLE 9. Supervision**

Measure	Source	Scope of application	Key features
<b>9.1. National Regulatory Authority</b>			Conseil National des Programmes ( <a href="http://www.cnpl.lu">http://www.cnpl.lu</a> )
<i>Note: Absence of a real, independent National Media Regulator (except for some categories of radio stations). Competence for the regulation of media enterprises and their activities is spread among a number of different authorities. Main responsibility is vested with the Prime Minister. However sanctions related to programme content can only be taken on the proposal of the National Programme Council.</i>			
	Art. 10, 1, I Media Law		Book of conditions can stipulate the supervision rights of the government regarding the articles of association, share holders and organs of the broadcasting society.
	Art. 29 Media Law		Media and Communication Service: special branch of the Ministry of State, assisting the Prime Minister in his media policy.
	Art. 30 Media Law		Independent Broadcasting Commission (CIR): authorisation of channels with low power transmitters and radio networks. Advises government on all other authorisations related to broadcasting. Can issue binding decisions and is therefore the most independent regulatory body.
	Art. 31 Media Law		National Program Council (CNP): advises on surveillance of program content, advises on the socio-cultural radio. It is also independent from the government, but has no decisive powers.
	Art. 10, 1, H Media Law		Book of conditions can stipulate the terms of supervision by the CNP over the program content of a licensed broadcaster.
	Art. 32 Media Law		Advisory Media Commission: advisory body representing the players of the sector within the government.
			Luxembourg Regulation Institute: national regulator for telecom.
9.1.1. Structure/ organisation			
9.1.1.1. Guarantees for independence			
9.1.1.2. Representation requirements			
9.1.2. Credibility and efficiency			
9.1.2.1. Sufficient resources			
9.1.2.2. Tasks and duties			
9.1.2.3. Effective sanctioning powers			
9.1.3. Cooperation with other regulators			
<b>9.2. Press Council</b>	Art. 2 Law on the recognition and protection of the professional journalists (1979)		Press Council: any person may ask the PC to determine whether or not a breach of the professional ethics, as laid out in the code has occurred. Council can initiate investigations on its own. New far-reaching competences both to regulate proceedings and issue ethical codes granted by the Press Law.

9.2.1. Broad representation of sector	Art. 4 Internal Code of the Press Council		The members are editors with domicile in Luxembourg, journalist with a Luxembourg press card, representatives of professional organizations. In case a professional scene is underrepresented, the Press Council can take initiatives to resolve this (c).
9.2.2. Sufficient resources			Financial resources of the Press Council consist in: - subsidies granted by the government - gifts - if necessary, contributions of the editors and the professional organizations of journalists
9.2.3. Credibility			
<b>9.3. Competition Authority</b>			Conseil de la concurrence ( <a href="http://www.eco.public.lu/attributions/iconc/index.html">http://www.eco.public.lu/attributions/iconc/index.html</a> )
	Competition Law (2004)		The law of May 17, 2004 on competition has created the two Luxembourg competition authorities. The two authorities are: the Competition council (independent administrative authority), decision maker and the Competition inspection, in charge of the investigations (service established within the Ministry of the Economy and Foreign Trade). The two authorities are member of the European competition network (ECN).
<p><i>Note: At this moment the law is under revision. The most important changes will be:</i>          -centralization of all the competences regarding competition with the Competition Council          - increase of recourses          - abolition of maladjusted rules          -adopting the new European rules regarding exemptions</p>			
9.3.1. Structure/ organization <i>(What this row should learn is whether there is a problem for media pluralism because NCA does not function properly; it should not contain an in-depth analysis of functioning of NCA!)</i>			
9.3.1.1. Guarantees for independence	Art. 7, 3 Competition Law		Members of the Council can not intervene in case where they have a direct or indirect economical interest; neither can they intervene in cases they were involved with due to a professional function preceding the one with the Council.
9.3.1.2. Representation requirements			
9.3.2. Credibility and efficiency			
9.3.2.1. Sufficient resources	Art. 3, 5 Competition Law		The secretariat of the Council is guaranteed by the Ministry.
9.3.2.2. Tasks and duties			
9.3.2.3. Effective sanctioning powers	Art. 18-20 Competition Law		Possibility to impose fines and penalties imposed on a daily basis in case of non-compliance.
9.3.3. Cooperation with other regulators			



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