



Background information report

Media policies and regulatory practices in a selected set of European countries, the EU and the Council of Europe: The case of Belgium

Bart Van Besien (under the scientific supervision of Pierre-François Docquir, Benoît Frydman and Emmanuelle Bribosia) (ULB)

October 2010

Project profile

MEDIADEM is a European research project which seeks to understand and explain the factors that promote or conversely prevent the development of policies supporting free and independent media. The project combines a country-based study in Belgium, Bulgaria, Croatia, Denmark, Estonia, Finland, Germany, Greece, Italy, Romania, Slovakia, Spain, Turkey and the UK with a comparative analysis across media sectors and various types of media services. It will investigate the configuration of media policies in the aforementioned countries and will examine the opportunities and challenges generated by new media services for media freedom and independence. Moreover, external pressures on the design and implementation of state media policies, stemming from the European Union and the Council of Europe, will be thoroughly discussed and analysed.

Project title: European Media Policies Revisited: Valuing and Reclaiming Free and Independent Media in Contemporary Democratic Systems

Project duration: April 2010 - March 2013

EU funding: approx. 2.65 million Euro

Grant agreement: FP7-SSH-2009-A no. 244365

Copyright © 2010
All rights reserved

Disclaimer

The information expressed in this document is the sole responsibility of the author and does not necessarily reflect the views of the European Commission.

Information about the author

Bart Van Besien is a researcher at the Centre Perelman for Legal Philosophy. He studied Law and History at the Katholieke Universiteit Leuven and obtained a Master's degree in European Law from the Université Libre de Bruxelles. During his law studies, he participated in an exchange program with the Universitat de Barcelona. After graduating, he specialised in intellectual property law and internet law, and worked as an attorney in Belgium and as an in-house legal counsel in Ireland. He currently writes his PhD thesis in the field of media law. Other fields of interest are internet law, intellectual property law, legal history, human rights and philosophy of law.

TABLE OF CONTENTS

1. Introduction.....	5
2. The media landscape in Belgium.....	8
2.1 Two separate media landscapes.....	8
2.2 Two similar media landscapes.....	10
2.3 The media market.....	11
2.3.1 The print media.....	11
2.3.2 Radio and television.....	14
2.3.3 Media online.....	17
2.3.4 Social media online.....	19
2.3.5 News agencies.....	19
2.4 Journalists' background and education.....	19
2.5 Media literacy and media status in society.....	20
3. The media policy in Belgium.....	21
3.1 Actors of media regulation and policy.....	21
3.2 The media regulatory framework.....	22
3.2.1 Freedom of expression and information.....	22
3.2.2 Structural regulation.....	25
3.2.3 Content regulation.....	28
4. Assessment of Belgian media policy and democratic politics.....	31
References.....	34

The case of Belgium

Bart Van Besien (under the scientific supervision of Pierre-François Docquir, Benoît Frydman and Emmanuelle Bribosia)*

1. Introduction

Although the principle of freedom of the press was enshrined in the Dutch constitution of 1815, this principle remained dead letter during the fifteen years of Dutch rule.¹ When the Belgian revolutionists drafted the constitution of 7 February 1831, they made sure it expressly safeguarded the freedom of the press as one of the main “freedoms” that the Belgians were henceforth to enjoy.

After Belgium’s independence, the competition between various political groupings (at first Liberals and Catholics, later on also Socialists, Regionalists and other parties) translated into the gradual emergence of a compartmentalised society, where people went to different schools, read different newspapers and organised their lives in separated and opposing compartments or “pillars”.² Although only few newspapers were directly owned by political parties, most of them were linked to political parties and openly supported their policies.³ As such, one can speak about a media landscape where the press was traditionally “free” in the sense that the press was not directly owned or controlled by the state, but not necessarily “independent”, in the sense that the press was subject to interference by political actors and served as a means to influence public opinion and politics.

One of the turning points in the evolution of the Belgian press was the abolition in 1848 of the stamp duty on newspapers. This led to the emergence of an affordable and therefore more widely spread opinion press.⁴ However, even though newspapers became more affordable, and even if they were often available at public places where they could be read aloud,⁵ they remained to a large degree a privilege of the few who could read and receive them. Also, the limited democratisation level and the fact that newspapers were for some time available in French only⁶ meant that not everybody was equally interested in reading newspapers.

The period in between the two World Wars saw the emergence of a mass press, due to the introduction of universal voting rights and compulsory education, but also mere technical improvements in press techniques, cheaper paper and an increasing focus on sports, advertisements and regional news.⁷

* Dr. Pierre-François Docquir, senior researcher at the Perelman Centre for Legal Philosophy (ULB) and vice-president of the Conseil Supérieur de l'Audiovisuel; Professor Benoît Frydman, Director of the Perelman Centre for Legal Philosophy (ULB); Professor Emmanuelle Bribosia, Director of the Legal Department of the Institute for European Studies (ULB).

¹ Article 227 of the Constitution of 24 August 1815 and Royal Decree of 20 April 1815.

² D.C. Hallin and P. Mancini, *Comparing media systems, Three models of media and politics* (2009), at p. 153.

³ Indirect links existed between the Liberal and the Catholic Parties and their supportive newspapers, and more direct links between the Socialist and Communist Parties and their newspapers.

⁴ E. De Bens and K. Raeymaeckers, *De pers in België: het verhaal van de Belgische dagbladpers gisteren, vandaag en morgen* (2010), at p. 33.

⁵ E. Witte, *La Construction de la Belgique 1828 – 1847* (2010), at pp. 45-46.

⁶ Flemish newspapers emerged only a couple of decades after French newspapers. See J. Gol, *Le Monde de la Presse en Belgique* (1970) at p. 19.

⁷ *Ibid.*, p. 19.

In the period after the Second World War, ideological clashes between opposing political parties gradually diminished. The press followed this evolution by cutting its most obvious links with political parties and by orientating itself more towards informing readers, rather than trying to influence its readers' views. This change is also linked to a growing dependence on income from advertisements, which gave rise to a general tendency to voice rather moderate and uncontroversial opinions.⁸ Succeeding concentration waves resulted in a situation where newspapers with traditionally very different views on politics and on society are now owned by the same press groups, as will be discussed further below.

The Belgian authorities' approach towards radio and television was very different from the broad freedom that was granted to the written press. In 1930, the Belgian authorities created a national public broadcasting organisation, INR/NIR, which they granted a monopoly to broadcast nationwide radio programmes, in coexistence with the existing private local and regional radio broadcasters. The arrival of television in the 1950s saw the transformation of INR/NIR to RTB/BRT, which was promptly granted a monopoly to broadcast television signals. The preparatory works of the act of 18 June 1930 on radio broadcasting echo some concerns by members of parliament that the state monopoly would constitute a breach of the press freedom. The parliamentary voting nevertheless concluded in favour of the state monopoly, for technical reasons (i.e., only three international frequencies were available), and because the state monopoly was seen as an experimental and temporary solution.⁹ Almost all European governments at the time had serious concerns about the possible effects of these new media on society at large (i.e., their potential to influence the opinion of the population) and hence chose to bring them under direct state control instead of leaving them to the rules of the free market.¹⁰ Fact is that the public broadcasters' monopolies on radio and television broadcasting have always been linked to a public remit which they had to fulfil (culture, sports, information, and "elevation of the people").

The state broadcasters were (and still are) directly owned by the Belgian authorities (at first the Belgian government, later on the Communities), and measures were taken in order to guarantee some degree of political control over the broadcasters, based on a proportional representation of the various political groupings within their representative bodies and personnel, and over the content of the programs, through guaranteed proportional airtime for various philosophical or religious associations. This system of internal pluralism in broadcasting, where various political representations keep each other in balance,¹¹ exists until today within the public broadcasters, but is mostly limited to the broadcasters' board of directors (and not so much their personnel).

These monopolies were challenged as from the 1970s and 1980s on by pirate radios and foreign television broadcasters who reached the Belgian audience via the cable networks. Legislation followed slowly to legalise private radio and television broadcasting. Local commercial radio broadcasting was legalised in 1981 in Flanders and in 1982 in the French Community. In 1987, private (commercial) television broadcasting was legalised in both Communities, and RTL-TVI and VTM became the

⁸ G. Thoveron, "La valeur commerciale de l'objectivité", in G. Thoveron and C. Doutrelepon (eds), *La Presse, Pouvoir en Devenir* (1996) 19.

⁹ See S. Hoebeke and B. Mouffe, *Le droit de la presse* (2005), at p. 90.

¹⁰ R. Otten, *Achter televisie: omroepmarkten en -structuren in West-Europa* (2005), at p. 23.

¹¹ See Hallin and Mancini, *Comparing media systems*, p. 166.

first private television channels in respectively the French and the Flemish Community.¹² Licences for local television broadcasting have been granted since 1987 in the French Community and since 1993 in the Flemish Community. The authorities tried to compensate the written press for foreseeable losses caused by television and radio advertising, by granting subsidies to the written press and – initially – by forcing the private broadcasters to open their shareholding to editors of the written press.

Both radio and television have since the end of the 1990s been confronted with new technical developments (e.g. in the fields of cable, fibreglass, satellite, pay-tv, video-on-demand, the internet and digitalisation), which create challenges and opportunities to the broadcasters in terms of new platforms and room for new players, but also put the role of the state and its control over radio and television in question. All in all, Belgium's authorities have been quite reluctant to loose their grip on radio and television broadcasting. For example, the Flemish government attempted for a long time to close the market for private television broadcasting, by granting a monopoly to broadcast advertisements to the Flemish public to just one player (VTM). This monopoly lasted from 1989 to 1998 and was only abolished after the European Commission forced the Flemish government to do so.¹³ In Flanders, the monopoly granted to VTM was only challenged in 1995 by the Scandinavian SBS group (in order to circumvent Flemish legislation, VT4 was at first broadcast from London). In French-speaking Belgium, it took until 2001 before the (Luxembourg based) RTL group got competition from the (French) AB group.

In sum, the influence from politicians on the media is less apparent today than it used to be, because the links between political groupings and the written press have atrophied, and because the state monopolies for broadcasting have disappeared. However, the Belgian authorities remain directly active in the fields of radio and television broadcasting, through the public broadcasters and through the application of much stricter rules than those applying to other media. Also, the Belgian authorities are interfering in the media through a variety of direct and indirect subsidies. For the written press, the authorities grant mostly indirect subsidies such as a VAT tariff of 0% for newspapers and magazines, reduced tariffs for post and distribution, government advertisements, etc.¹⁴ Unfortunately, there is a lot of uncertainty as to the total amount of these indirect subsidies, and more transparency in this regard is desirable. The Communities also grant direct state aid to the written press.¹⁵ For the audiovisual media, apart from directly sponsoring the public broadcasters, the Communities also grant direct subsidies to e.g. private regional television

¹² In 1987, RTL-TVI became the first private television channel for French speaking Belgium (Decision of the Government of the French Community of 21 December 1987). In 1989, VTM became the first private television channel for Dutch speaking Belgium (Decision of the Government of the Flemish Community of 19 November 1987).

¹³ Commission Decision 97/606/EC of 26 June 1997 pursuant to Article 90 (3) of the EC Treaty on the exclusive right to broadcast television advertising in Flanders, OJ L 244, 6/09/1997, P. 0018–0025.

¹⁴ Until 2008, the French Community forced the television broadcasters to contribute part of their revenue (if this revenue surpassed 15 million euros) to the written press, as a compensation for revenue losses by the written press following the admission of commercial advertisements on television (see old Art. 30 FRBA).

¹⁵ E.g. decision of the French Community's Government of 1 July 2010 and the Act of 31 March 2004 concerning aid to the French-language written daily press and the development of initiatives of such daily press in schools; Protocol between the Flemish Government and the Flemish written press concerning safeguards for a pluralistic, independent and efficient Flemish opinion press.

broadcasters¹⁶ and private local radio broadcasters.¹⁷ Finally, the authorities grant some direct subsidies to specific projects, such as projects supporting newspapers in schools, funds promoting quality journalistic research,¹⁸ and subsidies to professional organisations for journalists.¹⁹

2. The media landscape in Belgium

As a result of the transition of Belgium from a unitary to a federal state, the political and the cultural landscape in Belgium is separated along language barriers. This means that there is a clear separation between the French-language media on the one hand and the Dutch-language or Flemish media on the other hand. In other words, it is more correct to speak about two separate media landscapes, rather than about one general Belgian media landscape. Although these two media landscapes are separate, they present a number of similarities. The following sections will give a detailed overview of the Belgian media landscape.

2.1 Two separate media landscapes

Since the 1970s, Belgium gradually evolved step by step from a unitary state to a complex federal state, where political power is divided between the federal (i.e., Belgian) level, the language-based Communities (i.e., the Flemish Community, the French Community and the German-speaking Community) and the territory-based regions (i.e., the Flemish Region, the Walloon Region and the Brussels-Capital Region). In the field of media, the main competences belong to the Communities – although the detailed picture is actually a more complex one.

As concerns *radio and television*, Belgium's French- and Dutch-language public broadcasters are separated entities (split from formerly one public broadcaster), with different personnel, audiences, public remits, regulations and controlling bodies. RTBF.be, the French-language public broadcaster, is only broadcasting French-language programs, whereas on the other side of the linguistic border, VRT, the Flemish public broadcaster, is only broadcasting Dutch-language programs. The same linguistic separation is true for non-public broadcasters.

As concerns *newspapers*, a small number of media groups control the newspaper market in French-speaking Belgium (i.e., Rossel, IPM and Corelio) and in Flanders (i.e., Corelio, De Persgroep and Concentra). There is no Flemish newspaper with significant sales figures in French-speaking Belgium, and almost no French language newspaper with significant sales figures in Flanders.²⁰ Cross-ownership of newspapers across language borders is mostly limited to specialised press, such as

¹⁶ E.g. decision of the Flemish Government of 23 July 2010 on subsidies to certain private regional television broadcasters.

¹⁷ E.g. based on Art. 161 FRBA, the French Community's authorities force their radiobroadcasters to contribute part of their revenues to a fund supporting radio broadcasting.

¹⁸ E.g. the Flemish Government grants subsidies to the Fund Pascal Decroos for Exceptional Journalistics.

¹⁹ E.g. the Flemish Government grants subsidies to VVJ.

²⁰ *La Libre Belgique* is the only newspaper that sells relatively well in the other language Community. More than 13% of the paper's readers live in Flanders. See De Bens and Raeymaeckers, *De pers in België*, p. 464.

papers focussing on business and the economy,²¹ and free newspapers.²² The only media group with an important market share for general newspapers in the other language is the Flemish media group Corelio (which publishes the French-language Editions de L’Avenir papers).

As concerns *magazines*, there seem to be more crossings between Belgium’s two major language groups. Although the most popular magazine titles in each language are not available in the other language, other titles are available for both Communities and publishers such as Roularta and Sanoma are very active on both language markets.

Belgian media tend to focus on differences between the Communities, rather than on similarities between them. This is especially the case with political reporting, where journalists often translate the same facts in opposing interpretations and opinions, and where the two Communities are regularly presented as opposite to each other.²³ Also, a recent study shows that French-language politicians get very limited airtime on Flemish television news bulletins,²⁴ and the same seems to be true for Dutch-speaking politicians on French-language television news bulletins.²⁵ It should be noted in this regard that the split of Belgium’s media landscape is closely related to the way its political system is organised. Belgium’s political parties are split upon a linguistic basis, and voters can - generally speaking - only vote for candidates who stand for election in their own region (e.g. a voter based in Wallonia cannot vote for a candidate from Flanders, and vice versa). Political debate takes place within two distinct media fields, and elections take place on the basis of two distinct electorates.

As such, the separation of Belgium’s media landscape and of its electorates challenges the country’s democratic system at a federal level, because it impedes the development of a shared public sphere where politicians, journalists, and other members of the two Communities can debate their different opinions and views.²⁶ On the other hand, this problem is not unique to Belgium alone (e.g. one can wonder whether a democratic Europe is possible without a single European media landscape) and was relevant in earlier times as well, when Belgians did not overwhelmingly read each other’s newspapers neither.²⁷

²¹ The group Mediafin, which publishes L’Echo and De Tijd, is a joint-venture between the French-language publisher Rossel and the Dutch-language publisher De Persgroep.

²² Mass Transit Media, which publishes Metro, is a joint-venture between the French-language publisher Rossel and the Dutch-language publisher Concentra.

²³ D. Sinardet, “Direct democracy as a tool to shape a united public opinion in a multilingual society? Some reflections based on the Belgian case”, in D. Sinardet and M. Hooghe (eds), *Is democracy viable without a unified public opinion? The Swiss experience and the Belgian case* (2009), Re-Bel e-book 3, available at: <http://www.rethinkingbelgium.eu/rebel-initiative-ebooks/ebook-3-democracy-without-unified-public-opinion> (last visited on 25/10/2010), at p. 35.

²⁴ J. De Smedt, M. Hooghe and S. Walgrave, “Franstalige politici in het Vlaamse televisienieuws: quantité négligeable?”, ENA – Nieuwsmonitor 1/09/2010, available at: www.nieuwsarchief.be (last visited on 21/10/2010).

²⁵ M. Lits, “Media in Belgium: two separate public opinions”, in D. Sinardet and M. Hooghe (eds), *Is democracy viable without a unified public opinion? The Swiss experience and the Belgian case* (2009), Re-Bel e-book 3, available at: <http://www.rethinkingbelgium.eu/rebel-initiative-ebooks/ebook-3-democracy-without-unified-public-opinion>, at p. 45.

²⁶ Ibid, p. 45 and Sinardet, “Direct democracy as a tool to shape a united public opinion in a multilingual society?”, p. 39.

²⁷ M. Beyen, “The duality of public opinions as a democratic asset’ – Confessions of an historian”, in D. Sinardet and M. Hooghe (eds), *Is democracy viable without a unified public opinion? The Swiss experience and the Belgian case* (2009), Re-Bel e-book 3, available at:

Be it as it may, some initiatives have been taken recently to move the French- and Dutch-language media closer together. Most of these initiatives took root after 13 December 2006, when RTBF.be interrupted its normal broadcasting for a sudden announcement by the anchorman of its regular news bulletins that Flemish politicians were voting for the independence of Flanders. Although this announcement and the news bulletin that followed were fake, surveys showed that 89% of viewers had up to some point believed that the events reported were real. In the following days and weeks, a lively debate developed on the journalistic appropriateness of this program and on the impact that journalists have on public opinion and politics. Following this incident, the media have been paying more attention to events in the other Community.²⁸ Most newspapers now regularly publish articles of opinion makers from the other Community. However, the attempts taken remain limited in scale and impact and are not always very successful. For example, before the June 2010 elections, the public television broadcasters of the two Communities tried to jointly organise a political debate with politicians from both Communities, but the French-language broadcaster's board of directors obstructed this initiative, a decision they justified by divergences in the manners public broadcasters deal with far right political parties.

2.2 Two similar media landscapes

Although the media landscapes of Belgium's main Communities are separate and distinct, they are similar in the sense that they have a similar history, during most of which they discussed the same news topics in the same Belgian context. Newspapers in both languages used to be linked to specific ideological or political trends in society, but have during recent decades cut these links. Another similarity is that media in both languages address relatively small audiences (around 4 million French-speakers and around 6 million Dutch-speakers). Ownership of both French- and Dutch-language media is strongly concentrated in the hands of just a few media groups (e.g., the French- and the Dutch-language newspapers are dominated by 3 media groups, the French- and Dutch-language magazines are dominated by 3 media groups, the French- and Dutch-language radio and television services are dominated by just 2 media groups).

The majority of both the French- and Dutch-language media groups are also becoming active in other domains (e.g., traditional magazine and newspaper publishers are also active in television and radio,²⁹ traditional newspaper publishers are also publishing magazines,³⁰ traditional television broadcasters are also starting to publish magazines³¹ and all of the media players are active on the internet).³² Also,

<http://www.rethinkingbelgium.eu/rebel-initiative-ebooks/ebook-3-democracy-without-unified-public-opinion>, at p. 22.

²⁸ E.g. the initiative of *Le Soir* and *De Standaard*, where each journal sent journalists to the other Community for a certain time, with the purpose of getting to know each other better.

²⁹ E.g. *Audiopresse*, the association of Belgium's French-language and German-language newspapers, participates for 34% in the television and radio broadcaster RTL Belgium; magazine publisher *Roularta* owns the television channels *Canal Z* and *Kanaal Z* and owns 50% of the shares of *Vlaamse Mediamaatschappij* (VMMa). Newspaper publisher *De Persgroep* owns the remaining 50% of VMMa. Newspaper publisher *Concentra* broadcasts the digital television channel *Acht*. Newspaper publisher *Corelio* participates in *Radio Nostalgie* and in the television production houses *Woestijnvis* and *Caviar*.

³⁰ E.g. newspaper publisher *De Persgroep* also publishes the magazines *Dag Allemaal*, *Joepie*, etc.

³¹ E.g. television broadcaster *Media Ad Infinitum* also publishes the magazine *Vitaya* (together with *Sanoma*).

media consumers all over the country seem to prefer the same kind of radio and television programmes (i.e., mainly entertainment programmes) and tend to read the same type of newspapers (i.e., mainly popular and regional newspapers). Finally, Belgium is a very open society, and its media – irrespective of their language – are heavily influenced by the international media market, especially by media from neighbouring countries (although the influence of French media on the media of the Belgian French-Community seems stronger than the influence of Dutch media on the media of the Flemish Community (see below). This implies not only that international media groups are quite strong on the Belgian market,³³ it also means that Belgian media groups – irrespective of their language - are surprisingly active abroad, especially in the neighbouring countries.³⁴

2.3 The media market

On the one hand, the Belgian media market is characterised by a relatively wide variety of different media available to the public. On the other hand, ownership of these media is concentrated into the hands of just a limited number of media groups - although no single group dominates the entire media market. Also, media players are trying to diversify their revenue streams and become more and more active in other media domains (cross-media concentration, the Internet, etc.). The following sections attempt to give an overview of the Belgian media market.

2.3.1 The print media

As described in detail below, there is a high concentration in ownership of the Belgian newspaper and magazine publishers. Although the consolidation of the written press is well described in literature, its origins and effects are not always that well described. On the one hand, too much consolidation endangers the pluralistic character of the media. On the other hand, consolidation may have positive effects as well, and it should be noted that several titles were saved from bankruptcy by large media groups. It is of course of great importance that newspapers that merge into a larger group can save their editorial independence.³⁵

Belgium counts six major French-language newspapers. Of these, two can be considered “quality” newspapers,³⁶ two others “regional” newspapers,³⁷ one a “popular” newspaper³⁸ and another one a specialised “economic” newspaper.³⁹ A

³² However, cross media involvement seems to be more prominent among the Dutch-language media than among the French-language media.

³³ E.g. the German Bertelsmann group (RTL) is very prominent on the French language television and radio market. Another German group, ProSiebenSat.1 (SBS), is quite strong on the Flemish television market. The Finnish Sanoma group has a strong presence on the magazine markets of both Communities.

³⁴ E.g. De Persgroep owns the Dutch newspapers Het Parool, Trouw, Algemeen Dagblad and Volkskrant. Roularta has a strong presence in France, where it owns the titles L'Express, L'Expansion, Point de Vue, etc. Rossel is also active in France, with the regional newspapers La Voix du Nord, Nord Éclair, Nord Littoral and Lille Plus.

³⁵ E.g. De Morgen and Gazet van Antwerpen maintained their independent editorial staff. De Tijd and L'Echo also received guarantees for their editorial independence. See De Bens and Raeymaeckers, *De pers in België*, pp. 76-77.

³⁶ Le Soir and La Libre Belgique.

³⁷ The titles of Sud Press and Editions de l'Avenir.

³⁸ La Dernière Heure / Les Sports.

similar picture can be drawn of the Flemish side, where there are seven major newspapers, two of which can be considered “quality” newspapers,⁴⁰ two others “regional” newspapers,⁴¹ yet two others “popular” newspapers⁴² and one a specialised “economic” newspaper.⁴³ Belgium has only one major German-language newspaper.⁴⁴ Although the concepts “quality”, “regional”, “popular” and “economic” can have different meanings and connotations, they are used in literature (and even in policy practice) to distinguish different types of newspapers (e.g. these terms are used in the Flemish regulator’s report on media concentration in Flanders).

On the one hand, 6 different newspaper titles for around 4 million French speakers and 7 different titles for a public of 6 million Dutch speakers may be considered a relative wide variety of newspapers. However, if one looks at the available titles per category, Belgian consumers can only choose between 1 or 2 titles in their own language. Also, these figures look pale in comparison with the figures of newspapers published in earlier times. At the German-language side, 1 major newspaper is certainly a low figure, but taking into account the limited number of German-speakers in Belgium (around 75,000), this is not a surprising figure. Compared to other countries, Belgium seems to have a relatively low or averaged level of newspaper readership, which partly explains the high level of concentration.⁴⁵

Free newspapers take a special position in the Belgian newspaper market. Although their popularity is a relatively recent phenomenon, Belgium has had experiences with free newspapers since the 19th century.⁴⁶ Belgium currently counts one major free newspaper (Metro⁴⁷), which is published in separate issues in French and Dutch. The effect of free newspapers on the circulation figures of the classic paid newspapers is yet unclear. According to the Flemish media regulator, there is no proof of a linear relationship between the increase in circulation of Metro and the sales figures of the paying (Flemish) newspapers, and it remains unclear whether the average reader considers Metro as a complement or a substitute to a paid newspaper.⁴⁸

For the French-language newspapers, the most recent figures show that the free newspaper Metro is the most widely spread, followed by the “regional titles” (Sud Press and Editions de l’Avenir), the “quality paper” Le Soir, the “popular title” La Dernière Heure / Les Sports, the “quality paper” La Libre Belgique and the “economic title” L’Echo. At the Flemish side, the most recent figures show that the “popular titles” (Het Laatste Nieuws / De Nieuwe Gazet and Het Nieuwsblad / De Gentenaar) are the best selling Flemish newspapers. These were followed by

³⁹ L’Echo.

⁴⁰ De Standaard and De Morgen.

⁴¹ Gazet van Antwerpen and Het Belang van Limburg.

⁴² Het Laatste Nieuws / De Nieuwe Gazet and Het Nieuwsblad / De Gentenaar.

⁴³ De Tijd.

⁴⁴ Grenz-Echo.

⁴⁵ D. Ward, *A Mapping study of media concentration and ownership in ten European countries* (2004), available at: <http://www.cvdm.nl/dsresource?objectid=421&type=org> (last visited on 22/10/2010), at p. 25. According to De Bens and Raeymakers, newspaper readership in Belgium amounts to 173 readers per 1,000 inhabitants, which is close to the average European figure. See De Bens and Raeymaeckers, *De pers in België*, p. 149.

⁴⁶ Le Soir started as a free advertising newspaper in 1887, but later on evolved to a paying newspaper.

⁴⁷ Metro is published by Mass Transit Media (MTM), a joint-venture between Conentra and Rossel.

⁴⁸ Vlaamse Regulator voor de Media (VRM), “Mediaconcentratie in Vlaanderen Rapport 2009”, available at: <http://www.google.com/search?ie=UTF-8&oe=UTF-8&sourceid=navclient&gfns=1&q=%E2%80%9CMediaconcentratie+in+Vlaanderen%2C+Rapport+2009> (last visited on 22/10/2010), at p. 63.

respectively the free newspapers (Metro), the “regional titles” (Gazet van Antwerpen and Het Belang van Limburg), the “quality papers” (De Standaard and De Morgen) and the “economic paper” De Tijd.⁴⁹ Whereas sales figures for the major French-language papers are in a rather sharp decline, sales figures for the major Dutch-language papers seem to be more stable.⁵⁰

Both the market of the French-language newspapers and the market of the Dutch-language newspapers in Belgium are marked by a high concentration. In fact, both markets are dominated by three major media groups: the groups Rossel,⁵¹ IPM⁵² and Corelio⁵³ for the French-language newspapers, and the groups Corelio,⁵⁴ De Persgroep⁵⁵ and Concentra⁵⁶ for the Dutch-market newspapers. This concentration trend has been going on since the 1950s.⁵⁷ At the same time, Belgium’s oligopolistic market structure makes it virtually impossible to launch new titles (except for the success of Metro almost all new ventures in the sector have failed since the 1950s).⁵⁸ Family ownership is still important for the Belgian media landscape, with most of the major press groups still being under the control of family shareholders.⁵⁹

The newspaper market in Belgium is currently confronted with various challenges, including a move to electronic versions of newspapers on the Internet, the availability of free news online and the success of free newspapers (e.g. the publishers and journalists of French-language newspapers are quite anxious about the recent success of Metro), a decline in sales figures (especially for the French language newspapers), and difficulties in finding alternative ways of funding via advertisements (due to the economic crisis and due to the availability of other advertising platforms, e.g. the websites of other media players). These challenges partly explain a move towards consolidation and towards cross-media involvement (e.g. expansion in other media sectors and on the Internet).

The periodical press in Belgium is also highly concentrated with a couple of media groups controlling the market in both Communities. The most important of them are Roularta,⁶⁰ the Finnish group Sanoma,⁶¹ Editions Ciné Revue,⁶² and De

⁴⁹ See the latest figures of CIM, available at: <http://www.cim.be> (last visited on 22/10/2010).

⁵⁰ Minus 4.14% for the French-language newspapers and minus 0.53 for Dutch-language newspapers for the second quarter of 2010, compared with the second quarter of 2009. See Centre for Information on the Media, available at: <http://www.cim.be/fr/media/presse/authentication/r%C3%A9sultats/r%C3%A9sultats-public> (last visited on 22/10/2010).

⁵¹ Le Soir, the newspapers of Sudpresse and the German-language Grenz-Echo all belong to Rossel. Rossel also participates for 50% in Metro, L’Echo and De Tijd.

⁵² La Libre Belgique and La Dernière Heure belong to the group IPM.

⁵³ The titles of “Editions de l’Avenir” belong to Corelio.

⁵⁴ Corelio also publishes the newspapers De Standaard, Het Nieuwsblad and De Gentenaar.

⁵⁵ De Persgroep owns Het Laatste Nieuws, De Nieuwe Gazet and De Morgen and participates for 50% in L’Echo and De Tijd.

⁵⁶ Concentra publishes Het Belang van Limburg and owns 90% of the shares of De Vlijt, the publisher of Gazet van Antwerpen. Concentra also participates for 50% in Metro.

⁵⁷ See De Bens and Raeymaeckers, *De pers in België*, p. 74.

⁵⁸ M. Kelly, G. Mazzoleni and D. McQuail (eds), *The media in Europe* (2004), at p. 18.

⁵⁹ I.e., the family Rossel-Hurbain for Rossel, the family Le Hodey for IPM, the family Van Thillo for De Persgroep and the family Theelen for Concentra.

⁶⁰ Roularta is the publisher of Belgium’s most important newsweeklies Le Vif/L’Express (in French) and Knack (in Dutch), the economic magazines Trends-Tendances and Bizz (both of which are published separately in French and in Dutch), and a number of television, lifestyle, regional and specialised magazines.

Persgroep.⁶³ Figures for 2008 show that Editions Ciné Revue has 26.7% of the French-language magazines, but no significant part of the Dutch-language market. Similarly, De Persgroep has 31.3% of the market of Dutch-language magazines, but no significant sales in French-speaking Belgium. Roularta has 24.2% of the French-language magazines and 10.6% of the Dutch-language magazines. Sanoma has 23.9% of the market of French-language magazines and no less than 47% of the market of Dutch-language magazines.

As shown above, the market for magazines is a very heterogeneous market, with some magazines focusing on news and general information, and others focusing on more specific audiences or themes. According to figures from CIM,⁶⁴ the most widely sold magazines in Belgium are television magazines and so called “popular” magazines. These are followed by respectively women’s magazines, news magazines and specialised magazines.

Figures show quite a sharp decline in the number of magazines sold.⁶⁵ Like the newspaper market, the market for magazines seems saturated with few new magazines appearing (and even fewer of these surviving).⁶⁶

2.3.2 Radio and television

At both sides of the language border, there is a growing evolution towards digital television and so-called catch-up television services. In Flanders, all analogue terrestrial television services were switched off on 3 November 2008, whereas in the French Community analogue terrestrial broadcast ceased to be on 1 March 2010. Also, the Flemish public broadcaster VRT recently sold its terrestrial digital broadcasting facilities to Norkring Belgium (which is a joint venture between VRT (51%) and the Norwegian Norkring (49%)).⁶⁷ Digital terrestrial switch-over is giving rise to a growing number of television channels (mostly thematic channels), a growing number of non-linear television services such as video-on-demand (which also increases interactivity), and a growing number of distributors of television services on the Belgian market.⁶⁸

Although there are quite a lot of television channels available, there is – once again – a strong concentration in Belgium’s television landscape. At the French-

⁶¹ Sanoma focuses on women’s magazines (e.g. Flair and Libelle), lifestyle magazines (e.g. Feeling), popular magazines (e.g. Story) and television magazines (e.g. TéléMoustique and TeveBlad).

⁶² Editions Ciné Revue publishes the television magazine Ciné Télé Revue, which is the most widely sold magazine in French-speaking Belgium, but is not available in the Dutch-language.

⁶³ Newspaper publisher De Persgroep focuses on popular magazines (e.g. Dag Allemaal), lifestyle magazines (e.g. Genieten), youth magazines (e.g. Joepie) and television magazines (e.g. TV-Familie).

⁶⁴ See Centre for Information on the Media, <http://www.cim.be/fr/media/presse/authentication/r%C3%A9sultats/r%C3%A9sultats-public> (last visited on 22/10/2010). CIM’s main activities concern research about and verification of circulation figures of the Belgian media. As such, CIM has a considerable influence on the flow of advertisement budgets towards media players.

⁶⁵ 173 million magazines sold in 2008, compared to close to 200 million magazines sold in 1999. Ibid.

⁶⁶ Kelly, Mazzoleni and McQuail, *The Media in Europe*, p. 20.

⁶⁷ Norkring belongs to the Norwegian Telenor group.

⁶⁸ For more information for advertisement income for digital television, see K. Berte, “Reclame in een digital medialandschap”, unpublished PhD thesis, Ghent University (2009-2010).

language side, apart from the public broadcaster RTBF.be⁶⁹ and the main private television broadcaster RTL group, other smaller players are BeTV, BTV, SiA (Belgacom), Liberty TV Europe, MCM, Belgian Business Television (Roularta), PPMG, MTV and the twelve local television broadcasters.⁷⁰ At the Flemish side, next to the public broadcaster VRT and the main private broadcaster Vlaamse Media Maatschappij (VMMa),⁷¹ other players are SBS Belgium,⁷² Media Ad Infinitum, SiA (Belgacom), Telenet, Concentra, Alfacam, Actua TV, Belgian Business Television (Roularta), Life!TV, Icon Europe and the ten local or regional television broadcasters.⁷³

At the French-language side, RTL's commercial channel RTL-TVI (23.6%) was the most widely watched channel in 2008, followed by the public broadcaster's channel La Une (14.6%). These two dominant channels are followed by the channels TF1 (13.2%), France 2 (6.6%) and France 3 (6.5%), all of which are French (i.e., not Belgian) channels. Together, these five channels account for more than 63% of the audiences in French-speaking Belgium.⁷⁴ At the Dutch-language side, there is a similar strong concentration, but the public broadcaster has a bigger and ever growing market share than its commercial counterparts. VRT's Eén was the most widely watched channel in 2008 (31.8%), followed by VMMa's VTM (21.3%). Other channels lag behind (Canvas/Ketnet: 8.4%; VT4: 6.5%; 2BE: 5.9%; VijfTV: 4.5%; Vitaya: 3.6%). Together, the different channels of VRT and VMMa accounted for more than 67% of the market. Channels from the Netherlands only accounted for 3.8% of the market share in 2008.⁷⁵

It is worth noting that the main French-language private broadcaster (RTL Belgium) has rejected the competence of the Belgian authorities over its broadcasting services, arguing that its television activities are executed by its mother company, RTL Group, which is subject to the laws of Luxembourg.⁷⁶ In order to solve this problem of a broadcaster based and licensed in one European Member State (Luxembourg), but focusing its television programs on the audiences of a different Member State (Belgium), the government of the French Community of Belgium and the government of Luxembourg in June 2009 signed a cooperation agreement whereby some of the regulations applying in Belgium's French Community (that are more strict than the European Audiovisual Media Services (AVMS) Directive and do not exist in Luxembourg) are henceforth also applied to RTL's channels RTL-TVI,

⁶⁹ In January 2010, RTBF changed its name from RTBF to RTBF.be, to stress its focus on new technologies and in particular the Internet.

⁷⁰ For the detailed overview see Le Conseil supérieur de l'audiovisuel, "L'offre de médias et le pluralisme en Communauté française", available at: <http://www.csa.be/pluralisme> (last visited on 22/10/2010).

⁷¹ VMMa is owned for 50% by De Persgroep and for 50% by Roularta.

⁷² SBS Belgium is owned by the German media group ProSiebenSat.1 Media, Europe's second biggest media group (behind RTL Group).

⁷³ See for a detailed study Vlaamse Regulator voor de Media (VRM), "Mediaconcentratie in Vlaanderen Rapport 2009".

⁷⁴ See figures Communauté française de Belgique Service général de l'Audiovisuel et des Multimédias, "Annuaire de l'Audiovisuel 2009", at p. 72.

⁷⁵ See figures VRT Jaarverslag 2008, 52.

⁷⁶ RTL Group owns 66% of the shares of RTL Belgium. The other 34% of RTL Belgium's shares are owned by Audiopresse, the association of Belgium's French-language and German-language newspapers. RTL Group is a Luxembourg group controlled by the German Bertelsmann-group. With its 45 television channels and 32 radio channels in 11 European countries, RTL Group is one of the major audiovisual groups of Europe.

Club RTL and Plug RTL. The legal validity of the agreement is the object of debate. In a controversial decision of 15 January 2009, the Conseil d'Etat decided that RTL was permitted to rely upon its Luxembourg authorisation to broadcast towards the French Community of Belgium. However, this judgment related to legislation applicable prior to the transposition of the AVMS Directive. In a case that occurred after the transposition of the AVMS Directive, the French Community's regulator (CSA), in a decision of 3 December 2009, sent a reference for preliminary ruling to the European Court of Justice seeking clarification as to which state is allowed to claim jurisdiction upon the services edited by RTL (Case C-517/09).⁷⁷

As regards distribution, Belgium is one of the most widely cabled countries in the European Union. The development of the cable networks started as early as the 1960s.⁷⁸ While the cable operators (mainly Tecteo for the French Community and Telenet for the Flemish Community) are still largely dominating the distribution market of television services, their supremacy is under challenge by other operators, such as for IPTV, satellite and mobile television. Increased competition resulted in consolidation and concentration of the market of television distributors (and in the market of internet access providers).⁷⁹ In Flanders, the main television broadcasters (i.e., VRT, VMMA and SBS Belgium) recently accused the network operators Telenet and Belgacom TV of threatening their revenue streams, by giving too much freedom to viewers of digital television to record television programs. The broadcasters claim that this jeopardises their advertisement income (i.e., because viewers skip commercials) and income from video-on-demand services. It is unclear how this disagreement between broadcasters and operators will be solved and to what extent these actors will have to adapt to new technologies and developments.

Radio signals are still mainly transmitted via analogue means, but there is a transition towards digital radio. Radio programs are mainly accessible via terrestrial broadcasting, cable, satellite and the Internet. The public broadcasters of both Communities have since the 1990s been broadcasting their radio programmes digitally. VRT recently sold its terrestrial analogue and digital broadcasting facilities to Norkring Belgium (see above for television). Digital radio broadcasts are available via different platforms, including the Internet, satellite, terrestrial and mobile broadcasting. There is a lot of uncertainty about the type of format⁸⁰ that should be used for broadcasting digital radio, and given the investments needed to develop digital broadcasting and the extent of the current cable network that needs to be upgraded, Belgium's switch towards digital radio is slower than in other European countries.⁸¹ RTBF.be is suggesting a public-private cooperation in order to finance digital switchover for radio broadcasting. The Flemish government's frequency plan for digital radio dates from 12 October 2007 and the French Community launched a

⁷⁷ See Official Journal C 051, 27/02/2010, 19–20.

⁷⁸ See European Institute for the Media, "Final report of the study on the information of the citizen in the EU: obligations for the media and the Institutions concerning the citizen's right to be fully and objectively informed", 31/08/2004, at p. 33.

⁷⁹ MAVISE, "TV market in Belgium", available at: <http://mavise.obs.coe.int/country?id=4> (last visited on 22/10/2010).

⁸⁰ E.g. DAB (Digital Audio Broadcasting), DMB (Digital Multimedia Broadcasting), DVB (Digital Video Broadcasting), DRM (Digital Radio Mondiale), etc.

⁸¹ Communauté française de Belgique Service général de l'Audiovisuel et des Multimédias, "Annuaire de l'Audiovisuel 2009", at p. 479.

plan for the transition to digital radio broadcasting on 9 July 2007.⁸² In contrast to what happened to analogue television broadcasting, the Belgian authorities do not seem to have an official policy to completely switch off analogue radio broadcasting in the near future. An argument often heard is that digital switch over would put the further existence of smaller radio broadcasters (e.g. local radio stations, specialised radio stations, Community type radio stations, etc.) at risk.

Belgium's (terrestrial) radio landscape is similar to its television landscape, insofar that there are quite a lot of radio channels available, but that there is also a strong concentration in the market. At the French-language side, the public broadcaster RTBF.be and the commercial RTL group dominate the market. These main players are followed by the French NRJ group. At the Dutch-language side, the public broadcaster VRT and the commercial broadcaster VMMA dominate the market. At both sides of the language borders, a number of independent local, regional and community-focussed radios⁸³ are operating.⁸⁴ It can be noted that it is only since 2008 that the French Community succeeded in formulating a new frequency plan on terrestrial radio broadcasting, making an end to ten years of legal uncertainty for the private radio broadcasters as to whether or not they needed a licence to broadcast in the French Community.

To conclude the chapter about radio and television broadcasting, there currently is a lively discussion going on about the public remit of the public broadcasters. This discussion is partly fuelled by serious budget reductions that the Communities enforce on the public broadcasters. As such, an important part of the discussion focuses on the funding of the public broadcasters by the authorities – and indirectly by the taxpayers. Also, discussions are currently ongoing on new management contracts between the public broadcasters and the authorities.⁸⁵ Some fundamental questions are raised in this context, notably concerning which specific tasks should fall under the public remit of the public broadcasters, and which tasks they should refrain from performing. For instance, should the focus of the public broadcasters lay on culture, on information, on science, on sports or on entertainment? In what sense should the public broadcasters be allowed to develop into alternative funding and new technologies? As said, there is a lively debate going on about these issues between various stakeholders and many of the questions raised are expected to be addressed in the new management contracts between the public broadcasters and the Communities.

2.3.3 Media online

According to the figures of the International Telecommunication Union (ITU), as per September 2009, Belgium counted 7,292,300 Internet users, i.e., a 70% penetration level. An ESS survey on daily use of the internet per country puts Belgium

⁸² See also a recent consultation, Conseil supérieur de l'audiovisuel, "Consultation publique sur le lancement de services audiovisuels numériques par voie hertzienne et le suivi du Plan stratégique de transition numérique", available at: <http://www.csa.be/consultations/show/13> (last visited on 22/10/2010).

⁸³ E.g. radios for the Turkish community in Belgium, etc.

⁸⁴ See for more details Conseil supérieur de l'audiovisuel, "L'offre de médias et le pluralisme en Communauté française" and VRM, "Mediaconcentratie in Vlaanderen Rapport 2009", p. 18-25.

⁸⁵ The current management contracts between the French Community and RTBF.be and between the Flemish Community and VRT run from 2007 to 2011.

somewhere in the middle of the European countries surveyed.⁸⁶ Figures for 2008 show that internet radio or internet television were only used by 14% of the population in Wallonia, 15% of the population in Flanders and 22% of the population in Brussels. These figures are relatively low, compared to the overall figure of 20% for the entire European Union. Internet sites of newspapers or magazines were used by 13% of the population in Wallonia, 24% of the population in Flanders and 27% of the population in Brussels. Again, these figures are relatively low (especially the figure for Wallonia), compared to the overall figure of 25% for the entire European Union.⁸⁷

Where over the last couple of years, the sales figures of newspapers have been declining or at best stabilising, Internet sites of newspapers have at the same time seen a huge increase in popularity. In general, almost all newspapers and magazines have developed a full online version of their product, which is constantly updated. However, many newspapers and magazines only publish a limited number of their articles for free on their website, and ask their readers to subscribe to the paying online or paper version to gain access to all articles. This strategy of a hybrid paying-free model is especially popular with the specialised papers (such as the economic newspapers). Recently, many newspapers have also developed applications for mobile electronic devices, such as mobile phones and iPads. Most newspapers publish a lot of video-content on their websites and some of them even created their own studio to develop further in the direction of video-content. Similarly, almost all television and radio broadcasters have also developed an online version of their channels, where they offer not only information about their programs and a limited number of programs for downloading, but also a type of information that can be classified as “written press” activities. All of this means of course that the borderline between different types of media services (such as between the written press and television) is fading.

The evolution of media players entering into the internet world, together with the newspapers’ struggle to survive and to make their websites profitable through advertisement, has caused the main French-language newspaper publishers (i.e., Rossel, IPM and Corelio-subsidiary Editions de l’Avenir) to contest RTBF.be’s offering “written press” activities on its websites. These publishers recently announced they would start legal proceedings against RTBF.be, claiming that the public broadcaster is infringing on its public remit and is guilty of unfair competition by offering certain activities on its Internet sites.⁸⁸ They claim in particular that RTBF.be should not be allowed to offer services of the written press (as opposed to audiovisual services) on its internet sites, especially not if RTBF.be is using taxpayers’ money to offer such services. After the failure of a government-sponsored attempt to reconcile the parties, the newspaper publishers recently threatened to summon RTBF.be to court.

⁸⁶ European Social Survey, “Exploring public attitudes, informing public policy - Selected findings from the first three rounds”, 5, available at: <http://www.europeansocialsurvey.org> (last visited on 22/10/2010).

⁸⁷ “Mediaconcentratie in Vlaanderen Rapport 2009”, p. 69.

⁸⁸ See also Communication 2009/C 257/01 of the European Commission on the application of State aid rules to public service broadcasting, OJ C257, 27/10/2009.

2.3.4 Social media online

Social media online (such as blogs, Facebook, Twitter, etc.) do not seem to have conquered a prominent place in the Belgian media landscape. Although most media players are active on social media such as Facebook through e.g. fan clubs for and links to newspapers, and although journalists often have a Facebook or Twitter account, they do not overwhelmingly use these new media for their reporting. Private media blogs exist, but most of these blogs are initiatives of established journalists.⁸⁹ Citizens also provide news items through social media, but such information is not always trustworthy.⁹⁰

As concerns content production methods for media online, it seems that the Internet sites of most traditional media players are provided with content by professional journalists and traditional press agencies. User-generated content for online versions of traditional media services are mostly limited to readers' sections and comments on forums.

All in all, social media are developing in Belgium (and in theory, they have the capacity to divert advertisement income away from traditional media players), but for the moment their influence seems rather limited.

2.3.5 News agencies

Belga News Agency is the most important news agency for Belgium. Other news agencies are the big international news agencies and specialised Belgian news agencies. Given Belga's position as the only major Belgian news agency, its organisation (i.e., its main shareholders are in fact the same media groups that are its main clients) and influence on the Belgian press (i.e., in terms of structural pluralism and content-wise) is sometimes seen as controversial.⁹¹ Also, there is a lack of scientific data on the extent to which Belgian media rely on information from Belga. All in all, it can be said that there is a very strong concentration in the market of press agencies in Belgium. Given the importance of press agencies for the proper functioning of the media, it is surprising that there is no legislation that guarantees pluralism in the sector and that there is almost no literature on press agencies in Belgium.

2.4 Journalists' background and education

Belgium counts a wide variety of different types of journalists, depending on the type of media they work for, the kind of work they do, the type of contract they have with a media group, etc. Some but not all journalists have the legally protected status of "professional journalist" under the act of 30 December 1963. This act regulates the

⁸⁹ Some examples of social media are www.apache.be; www.dewereldmorgen.be; www.politics.be; www.mediakritiek.be, etc.

⁹⁰ One of the most noteworthy 'accidents' with civic journalism was the case where the press agency Belga wrongly reported that Belgium's queen Fabiola had passed away. Belga picked this "news item" up from its website Ihavenews.be, where citizens can report news items. For unknown reasons, the message was not checked by Belga, and other media players published Belga's "news item" as breaking news.

⁹¹ See T. Cochez, "Belga, waar de klant koning én aandeelhouder is", available at: <http://www.apache.be/2010/01/belga-waar-de-klant-koning-en-aandeelhouder-is> (last visited on 22/10/2010).

recognition and protection of the title of professional journalist for those journalists who meet the conditions laid down in the act,⁹² and who have applied for the recognition of their status of professional journalist. The act also grants certain benefits to recognised professional journalists, such as the deliverance of certain professional identification documents (e.g. press passes, admission tickets, etc.). However, the act of 30 December 1963 does not monopolise the title of journalist, and in principle everybody is free to call himself or herself a “journalist”. No special education or examination is needed to obtain the titles of “journalist” or “professional journalist”, and journalists have a wide variety of different educational and professional backgrounds.

It is worth noting that a study from the Artevelde Hogeschool showed that no less than 10% of the Flemish journalists fight with a burn-out. Compared to an overall figure of 4% in general for the entire population, this seems a high figure. On top of this, 21% of the Flemish journalists have an increased risk of burn-out. Apparently, the main reasons behind these alarming figures are related to the increased commercialisation and digitisation (with increasingly short deadlines) of the profession of journalist.⁹³ A study conducted among French-speaking journalists shows that almost half of them is unhappy about their working conditions and almost 80% sees a negative evolution over the last years.⁹⁴

2.5 Media literacy and media status in society

Belgium generally has an average score when it comes to media literacy. A recent study commissioned by the European Commission estimates Belgium’s media literacy level as the exact average level of the European Union as a whole.⁹⁵

Some small-scale initiatives have been taken by the Communities to improve the media literacy level in Belgium (e.g. the disposition of free newspapers or visits by journalists to secondary schools). Other initiatives have a more structural character, for instance, the compulsory integration since September 2010 of media education in the school curriculum in Flemish schools (meaning that all students graduating from secondary school should be able to work with computers and the internet, and to critically judge information to which they are exposed) or the re-launch of a dedicated committee on media education by the French Community (“Conseil supérieur de l’Education aux Médias”).

⁹² E.g. in order to be recognized as a professional journalist, one should – as a primary professional activity and against remuneration - contribute to the redaction of the daily or periodic press, of radio- or television news bulletins, film journals or press agencies; One should have exercised this activity during the last two years at the minimum; etc.

⁹³ See Arteveldehogeschool, “Journalist”, available at: <http://www.arteveldehs.be/emc.asp?pageId=1848> (last visited on 22/10/2010).

⁹⁴ See Association Générale des Journalistes Professionnels de Belgique, “Dossier Enquête sur le moral des journalistes”, 96 La lettre de l’AJP, September 2008.

⁹⁵ European Commission, “Study on assessment criteria for media literacy levels”, available at: http://ec.europa.eu/avpolicy/media_literacy/docs/studies/eavi_study_assess_crit_media_lit_levels_europe_finrep.pdf (last visited on 22/10/2010).

3. The media policy in Belgium

Belgium's constitution and other fundamental legislation safeguards the freedom of expression and information of its citizens. Belgium scores relatively high in international rankings of media freedom. Nonetheless, there have been particular cases where the application of the freedom of the press by the Belgian courts has given rise to controversy. The following section gives an overview of the media regulatory framework in Belgium.

3.1 Actors of media regulation and policy

The authorities competent for regulating the media in Belgium are organised at the level of the Communities. On a policy-level, the competent authorities are the governments and legislative assemblies of the French Community, the Flemish Community and the German-speaking Community. On a regulatory level, the competent authorities are the "Conseil Supérieur de l'Audiovisuel" (CSA) for the French Community,⁹⁶ the "Vlaamse Regulator voor de Media" (VRM) for the Flemish Community⁹⁷ and the "Medienrat" for the German-speaking Community⁹⁸.

It should be noted, however, that Belgian law makes a basic distinction between telecommunications (which falls under federal law) and broadcasting (which falls under Community law).⁹⁹ Although it is not always easy to make such a clear distinction in practice, the case law of the Constitutional Court gave the Communities quite broad powers to regulate everything that is related to broadcasting, resulting in radio, television and cable distribution all falling under the authority of the Communities. Telecommunications (including satellite reception and ground networks) is subject to federal legislation. Overall, legislation on the media is scattered between different levels of government, but the various governments and regulators try to work together through cooperation agreements.¹⁰⁰ For instance, CSA, VRM and Medienrat are working together with the IBPT (the Belgian Institute for Postal and Telecommunication Services) in a Conference of Regulators for the sector of Electronic Communications (CRC).¹⁰¹

In general, the press in Belgium was given a broad freedom to organise itself without too much interference from the authorities (as described above, the situation is different for the audiovisual media, where government interference is more strongly felt). Journalists used this freedom to organise themselves in professional organisations where deontological codes were developed for all associated journalists to comply with. The most important of these self-regulatory organisations are CDJ¹⁰²

⁹⁶ See Conseil Supérieur de l'Audiovisuel de la Communauté française official website, available at: www.csa.be (last visited on 22/10/2010).

⁹⁷ See Vlaamse Regulator voor de Media official website, available at: www.vlaamseregulatormedia.be (last visited on 22/10/2010).

⁹⁸ See Medienrat der Deutschsprachigen Gemeinschaft Belgiens official website, available at: www.medienrat.be (last visited on 22/10/2010).

⁹⁹ Article 4, 6° of the Special Act of 8 August 1980, as amended by the Special Act of 8 August 1988.

¹⁰⁰ J. De Wachter and L. Parret, "Belgium" in de M. Avillez Perreira, *Antitrust and new media* (2000) 95.

¹⁰¹ See cooperation agreement of 17 November 2006, *Moniteur belge*, 28 December 2006, 75371.

¹⁰² See Conseil de Déontologie journalistique official website, available at: www.deontologiejournalistique.be (last visited on 22/10/2010). It must be noted that the CDJ is partly funded by the French Community (see the Decree of 30 April 2009).

and RVDJ¹⁰³, the independent self-regulatory organisations of respectively the French- and German-language media and the Flemish media. The main representative organisations for journalists are AGJPB/AVBB¹⁰⁴ and AJPP/VJPP.¹⁰⁵ The most influential media industry organisations are the organisations of newspaper publishers (JFB¹⁰⁶ and VDP¹⁰⁷), the periodic press (THE PPRESS¹⁰⁸ and UPP¹⁰⁹) and the advertisement sector (JEP¹¹⁰).

There is a limited number of civil society organisations and NGOs with influential advocacy activity in the field of media policy in Belgium. Most of the universities have created important media research institutes.

3.2 The media regulatory framework

3.2.1 Freedom of expression and information

The main legal norms about freedom of expression and information in Belgium are incorporated in the Belgian Constitution. Article 19 of the Belgian Constitution is a general provision safeguarding the freedom of expression, except for the repression of offences committed when using this freedom. Article 25 specifically safeguards the freedom of the press and prohibits censorship. It also sets a principle of stepped liability for both criminal prosecutions and civil liability, whereby in principle only one person can be prosecuted: in the first place, the author, provided that he is known and resident in Belgium, in second instance, the publisher, then, the printer, and finally the distributor. This stepped liability replaces one actor by the next actor if the preceding one is missing in the chain, and was established as a mechanism to prevent private censorship by publishers, printers or distributors (i.e., since in principle the author alone will be prosecuted for a published work, publishers, printers and distributors do not have to fear for prosecution).¹¹¹ Article 150 of the Belgian Constitution submits all press offences to the jurisdiction of a jury (with the exception of press offences inspired by racism or xenophobia which are tried by professional judges). By submitting press offences to a jury (i.e., representatives of the people), the Belgian Constitution meant to install a special judicial protection for authors, journalists and editors: in practice, the cost of trials by jury has led criminal authorities to a general attitude of not bringing proceedings against the press (which means that the press is de facto only subject to civil proceedings). Article 32 of the Constitution provides that everyone has the right to consult any administrative

¹⁰³ See Raad voor de Journalistiek official website, available at: www.rvdj.be (last visited on 22/10/2010).

¹⁰⁴ See General Association of Professional Journalists in Belgium official website (available at: www.agjpb.be and www.avbb.be). This organisation consists of a French-German wing, AJP, and a Flemish wing, VVJ.

¹⁰⁵ See Association of Journalists of the Periodic Press official website, available at: www.ajpp-vjpp.be (last visited on 22/10/2010).

¹⁰⁶ For the French-language newspapers see JFB official website, available at: www.jfb.be (last visited on 22/10/2010).

¹⁰⁷ For the Dutch-language newspapers see VDP official website, available at: www.dagbladpers.org (last visited on 22/10/2010).

¹⁰⁸ See Organisation of publishers of the periodic press, official website, available at: www.theppress.be (last visited on 22/10/2010).

¹⁰⁹ See Union of publishers of the periodic press, official website, available at: www.upp.be (last visited on 22/10/2010).

¹¹⁰ See Jury for Ethics and Publicity, available at: www.jep.be (last visited on 22/10/2010).

¹¹¹ Note that article 25 of the Constitution has recently been declared subject to revision (see below).

document and to have a copy made of such document, except in limited cases as specified by secondary legislation.¹¹²

Although there is no legal registration or notification obligation in Belgium for publishing a newspaper, a magazine or a book, Article 299 of the Penal Code stipulates that publishing or distributing a printed matter without mentioning the real name and address of the writer or the printer is punishable. This is not considered a major obstacle to free publishing. The Penal Code also contains specific language on the punishment of libel (articles 443 – 452).

The main broadcasting acts for the French Community are the Act of 27 February 2003 on audiovisual media services¹¹³ (hereafter “FRBA”) and the Act of 14 July 1997 on the Belgian radio and television of the French Community (hereafter “RTBF-Act”). The main broadcasting act for the Flemish Community is the Act of 27 March 2009 on radio and television broadcasting (hereafter “FLBA”). For the German-speaking Community, the main acts are the Act of 27 June 2005 on audiovisual media services and film showings (hereafter “GBA”) and the Act of 27 June 1986 on the Belgian radio and television centre of the German-speaking Community (hereafter “BRF-Act”). For the region of Brussels, the main act is the Act of 30 March 1995 on electronic communication networks, electronic services and broadcasting activities in the bilingual region of Brussels-Capital. Other important documents for the public broadcasters are the management contracts between the public broadcasters and the Communities (i.e., management contract of 13 October 2006 between RTBF.be and the French Community for the period 2007-2011 and the management contract of 20 July 2006 between VRT and the Flemish Community for the period 2007-2011).

Other relevant legislation are the different anti-discrimination acts of 10 May 2007 which limit the freedom of expression if this amounts to unlawful discrimination¹¹⁴ and the Holocaust Denial Act of 23 March 1995 which makes it illegal to publicly “deny, grossly minimise, justify or approve the genocide committed by the German National Socialist regime during the Second World War”.

Article 10 of the European Convention on Human Rights (ECHR) and article 19 of the International Covenant on Civil and Political Rights (ICCPR) are directly applicable by Belgian judges and, as such, are of main importance in Belgium’s case law on media freedom and independence.

¹¹² The exception referred to in article 32 has been laid out in different legislative acts, such as the Act of 11 April 1994 (federal level), the Decree of 26 March 2004 (Flemish level) and the Act of 12 November 1997 (provincial and municipal level). Exceptions mainly relate to sensitive personal information, public security or abusive requests.

¹¹³ Coordinated on July 24, 2009, following the transposition of the AVMS Directive.

¹¹⁴ The Racial Equality Act of 10 May 2007 implements the EU Racial Equality Directive and the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, and prohibits discrimination on grounds of alleged race, color, descent, national or ethnic origin, and nationality. The Gender Equality Act of 10 May 2007 fights discrimination related to sex and assimilated grounds (i.e. maternity, pregnancy and transsexualism). The General Anti-discrimination Act of 10 May 2007 implements Directive 2000/78/EC of 27 November 2000 and prohibits discrimination on all other grounds (i.e., age, sexual orientation, civil status, birth, wealth/income, religious or philosophical belief, state of health, disability, physical characteristics, political opinion, language, genetic characteristic, social origin). This Act also contains language that incitement to hatred, discrimination or violence is punishable (see art. 22 of the Act and art. 444 Penal Code).

Important case law for the principle of freedom of the press includes the decision of 24 February 1997 of the European Court of Human Rights (the “ECtHR”) in the case of *De Haes and Gijssels v. Belgium*. In this case, the ECtHR blamed Belgium for the conviction of two journalists of the Flemish magazine *Humo*, for their critical remarks towards judges. The ECtHR ruled that it was unnecessary to convict these journalists (even if they were only convicted to a symbolic sum of 1 Belgian Franc), and concluded to a breach of Articles 10 and 6 ECHR. The ECtHR noted that the articles published by the journalists contributed to an important public debate,¹¹⁵ and were based on relevant sources and information. The ECtHR expressly stated that “*freedom of expression is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference but also to those that offend, shock or disturb the State or any section of the Community*” and that “*journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation*” (paragraph 46).¹¹⁶

Also, the Belgian Court of Cassation - Belgium’s court of last resort - interprets Article 25 of the Constitution on the freedom of the press and the prohibition of censorship as applying only to the written press, and not to e.g. radio or television.¹¹⁷ This interpretation of Article 25 of the Belgian Constitution is based on a restrictive interpretation of the concept of “the press”, as meaning the “printing press” only and not the media in general, as this was the only form of press or media existing at the time the Constitution was drafted. Furthermore, the Belgian Court of Cassation interprets Article 25 of the Constitution as applying only to prior censorship, which means in practice that the prohibition of censorship applies only if there has not yet been any dissemination and that this prohibition does not apply from the moment there has been some kind of dissemination.¹¹⁸

However, these interpretations of Article 25 of the Constitution are subject to controversy and are not shared by all scholars or lower courts. Some of the courts¹¹⁹ have granted injunctions for taking newspapers or magazines out of distribution, based on the argument that, since the papers and magazines were already available for sale, their judicial ruling did not constitute prior censorship. These cases covered a range of different facts and allegations, going from defamation to breach of privacy, breach of the presumption of innocence and breach of confidentiality of parliamentary inquiries.

One of these cases (*Leempoel & Ciné Revue v. Belgium*)¹²⁰ was ultimately brought before the ECtHR, which found no violation of freedom of expression in the way the Belgian court had ordered the magazine *Ciné Revue* to be withdrawn from sale and banned from further distribution. The ECtHR found that the publication of the article in *Ciné Revue* - which included a copy of strictly confidential correspondence of a judge - breached the private life of the judge, and did not contribute to the general interest of society. The ECtHR ruled that the grounds¹²¹ given by the Belgian court to justify the provisional ban on further sale and

¹¹⁵ On incest, violence within families, criticism of the judicial system, etc.

¹¹⁶ ECtHR, *De Haes and Gijssels v. Belgium* (no. 7/1996/626/809), 24 February 1997.

¹¹⁷ Cassation, 9 December 1981 and Cassation, 2 June 2006.

¹¹⁸ Cassation, 29 June 2000. See B. Frydman and J. Englebort, “Le contrôle judiciaire de la presse”, 6 *Auteurs & Médias*, 2002.

¹¹⁹ See case law cited by D. Voorhoof, *Handboek Mediarecht* (2003), pp. 63-75.

¹²⁰ ECtHR, *Leempoel & S.A. Ed. Ciné Revue v. Belgium* (no. 64772/01), 9 November 2006.

¹²¹ I.e., limitation of the extent of damage caused to a person’s private life.

distribution were relevant and sufficient and that the limitation of the publisher's right to freedom of expression could *in casu* be seen as necessary in a democratic society and proportionate to the aim pursued.

Nevertheless, Belgian case law and literature remain divided about the exact implications of this case law of the Court of Cassation and of the ECtHR. In scholarly literature, one of the recurring issues is the unilateral character of some of the judicial decisions where newspapers or magazines were taken out of circulation. These decisions are often taken on the basis of a special procedure for urgent applications,¹²² where a claimant starts a unilateral proceeding before a judge, claiming that his case is too urgent to convene the publisher, and where the judge "provisionally" (i.e., pending a definitive decision) orders the paper or magazine to be taken out of circulation, in order to prevent further harm to the claimant, without hearing the publisher.¹²³

All in all, one can conclude that, where the general rule of prohibition of censorship does still stand in Belgium, there is a lack of legal security whether this rule applies also to judicial decisions. The distinction made by the Court of Cassation and some other courts between media of the written press and other media does not seem supportive of the press freedom in Belgium. However, things may change soon since Article 25 of the Constitution has recently been declared subject to revision, and it is generally expected that its scope will be extended to other forms of media, such as radio, television and the Internet.¹²⁴

Belgium scores 11 points on Freedom House's "Freedom of the Press 2008" ranking, putting the country on a shared fifth place with Sweden in the global press freedom ranking (only Finland, Iceland, Denmark and Norway score better). Belgium occupies an eleventh place on Reporters Without Borders' global "Press Freedom Index 2009" (after Denmark, Finland, Ireland, Norway, Sweden, Estonia, the Netherlands, Switzerland, Iceland and Lithuania).

3.2.2 Structural regulation

As a general rule, radio and television broadcasters need to obtain a licence if they want to broadcast in Flanders. In the French Community, editors of terrestrial radio services (FM) need to obtain a licence (which entitles them to broadcast using a

¹²² Articles 584, 588-589, 1025-1034 and 1035-1041 of the Belgian Judicial Code.

¹²³ Several problems are identified with these decisions. First, it can be argued that these decisions are not proportionate, because the judge could as well suffice with ordering a rectification to be published together with the article or a reference that the article is the subject of a judicial proceeding, instead of prohibiting the further circulation of the entire paper or magazine. Also, it is often difficult for a judge to assess the urgency of the case and the balance between the rights of the publishers on the one hand and the possible harm that may be caused to the applicant by postponing the hearing in order to convene the publisher on the other hand. Furthermore, such unilateral proceedings are supposed to only bring about "provisional" measures, but a provisional measure of further publication in fact means that the publisher must defend himself before a judge - often the same judge that ordered the provisional measure - in order to have his article published. Some courts even ordered a prohibition on broadcasting a television program (i.e., even before there was any kind of dissemination), following a unilateral request by a claimant, based on the Court of Cassation's interpretation of article 25 of the Constitution as applying only to the written press, and not to audiovisual media. See for instance Pres. Tr. Brussels, 24 October 2001, A&M 2002/2, 177 and case law cited by D. Voorhoof, *Handboek Mediarecht*, 63-75.

¹²⁴ Declaration of revision of the Constitution, *Moniteur belge*, 7 May 2010, 25762.

designated frequency). Radio services transmitted by other means (cable, internet) are only required to make a declaration to the CSA. Editors of television services generally only need to make a declaration to the competent authorities if they intend to broadcast in the French Community.¹²⁵ Broadcasters in both Communities need to comply with a set of rules that are applicable to their broadcasting activities. Publishers of newspapers or magazines and owners of Internet sites, etc. do not need to obtain such licence or make such declaration.

The general competition rules of the federal Act of 15 September 2006 on the protection of economic competition (hereafter “Competition Act”) and relevant EU laws apply to the media sector. There are no media-specific competition rules, except the rules for television and radio broadcasters described below. There are no special rules for newspapers or magazines concerning ownership, concentration or protection of pluralism, nor are there obligations for newspapers or magazines to provide transparency about their capital structure, shareholders or owners. So far, the Belgian authorities have prohibited no merger of media companies.¹²⁶ In theory, the Belgian federal government has the power to overrule a decision of the Belgian competition watchdog, and can declare a concentration admissible for general interest reasons, overriding the competition related risk on the Belgian market (or part of it) (Art. 60 Competition Act). There are no rules prohibiting foreign ownership of media in Belgium.

For radio and television broadcasters, the following competition and ownership rules apply:

For the *French Community*, the regulator (CSA) monitors whether editors or distributors with a “significant position” in the audiovisual sector are not threatening the access of the public to a pluralistic offer of broadcasting services (Art. 7 FRBA). A presumption of significant position exists in the following situations: 1. a natural or legal person holds more than 24% of the capital of 2 editors of television services (directly or indirectly); 2. Same rule for radio services; 3. several editors of television services, directly or indirectly controlled by the same natural or legal person, have an audience share of 20%; 4. Same rule for radio services. If the CSA concludes that a threat to pluralism exists, it will start negotiations with the people or companies concerned with a view to reaching a solution to this threat. If negotiations do not lead to an agreement within six months time, or if such agreement is violated, a range of sanctions may be applied, ranging from fines to revocation of licences. Article 6 FRBA contains specific requirements for audiovisual broadcasting companies to make available to the public some basic information about their companies. This article also contains some specific transparency requirements for media players to obtain a licence from the authorities (e.g. requirements to identify the persons or legal entities that participate in the company’s capital, the amount of such participation, participations in other media players and service providers, etc). The CSA runs a website dedicated to all this transparency-related information.¹²⁷

¹²⁵ For an explanation to the creation of a merely declarative regime, see the preparatory works of the current Decree (Parlement de la Communauté française, dossier 634 (2008-2009)). If they wish to use terrestrial broadcast (analogue or digital), the editors of television services still need to apply for an authorisation.

¹²⁶ But certain conditions were imposed to safeguard pluralism e.g. when Tecteo acquired BeTV.

¹²⁷ See Conseil supérieur de l'audiovisuel, “L'offre de médias et le pluralisme en Communauté française”, available at: <http://www.csa.be/pluralisme> (last visited on 22/10/2010).

For the *Flemish Community*, a similar regulation applies where the Flemish Regulator (VRM) has the task to monitor concentrations in the Flemish media sector (Art. 218 FLBA) and to apply sanctions in case a company has significant market power. Significant market power exists if a company has, alone or together with other companies, an economic power that enables it to act in a significant way independently from its competitors, clients or consumers (Art. 190 FLBA). The sanctions are rather “soft” sanctions, ranging from obligations to provide additional transparency to obligations to grant access or interconnection to networks, etc. (Art. 192 FLBA). It is unclear if VRM can also apply harder sanctions (fines and revocation of licences) in case pluralism is in danger. Every year, VRM publishes a report on the concentration in different media sectors in Flanders. VRM also developed a “media database”, which can be used for the annual reports and for ad hoc reports in response to specific questions.¹²⁸

Cross media: Rules on the limitation of cross-media ownership in Belgium are not so much targeted to media companies as such, but rather to persons combining different functions and mandates in various media companies (the underlying rationale is to limit evasions of the rules through setting up structures with various subsidiaries and connected companies). For instance, in the French Community, one cannot be a director to RTBF.be and at the same time hold a function or have interests in a competitor of RTBF.be (Art. 12 RTBF-Act). Also, a person cannot be a member of the board of directors of a local television station and at the same time hold the position of director or executive of other service providers, press companies or organisations with similar activities, if such other position may cause a conflict of interest with the local television station (Art. 72 FRBA). In Flanders, a director to VRT can not have a function or a mandate in another media company (Art. 12 FLBA). A director to a Flemish Community-wide or regional radio broadcaster can not have a political mandate and can not be a director to a public broadcaster or another local or regional radio broadcaster (Art. 138 and 141 FLBA). Only one fifth of the directors of a Flemish regional television broadcaster may be a director or have a leading role in another media company, an advertisement company, VRT or a private broadcaster that targets the entire Flemish Community (Art. 172 FLBA). Finally, when the first commercial television and radio broadcasters appeared in Belgium, the Belgian authorities required that newspaper and magazine editors had to participate in the commercial broadcasters (amounting to 31% in RTL-TVI¹²⁹ and to 51% in VTM¹³⁰), but these rules did not survive. These compulsory concentration rules were meant to secure the survival of the written press, by guaranteeing that advertisement revenues lost to the commercial radio and television broadcasting would in fact flow back to the written press.

Specific rules exist regarding interaction between *politicians and the media*. In general terms, there is interaction rather than separation between the political world and the public radio and television broadcasters. This system can be described as a system of internal pluralism, whereby different political parties have a proportionate representation in the public broadcasters’ governing bodies. This system is tempered with legal safeguards regarding the content of the public broadcasters’ programming

¹²⁸ See Vlaamse Regulator voor de Media, “Persberichten 2010”, available at: <http://www.vlaamseregulatormedia.be/nl/documentatie.aspx> (last visited on 2/10/2010).

¹²⁹ Decision of the Government of the French Community of 21 December 1987.

¹³⁰ See art. 8 Act of the Flemish Community of 28 January 1987.

(see below). In this sense, Belgium is a clear example of the “Democratic Corporatist” model described by Hallin and Mancini.¹³¹

Public broadcasters are subject to a system where influence from politicians, at least on the level of their boards of directors, is institutionalised, although in a proportionate manner. The underlying rationale of this system is aimed at safeguarding a sufficient degree of internal pluralism within the public broadcasters. For example, in the French Community, the board of directors of the public broadcaster (RTBF.be) must be composed, in a proportionate manner, of representatives of the various recognised political groupings in the Parliament of the French Community.¹³² In the Flemish Community, the directors of the public broadcaster (VRT) are appointed by the Flemish government, in proportion to their representation in the Flemish Parliament.¹³³ In the German-speaking Community, the board of directors of the public broadcaster (BRF) must be composed of representatives of the various political parties in the Parliament of the German-speaking Community, in a proportionate manner.¹³⁴ In all three Communities, the position of director at the public broadcaster is incompatible with several political mandates (e.g., in a government or in a parliament).¹³⁵

A special regime applies to regional and local broadcasters, which are also subject to influence from politicians, but where this influence is more limited (and also proportionate). For example, in the French Community, maximum half of the directors of a local television station may have a political mandate. Those directors that have a political mandate should represent in a proportionate manner the political parties in the councils of the municipalities located within the emission region of the local television (in Brussels-Capital: proportionate representation of the political parties in the Parliament of the French Community).¹³⁶ In the Flemish Community, the boards of directors of regional television broadcasters must be composed in a proportionate way, and only 1/5th of their directors may have a political mandate (they should not have an executive mandate).¹³⁷ Also, the general assembly of the Flemish regional television stations must be composed in a representative way as regards political, social, cultural, ideological and regional criteria.¹³⁸

3.2.3 Content regulation

All Communities have issued specific and detailed legislation on content regulation, such as on cultural matters (e.g. in order to promote their own language) and on specific requirements for news programs (e.g. in order to ensure quality and impartiality of such programs). Other examples are rules regarding access to airtime for various philosophical or religious associations.¹³⁹ Specific rules and quota exist on compulsory investments in content production. Although most of these rules are a

¹³¹ Hallin and Mancini, *Comparing media systems*, p. 166.

¹³² Art. 11, § 1 RTBF-Act and Art. 19 Act of 16 July 1973 on the protection of ideological and philosophical convictions (hereafter “Culture Pact Act”).

¹³³ Art. 12, §1 FLBA and Art. 19 Culture Pact Act.

¹³⁴ Art. 8, § 1 BRF-Act and Art. 19 Culture Pact Act.

¹³⁵ Art. 12 RTBF-Act; Art. 12 § 2 FLBA; and Art. 9, § 2 BRF-Act.

¹³⁶ Art. 70 FRBA.

¹³⁷ Art. 172 FLBA.

¹³⁸ Art. 171 FLBA.

¹³⁹ E.g. Art. 7, § 3-4 RTBF-Act and art. 35-36 FLBA provide that various “representative associations” are entitled to broadcast on the radio and television channels of the public broadcasters.

mere translation into Belgian law of the European directives,¹⁴⁰ some of them are specific to the Belgian case.¹⁴¹

In general, programming and content of both private and public broadcasters should stay clear from political, philosophical and ideological influences. Also, some provisions specifically restrict politicians' control over private, regional and local broadcasters. For example, the French Community's FRBA stipulates that all "editors of broadcasting services" (both radio and television services) should be independent of government, political parties, employers' organisations and labour associations.¹⁴² Specifically for local television broadcasters, the FRBA stipulates that their programming should remain independent from governments, municipal and provincial authorities, political parties, employers' and labour organisations, philosophical or religious movements, etc.¹⁴³ RTBF.be, every editor of audiovisual services who uses a closed distribution platform and each local television broadcaster should recognise a committee of journalists which it should consult at various occasions e.g. for the organisation of the editorial staff for informative programmes, for the establishment of the internal rules relating to information processing, and in general for all decisions that fundamentally change the editorial line of the broadcaster.¹⁴⁴ Similarly, in Flanders, all information programs must respect a spirit of political and ideological impartiality.¹⁴⁵ Also, all editors of private television services, all regional television broadcasters and all linear radio broadcasters in Flanders must be independent from political parties.¹⁴⁶ Directors of Community-wide and regional radio broadcasters must not have a political mandate.¹⁴⁷ For all its informative programs, the Flemish public broadcaster (VRT) must respect a deontological code and an editorial statute that safeguards the independency of the editorial staff.¹⁴⁸ Flemish private and regional television broadcasters that broadcast news bulletins and other informative programmes should also have their own editorial staff and an editorial statute that safeguards the independency of their editorial staff (although it is unclear to what extent the obligation to have an editorial statute is complied with).¹⁴⁹

Newspapers and magazines do not have such legal obligations to have an editorial statute. However, a tradition exists of foundations within newspapers that take care of the editorial principles and the values of the newspapers. The statutes of these foundations mostly contain specific safeguards with regard to the editorial staff's independence (e.g. in case of take-overs or in case a chief editor is appointed or dismissed). It is also worth noting that there is a recent initiative of the Flemish government to make press subsidies dependent on the presence of an editorial statute or on other factors ensuring the independence of the editorial staff. Also, some

¹⁴⁰ Belgium was one of the first countries to implement the AVMS Directive into national law.

¹⁴¹ E.g. French-language television broadcasters should reserve 20% of their airtime (excl. airtime for informative programs, sport events, etc.) for audiovisual works whose original version was made in the French language (Art. 42, 2° FRBA), and should ensure that the majority of their programs (except for music programmes) are offered in the French language (Art. 42, 3° FRBA).

¹⁴² Art. 35, § 1, 5° FRBA.

¹⁴³ art. 66, § 1, 10° FRBA.

¹⁴⁴ Art. 19bis RTBF-Act and art. 35 and 66 FRBA.

¹⁴⁵ Art. 39 FLBA.

¹⁴⁶ Art. 163, 3°, 174, 2°, 169, 4° and 130 FLBA.

¹⁴⁷ Art. 138 and 141 FLBA.

¹⁴⁸ Art. 29, §1 FLBA.

¹⁴⁹ Art. 164 and 169, 9° FLBA.

newspapers have recently taken other initiatives to improve their accountability towards their readers' public (e.g. the Flemish newspaper De Standaard recently appointed an independent ombudsman).

All of the Communities have issued specific and detailed legislation on advertising (e.g. rules regarding advertisement in children's programs, prohibition of advertising or sponsoring in news and other informative programs, prohibition for news journalists to mislead the public by promoting a product or service in an advertising spot, prohibition for sponsors to influence editorial content, prohibition to limit advertising to certain groups, product or services, etc.).

The Act of 23 June 1961 on the Right of Reply grants a broad right of reply to any individual or corporation named or implicitly referred to in a newspaper or a magazine, and a more limited right of reply to any individual or corporation named or implicitly referred to in an audiovisual broadcasting (i.e., radio or television). In the case of audiovisual broadcasts,¹⁵⁰ the claimant must prove a personal interest in the reply and the right of reply consists only in the right to rectify incorrect facts relating to the claimant and to reply to facts or declarations that touch the honour of the claimant. The right of reply should always be free of charge and refusal of the right of reply may lead to penal sanctions. The Act on the right of reply of 1961 does not apply to electronic versions of newspapers.¹⁵¹ Several legislative proposals aimed at applying similar rules to electronic media have failed so far, but self-regulation exists in this field.

The Act of 7 April 2005 on the Protection of Journalistic Sources protects journalists from investigative measures (such as the interception of communication, surveillance and judicial home search and seizure) if this could breach the secrecy of their sources. Following a decision of the Belgian Constitutional Court of 7 June 2006, this protection of journalistic sources covers everybody who exercises an informative activity whether or not they are professional journalists (for instance, the protection includes bloggers).¹⁵²

The Belgian Ethical Code for Journalists of 1982 is the most important code of conduct for journalists. This code has been approved by the main journalists' organisation AGJPB/AVBB and by some of the main publishers' organisations.¹⁵³ Another important code is the Declaration of the Rights and Duties of Journalists, approved at a meeting of the Journalists' Unions of the (then) six countries of the European Community in Munich in 1971. The 1990s saw a surge of complaints about journalists' compliance with ethical principles, but more recently, monitoring by CDJ and RVDJ (see above) seem to have led to a more positive evolution.¹⁵⁴ In September 2010, RVDJ published a new code for journalistic ethics, which is based on previous

¹⁵⁰ For Flanders, the right of reply for audiovisual broadcasts is also covered by Art. 103-112 FLBA.

¹⁵¹ P.-F. Docquir, "Le droit de réponse 2.0 ou la tentation d'un droit subjectif d'accès à la tribune médiatique" in *Les propos qui heurtent, choquent ou inquiètent*, Revue de la Faculté de Droit, Université Libre de Bruxelles (2008) 303.

¹⁵² For more information see e.g. D. Voorhoof, *Het journalistiek bronnengeheim onthuld* (2008), and J. Englebert, "Le statut de la presse: du droit de la presse au droit de l'information", 35 *Revue de la Faculté de Droit de l'Université Libre de Bruxelles (Les propos qui heurtent, choquent ou inquiètent)* (2007), 231.

¹⁵³ For an English version of this code See EthicNet, "Code of journalistic principles, Belgium", available at: http://ethicnet.uta.fi/belgium/code_of_journalistic_principles (last visited on 22/10/2010).

¹⁵⁴ De Bens and Raeymaeckers, *De pers in België*, pp. 230-232.

texts, but takes into account recent developments such as the digitalisation of the media and the increasing use of images in news coverage.

Finally, although search-engines play an increasingly important role as “gateways” to information, the Belgian legislators have not taken any major initiatives to regulate search-engines. However, in 2007, the Court of First Instance of Brussels rendered an important judicial decision whereby Google was condemned for violating Belgian copyright law by publishing links to and abstracts of articles from Belgian newspapers on its Google News site and through its catch function, without the permission of the newspaper publishers.¹⁵⁵ The Court ruled that Google had to pay a sum of 25,000 Euros for each day it continued to display content from the plaintiff’s¹⁵⁶ publications in violation of copyright. This is an important decision in so far that it limits search engines’ possibilities to use and display content that is protected by copyright. An appeal against this decision is still pending.

4. Assessment of Belgian media policy and democratic politics

The most obvious conclusion from the overview provided in this report is that Belgium has two major different media landscapes (French-language and Dutch-language media). This separation is partly due to differences in language and culture between the two Communities and partly to a division on the policy and regulation level where the two Communities have their own policies, rules and institutions. This separation of the media presents the country with various challenges. It is first of all uncertain whether a good understanding and cooperation between the various Communities is possible in the absence of a shared public sphere in Belgium. A second challenge posed by Belgium’s linguistic separation of the media concerns the scattering of legal and regulatory competences among different levels of government, which need to cooperate on some specific issues (such as the convergence of telecommunication and media regulations).

All in all, it is correct to say that there is an adequate level of uniformity in Belgium’s media policy. This is partly due to the shared common heritage from pre-federalisation times and the fact that Communities’ regulations are based on European directives and are largely influenced by the interpretations of the European Commission and the European Court of Justice. Also, on an institutional level, the regulators established by the Communities are almost mirror-like. When it is necessary, these regulators work together with the federal institutions. At the same time, the Communities have a broad autonomy as concerns media policy (e.g. radio, television, cable, subsidies to the written press, etc.) and different legal texts apply in each Community. As such, Belgium’s media policy has a mixed character – uniform and separate at the same time – and it is expected that, though the core of its regulations will remain commonly shared, differences will probably increase.

The Belgian authorities have, in principle, granted quite a lot of freedom to the media. As such, the freedom of the press has always been protected under the Constitution and the written press has never been under direct state control. Also, the authorities opted to stay out of the field of journalists’ ethics and have encouraged self-regulation rather than government regulation. However, with the arrival of radio

¹⁵⁵ Court of First Instance of Brussels, *Google, Inc. vs. SCRL Copiepresse*, 13 February 2007.

¹⁵⁶ The plaintiff was Copiepresse, an association managing the copyrights of the main French-language Belgian newspapers.

and television, a radically different path was chosen whereby these new media were brought under direct state control. Over the last decades, radio and television monopolies have been abolished and political influences in the public broadcasters have decreased significantly. Nevertheless, one can say that the Belgian authorities have been quite reluctant in opening the markets for radio and television broadcasting, and that a certain degree of pressure from the European level was needed to open the market. Ironically, with the arrival of the Internet, the most recent forms of new media seem to escape any form of control by the authorities.

The freedom granted to the media in Belgium goes together with a moderate “laissez faire” policy on behalf of its authorities. As such, the Belgian authorities are not very keen to develop ground-breaking media policies and prefer to leave room for self-regulatory initiatives from the media sector (in some cases, authorities intervene to encourage or fund self-regulation initiatives). Also, many regulations on the media were in fact instigated by the media sector, and one can say that Belgium’s policy makers have an open attitude towards demands - and pressure - from the media sector (e.g. as regards subsidies to the press). At the same time, at certain occasions, Belgium has taken legal and regulatory initiatives that were innovative (e.g. the Flemish regulations on the use of a ‘PP’ symbol for product placement), and, at several instances, Belgium has adopted European directives more stringently than strictly required by European law (e.g. as concerns rules on advertisement).

The major principles on the freedom and independence of the media are well enshrined in Belgium’s constitution and its main legislation. However, some evolutions in the case law of the Belgian courts have limited the scope of these principles. For instance, according to the case law of the Court of Cassation, the constitutionally protected freedom of the press applies only to the written press and the constitutional prohibition of censorship applies only to prior censorship. Also, based upon unilateral requests in libel and defamation cases, some of the lower courts ordered magazines to be taken out of circulation and television programs to be prohibited from broadcasting. In specific circumstances, the European Court of Human Rights has judged that this Belgian case law does not violate freedom of expression. It is generally expected that Belgium will in the near future extend its constitutional freedom of the press to other forms of media, such as radio, television and the Internet through a revision of article 25 of its Constitution. In the meantime, the above cited evolution in Belgian case law does not prevent the country from scoring well in international rankings on media freedom.

There are many different newspapers, magazines, television channels, radio channels and Internet media available to the Belgian public, but ownership of these different media is highly concentrated in the hands of just a few media groups. However, no single media group dominates the entire media market. In recent times, concentration seems to have increased, with existing media players becoming active in other media domains (cross-media concentration). On the other hand, it seems that new types of media (such as digital television, video-on-demand, different types of media-on-line, etc) are to a certain degree bringing more diversity in the existing media landscape. All in all, the national market for classical types of media outlets seems to be saturated and to leave little room for new titles or even for further consolidation. This is especially the case for the written press. It is expected that the Belgian media groups will continue to increase their presence in other media outlets, and probably will continue to develop towards further integration at the international level, or that international players will increase their presence in Belgium.

Belgium's authorities have not taken many significant measures against this increasing concentration in the media sector. No specific anti-trust legislation has been adopted for the media, and although general anti-trust rules apply, no media-specific legislation safeguards an adequate degree of diversity in media outlets (i.e., external pluralism). In the past, the Belgian authorities have taken some attempts to support the survival of certain media outlets, for instance by granting direct and indirect subsidies to the written press or by forcing the first commercial television broadcasters to admit newspaper and magazine editors amid their shareholders in order to grant these a part of the television advertisement income. However, direct subsidies have largely disappeared since, and neither did the compulsory cross-concentration rules between the written press and the commercial broadcasters survive. All in all, these attempts to support external pluralism in the media show not only that policy makers are convinced of the importance of the media for our democratic system, but also that the measures that have been taken were in fact not very effective. Internal media pluralism (i.e., diversity of content within the media) is more effectively protected by Belgian legislation (see rules for content regulation above), albeit that these rules are mainly focussed on radio and television broadcasting and not on other forms of media.

References

Bibliography

Association Générale des Journalistes Professionnels de Belgique, “Dossier Enquête sur le moral des journalistes”, 96 La lettre de l’AJP, September 2008

Berte, K., “Reclame in een digital medialandschap”, unpublished PhD thesis, Ghent University (2009-2010)

Beyen, M., “The duality of public opinions as a democratic asset’ – Confessions of an historian”, in Sinardet, D., and Hooghe, M. (eds), *Is democracy viable without a unified public opinion? The Swiss experience and the Belgian case* (2009), Re-Bel e-book 3, available at: <http://www.rethinkingbelgium.eu/rebel-initiative-ebooks/ebook-3-democracy-without-unified-public-opinion> (last visited on 22/10/2010)

Centre for Information on the Media, available at: <http://www.cim.be/fr/media/presse/authentication/r%C3%A9sultats/r%C3%A9sultat-s-public> (last visited on 22/10/2010)

Conseil supérieur de l’audiovisuel, “Consultation publique sur le lancement de services audiovisuels numériques par voie hertzienne et le suivi du Plan stratégique de transition numérique”, available at: <http://www.csa.be/consultations/show/13> (last visited on 22/10/2010)

Conseil supérieur de l’audiovisuel, “L’offre de médias et le pluralisme en Communauté française”, available at: <http://www.csa.be/pluralisme> (last visited on 22/10/2010)

Communauté française de Belgique Service général de l’Audiovisuel et des Multimédias, “Annuaire de l’Audiovisuel 2009”

Cochez, T., “Belga, waar de klant koning én aandeelhouder is”, available at: <http://www.apache.be/2010/01/belga-waar-de-klant-koning-en-aandeelhouder-is> (last visited on 22/10/2010)

De Bens, E., and Raeymaeckers, K., *De pers in België: het verhaal van de Belgische dagbladpers gisteren, vandaag en morgen*, Leuven/Tielt: LannooCampus (2010)

De Smedt, J., Hooghe, M., and Walgrave, S., “Franstalige politici in het Vlaamse televisienieuws: quantité négligeable?”, ENA – Nieuwsmonitor 1/09/2010, available at: www.nieuwsarchief.be (last visited on 21/10/2010)

De Wachter J. and Parret, L. “Belgium” in de M. Avillez Perreira, *Antitrust and new media*, The Hague; Boston: Kluwer Law International (2000) 95

Docquir, P.-F., “Le droit de réponse 2.0 ou la tentation d’un droit subjectif d’accès à la tribune médiatique” in *Les propos qui heurtent, choquent ou inquiètent*, Revue de la Faculté de Droit, Université Libre de Bruxelles (2008) 303

Englebert, J., “Le statut de la presse : du droit de la presse au droit de l’information”, 35 Revue de la Faculté de Droit de l’Université Libre de Bruxelles (*Les propos qui heurtent, choquent ou inquiètent*) (2007) 231

EthicNet, “Code of journalistic principles, Belgium”, available at: http://ethicnet.uta.fi/belgium/code_of_journalistic_principles (last visited on 22/10/2010)

European Commission, “Study on assessment criteria for media literacy levels”, available at: http://ec.europa.eu/avpolicy/media_literacy/docs/studies/eavi_study_assess_crit_media_lit_levels_europe_finrep.pdf (last visited on 22/10/2010)

European Institute for the Media, “Final report of the study on the information of the citizen in the EU: obligations for the media and the Institutions concerning the citizen’s right to be fully and objectively informed”, 31/08/2004

European Social Survey, “Exploring public attitudes, informing public policy - Selected findings from the first three rounds”, 5, available at: <http://www.europeansocialsurvey.org> (last visited on 22/10/2010)

Frydman, B., and Englebert, J., “Le contrôle judiciaire de la presse”, 6 Auteurs & Médias, 2002

Gol, J., *Le Monde de la Presse en Belgique*, Brussels: C.R.I.S.P (1970)

Hallin, D.C., and Mancini, P., *Comparing media systems, Three models of media and politics*, Cambridge: Cambridge University Press (2009)

Hoebeke, S., and Mouffe, B., *Le droit de la presse*, Louvain-la-Neuve: Bruylant-Academia (2005)

Lits, M., “Media in Belgium: two separate public opinions”, in D. Sinardet and M. Hooghe (eds), *Is democracy viable without a unified public opinion? The Swiss experience and the Belgian case* (2009), Re-Bel e-book 3, available at: <http://www.rethinkingbelgium.eu/rebel-initiative-ebooks/ebook-3-democracy-without-unified-public-opinion> (last visited on 22/10/2010)

Kelly, M., Mazzoleni G., and McQuail, D. (eds), *The media in Europe*, London: Sage Publications (2004)

MAVISE, “TV market in Belgium”, available at: <http://mavise.obs.coe.int/country?id=4> (last visited on 22/10/2010)

Otten, R., *Achter televisie: omroepmarkten en –structuren in West-Europa*, Antwerp-Apeldoorn: Garant (2005)

Sinardet, D., “Direct democracy as a tool to shape a united public opinion in a multilingual society? Some reflections based on the Belgian case”, in D. Sinardet and M. Hooghe (eds), *Is democracy viable without a unified public opinion? The Swiss experience and the Belgian case* (2009), Re-Bel e-book 3, available at: <http://www.rethinkingbelgium.eu/rebel-initiative-ebooks/ebook-3-democracy-without-unified-public-opinion> (last visited on 25/10/2010)

Thoveron, G., “La valeur commerciale de l’objectivité”, in Thoveron, G., and Doutrelepon, C. (eds), *La Presse, Pouvoir en Devenir*, Brussels: Editions de l’Université de Bruxelles (1996)

Vlaamse Regulator voor de Media (VRM), “Mediaconcentratie in Vlaanderen Rapport 2009”

Vlaamse Regulator voor de Media, “Mediaconcentratie in Vlaanderen Rapport 2009”, available at: <http://www.google.com/search?ie=UTF-8&oe=UTF->

8&sourceid=navclient&gfns=1&q=%E2%80%9CMediaconcentratie+in+Vlaanderen%2C+Rapport+2009 (last visited on 22/10/2010)

Vlaamse Regulator voor de Media, “Persberichten 2010”, available at: <http://www.vlaamseregulatormedia.be/nl/documentatie.aspx> (last visited on 2/10/2010)

Voorhoof, D., *Het journalistiek bronnengeheim onthuld*, Bruges: Die Keure (2008)

Voorhoof, D., *Handboek Mediarecht*, Brussels: De Boeck & Larcier (2003)

Ward, D., *A Mapping study of media concentration and ownership in ten European countries* (2004), available at: <http://www.cvdm.nl/dsresource?objectid=421&type=org> (last visited on 22/10/2010)

Witte, E., *La Construction de la Belgique 1828 – 1847*, Brussels: Le Cri (2010)

Cases

ECHR, *Leempoel & S.A. Ed. Ciné Revue v. Belgium*, n. 64772/01, decision of November 9 2006

ECHR, *De Haes and Gijssels v. Belgium*, n. 7/1996/626/809, decision of February 24 1997

Belgian Court of Cassation, Cassation 2 June 2006

Belgian Court of Cassation, Cassation 29 June 2000

Belgian Court of Cassation, Cassation 9 December 1981

Court of First Instance of Brussels, *Google, Inc. vs. SCRL Copiepresse*, 13 February 2007

French Community’s regulator (CSA), Reference for a preliminary ruling of 11 December 2009 to the European Court of Justice, Case C-517/09, Official Journal C 051, 27/02/2010, 19–20

Legislation

Decision of the Government of the Flemish Community of 23 July 2010 on subsidies to certain private regional television broadcasters

Act of 31 March 2004 concerning aid to the French-language written daily press and the development of initiatives of such daily press in schools

Decision of the Government of the French Community of 1 July 2010 on subsidies to the French-language written press

Decision of the Government of the French Community of 21 December 1987 on the authorisation of a private television chain for the French Community

Decision of the Government of the Flemish Community of 19 November 1987 on the recognition of VTM as a non-public television association for the entire Flemish Community

Act of the Government of the Flemish Community of 29 January 1987 on the transfer of sound and television programmes in the radio and television distribution networks and on the recognition of non-public television associations

Racial Equality Act of 10 May 2007

Gender Equality Act of 10 May 2007

General Anti-discrimination Act of 10 May 2007

Act of 12 November 1997 on open government in the provinces and the municipalities.

Act of 11 April 1994 on open government (federal level)

Special Act of 8 August 1988 amending the Special Act of 8 August 1980 on institutional reforms

Special Act of 8 August 1980 on institutional reforms

Decree of 26 March 2004 on open government (Flemish level)

Declaration of revision of the Constitution, *Moniteur belge*, 7 May 2010, 25762

EU Documents

Commission Decision 97/606/EC of 26 June 1997 pursuant to Article 90 (3) of the EC Treaty on the exclusive right to broadcast television advertising in Flanders, OJ L 244, 6/09/1997, p. 18–25

Communication 2009/C 257/01 of the European Commission on the application of State aid rules to public service broadcasting, OJ C 257, 27/10/2009, p. 1-14