

The Media Councils Debates

Facing the Challenges of the Digital Age



January 2022

CDJ
Recherches & Enjeux

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Media Councils in the Digital Age

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Facing the Challenges of the Digital Age

Edited by Muriel Hanot
Coordinated by Anna Vidal

January 2022
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Publisher: Association pour l'autorégulation de la déontologie journalistique / Conseil de déontologie journalistique

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How to cite : HANOT, M. (ed.), VIDAL, A. (coord.) (2022), *The Media Councils Debates: Facing the Challenges of the Digital Age*. AADJ/CDJ. (CDJ: Recherches et enjeux, 2).

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This publication is produced with the financial support from the European Commission grant under DG Communications Networks, Content and Technology. The content of this publication does not reflect the official opinion of the European Union. Responsibility for the information and views expressed in the report lies entirely with the author and publisher.

Foreword

As the European forum organised during the first call of the Media Councils in the Digital Age (MCDA) project – which was co-financed by the European Commission for the CDJ's 10th anniversary – came to an end, a virus whose existence was not yet known was beginning its ineluctable progress. It was clear at the time that press and media councils needed to exchange more views on challenges at stake, and to speak in a louder and unique voice in order to be heard at the European level when it comes to supporting reliable information and tackling disinformation.

While the programme of the webinar series proposed by the AADJ/CDJ for the second MCDA call was only taking shape, putting on the table the issues that had arisen during the aforementioned forum, the effects of the Covid-19 health crisis on journalism were somewhat already perceptible. One could at least guess their importance, without measuring their real impact just yet. Adding this issue to the webinar programme was therefore obvious.

When the Covid-19 issue came on the agenda, the evidence was confirmed beyond any individual cases. The crisis, which has intensified many of the existing media phenomena, acted as a revelation of the role that press and media councils play and must play to (re)build confidence between the public and the media. It is difficult to assess whether or not, without this crisis, the discussions held during the various webinars – which focused on the common contours and challenges of bodies whose differences had previously seemed stronger than their similarities – would have been the same. But one thing is certain, it has given them a livelier tone and the desire to go further together.

At this starting point, nothing would have been possible without all the speakers, moderators, rapporteurs and participants coming from all over Europe (and beyond), and of course without the AADJ/CDJ interest and the support of the European Commission. May they all be sincerely thanked for this.

Muriel Hanot
Secretary General
AADJ/CDJ

Introduction

Together with the European Federation of Journalists (EFJ), press councils from Austria (OP), Belgium (CDJ and RVDJ), Germany (TDP) and Finland (JSN), as well as academics from ULB and Blanquerna-Ramon Llull created a consortium to launch the Media Councils in the Digital Age (MCDA) project in 2019. Co-funded by the European Commission (DG Connect), this initiative aims to support the European models of media self-regulation through a network of press councils, the Alliance of Independent Press Councils of Europe (AIPCE).

For the second edition of the MCDA project, the CDJ from French-speaking Belgium hosted the Media Councils Debates, a series of six webinars focusing on the transition of media councils towards the digital age, as a follow-up action to the European Forum held during the first phase.

The objectives of these sessions were to tackle, among press and media councils, issues dealing with social and online media, to share practices and find common grounds and, when appropriate, to propose recommendations. In short, to exchange best practices among self-regulatory bodies by discussing crucial issues, namely:

- Do young journalists' values, practices and experiences on (online) ethics call for change in standards and the work of press and media councils?
- How can the impact stemming from the Covid-19 crisis help to develop a common understanding on the challenges faced by the media sector, especially regarding disinformation, trust and ethics?

- What are the different strategies to encourage "new" online media and journalists to adopt ethical standards and join press and media councils?
- How can press and media councils assess what is or is not information and journalism in the content disseminated online, including on social media?
- What is there to learn from exchanges on the jurisprudence of press and media councils' decisions in the field of online and social media?
- How can press and media councils articulate journalistic self-regulation with other regulatory frameworks dealing with online content and social media?

Each session was moderated by a member of the CDJ and explored a specific theme on the basis of a preliminary report with two experts who, in their practice, had developed a useful approach on the matter. These short presentations allowed for an open discussion with the participants each time.

The sessions, which took place virtually between March and November 2021, brought together media councils' representatives from Belgium, Bosnia and Herzegovina, Catalonia, Cyprus, Estonia, Finland, France, Germany, Greece, Ireland, North Macedonia, Norway, Russia, South Africa, Switzerland, Turkey and the UK, as well as partners from Blanquerna-Ramon Llull, the EFJ, ULB and UNESCO. In total, the Media Councils Debates welcomed 120 participants and 12 speakers.

This final report comprises six chapters, summarising each webinar through a state of the art on the topic, exploratory interviews with several experts and key-points identified from each session by the moderators, who also acted as rapporteurs for their debates.

We sincerely hope this report will spark discussion among press and media councils, as well as the general public.

Have a thought-provoking read,

Anna Vidal
Project manager

Young journalists and (online) ethics

Do young journalists' values, practices and experiences on (online) ethics call for change in standards and the work of media councils?

First of all, why should this question be asked? « Young journalists are a crucial stakeholder for the evolution of journalistic self-regulation and for the activity of media councils. They usually learn to appreciate the ethical Codes and principles during their training in higher education institutions, and these values are put to test for the first time most often during their internships in media companies. These initial professional experiences confront them with the current work conditions in the media sector and the challenges they pose to ethical principles ». Concurrently, « [young journalists] are digital natives, with their own set of values and experiences about online life that may lead them to question existing professional values. Their reflections can therefore offer relevant insights that would contribute to develop a set of suggestions of best practices for the media councils, in order to address the needs and challenges specifically faced by young journalists in the digital age » (2021, pp.42-43).

According to the survey directed by researchers from the Blanquerna School of Communication and International Relations in late 2020, European journalists under 25 « tend to defend that the principles of journalism ethics are still necessary in the digital age, but they need adaptation in order to be able to apply them in new contexts, such as social media » (2021). This finding is also highlighted in the qualitative research conducted by the four main journalism schools in French-speaking Belgium in late 2019, which indicates that a significant part of journalism students surveyed perceives deontological norms as outdated and unfit « to meet the contemporary challenges of information production », including digitalisation (Tixier et al., 2021,

p.12). This last observation should nevertheless be put in perspective.

A. French-speaking Belgium

The qualitative research study *Journalism students in internship and deontology in French-speaking Belgium* (2021) was conducted by the four main journalism schools in French-speaking Belgium (ULB, UCLouvain, ULiège and IHECS). This collective study was based upon eight focus groups – conducted between September and November 2019 – with 33 students who had recently finished an internship in a professional newsroom. The goal of the research was to analyse how journalism interns are confronted with ethics, how they apprehend these issues and how they deal with it, deviate from or adjust to those common standards. A particular focus was set on the students' perception of professional ethics as adapted or not to the current evolutions in the profession, including digitalisation (2021).

In short, the results highlight that journalism students have a hard time when asked to precisely define ethical norms and apply them in their practices. But at the same time, they hold very high standards of journalistic quality and consider ethics to be a keystone of their professional identity.

Furthermore, the level of understanding of the ethical foundations by young journalists and their criticism of deontology are quite diverse, their knowledge of precise standards can vary and their interest in the deontological aspects of the practice of journalism is more or less important (Tixier et al., 2021, pp.3-5).

1. Values

Before going deeper into this specific study, it is interesting to briefly compare young and older journalists' ethical values. According to the 2018 national research *Portrait des journalistes belges [Portrait of Belgian journalists]*, 31.5% of journalists aged 55 and over believe that journalists are more prone to disrespect ethical standards than before, while only 17.3% of young journalists (under 35 years old, in this case) agree with that statement. The younger age groups also find certain practices to be more acceptable than the older respondents. For example, journalists aged 55 and over are less inclined to hide the fact that they are journalists (68.9%) than their 35 to 44-year-old colleagues (78.7%) and those under 35 (85.1%). Another example: journalists aged 55 and over agree more with the statement that the media are increasingly committing privacy breaches (46.5%) than respondents under 35 (31.7%) (Van Leuven et al., 2019, pp. 40-44).

a) What is deontology?

How do journalism students conceive and define deontology? First of all, many students surveyed insist on its normative dimension, by using words such as « norm » (most often), « framework », « set of rules », « beacon », « guide », « tool », « path » or even « moral code ». The notion of respect (for information, the journalist, the public, etc.) is also crucial in their eyes. Secondly, deontology – which refers to the set of collective ethical standards adopted by the profession – and ethics – or individual values – are often mixed up by the respondents. Indeed, not all of them seem aware that their personal ethics might be more restrictive (or different) than professional ethical standards (Tixier et al., 2021, pp.6-8).

In addition to being a rather confusing concept (which can also be mistaken for « the law »), deontology is perceived as a framework than can – or cannot – be respected. The obligation of respecting ethical norms is actually debated by

some. In summary, deontology is seen both as an obstacle and as a protection. Finally, it gives credibility to the journalist for the public and peers to see (*ibid.*).

b) Is deontology important and/or useful?

Even though the students have various representations of deontology, they frequently refer to the concept to assess the quality of journalistic productions and to guide their practices. They consider journalism which follows deontological norms to be « good journalism ». Deontology is seen as an integral part of their professional identity. In fact, the surveyed students are convinced that ethics are a necessary instrument to gain and cultivate public trust, seen as the essential goal of journalism (Tixier et al., 2021, pp.12-14).

Deontology can be mobilised to criticise threatening factors inside the newsroom, such as commercial pressure. Tensions linked to marketing or advertising communication practices are pointed out by some, as well as the predilection for sensationalist topics. Students are quite reluctant to write articles that promote products, but at the same time, they seem to think that deontology is not strong enough to oppose the pressures of advertisers and media owners on the work of journalists (*ibid.*).

Despite the general stance of defending their Code of Ethics, young journalists sometimes criticise the relevance of those norms, most of the time regarding the effectiveness of self-regulatory bodies. One respondent considered that norms can be obsolete, even if some basic principles are not going to change. Students also consider that the media companies should be sanctioned (instead of journalists) because they create the working conditions that can hinder the respect of deontology (*ibid.*).

Participants also mentioned the need for more media education to facilitate public knowledge and understanding of the deontological norms. The majority of respondents

consider that the sanctions imposed by the French-speaking Belgian council, the CDJ, should be heavier in order to have a dissuasive effect. These sanctions should also gain more visibility among the general public to make people aware of the many ethical issues regarding journalism (*ibid.*).

c) Are deontological norms adapted to contemporary issues?

Despite the existence of the Code, deontology remains impalpable and constantly changing in the eyes of young journalists. As stated before, norms can be seen as obsolete and unfit to the digitalisation of the profession. Thus, digital developments in the media sector suggest the need for a « modernisation » of deontology. It would seem that, in the eyes of students, journalism has remained « in a bubble of idealistic ethical purity » (Tixier et al., 2021, pp.14-15).

For example, the use of social networks by journalists is regularly seen as a threat to deontology (in terms of the protection of sources or the ease of traceability of online connections). The « implied imperative of immediacy of information » is regularly mentioned as a cause for the disrespect of norms. Most students clearly feel that ethics do not sufficiently frame online behaviour. They struggle to define their role in a well-defined way, especially regarding the role of the community manager (which they occasionally have to assume, without having the skills or the time to do so properly) (*ibid.*).

Social networks also blur the boundaries between private and public places. Some students asked themselves if using images published publicly on social networks was authorised. Most participants find privacy questions difficult, arguing that this is « a grey zone » and that there is still « a legal void » around these issues (*ibid.*).

2. Practices

As a reminder, journalism students have numerous visions of deontology (based on various presuppositions) and tend to blur the boundaries between deontology and ethics. But how do they practice it on a daily basis? The respondents confronted their knowledge of deontology for the first time during their internships, in the context of professional production. Students find it difficult to accommodate or justify their practical experience in connection to the theoretical knowledge they acquired over the years. They actually tend to suggest that they are discovering a new kind of Code in the field, which induces « a laxer way of applying theoretical principles » (Tixier et al., 2021, pp.10-12).

Once deontology is used in the interns' day to day practice, they deploy a form of relativism about the design and application of ethical principles, considering it as a framework that they may or may not respect. This is mostly influenced by the identity of the media company and their personal way of conceiving deontology. Some media are considered less conducive to a rigorous application of deontology. This is notably the case of the Internet, which has been presented on several occasions as a less standardised space, where practices would be less subject to careful verification and systematic proofreading. The web is also presented as a workspace where the youngest – and therefore the least experienced – professionals generally work. But ethical problems can also occur on television (with the issue of anonymity or confidentiality), in local news and in the specialised magazine press (because of the high proximity with the sources) (*ibid.*).

The participants often mention the difficulty of producing information without leaning towards a form of promotional content. This appears specific in certain types of specialised journalism (such as sport, music and women's press) or to certain types of media. Many respondents become aware of the nature of the content they are supposed to produce during their internships, especially when they are confronted with

sources who want the media to publish the content they offer. The insistence of some PR services also confronts interns with the difference between information and promotion. The confusion is said to be reinforced by the nature of the subjects given to them, which in turn depends on their status as interns and the period during which some of them carry out their internships, for example the summer holidays (*ibid.*).

3. Experiences

There are « many silences » surrounding deontological issues faced by young journalists. Because of their intern status and lack of experience, some participants stated that they did not engage in questioning, from a deontological point of view, the practices of colleagues who have been working in the media for a long time. Others claim to have detected ethical ambiguities but kept their questions unvoiced because of their status, the short unpaid time they spent in the newsroom or a lack of self-confidence. These silences could also be explained by their willingness to make a good impression on the editorial staff. Students would indeed not jeopardise their chances of eventually being hired at the end of their internship (or simply secure to be positively evaluated by the media and their training institution) (Tixier et al., 2021, p.12).

Most of the participants agreed that their status puts them in front of many deontological challenges and tricky situations. Some of them mention the difficulty of presenting themselves as journalists, interns or members of the editorial staff of a media organisation to the sources they are asked to work with. Others simply refer to their inexperience, which pushes them to follow guidelines without questioning them. Finally, the stories to cover (suggested or even imposed by the managers) could be very difficult to deal with in a non-communicative way. However, one of the participants tempered this observation by stating that the nature of the subjects proposed to interns does not expose them to important deontological risks (*ibid.*).

4. What role for media councils?

Researchers Florian Tixier and Marie Fierens, who took part in the aforementioned French-speaking Belgian study, consider that the question « do young journalists' values, practices and experiences on online ethics call for change in standards and the work of media councils? » should be asked in priority to the main stakeholders, namely media councils.

Marie Fierens urges press councils to reiterate what is (and what isn't) a Code of Ethics. The researcher has repeatedly highlighted the importance of transmission because according to her, older or more experienced journalists convey a certain vision of ethics, sometimes unconsciously. For their part, young journalists, instead of consulting their Code of Ethics, will be more inclined to observe how the « grown-ups » are doing. This raises the more general question of the gap between theory (learnt at school) and practical learning (learnt during internships). In this context, it's interesting to note that deontology courses illustrated by casus are particularly appreciated by the students surveyed. In summary, for Marie Fierens: « Deontology is not a set of precepts but the result of experience and transmission [...] It follows the journalist in a deeply personal way and evolves with time and experience » (February 1st, 2021).

Moreover, regarding the observation that some students judge ethical standards as unfit to the digital age, Florian Tixier and Marie Fierens insist on the fact that most students have a confused conception of deontology and ethics in general. This observation should thus be taken with a grain of salt. Marie Fierens also thinks that press councils should not especially focus on the relationship between young journalists and online ethics, but on their relationship with ethics in general (*ibid.*).

B. Other European examples

The Blanquerna School of Communication and International Relations directed a research project in 2020 to find out how media councils could adapt to the challenges of the digital age (see above). 454 European journalists from nine countries and 61 members of the board of media councils from six countries responded to a dedicated survey. Only 3.1% of the journalists surveyed were 18-25 years old (referred to as « young journalists » from now on). In summary, these young European journalists find the principles of journalism ethics still necessary in the digital age but also believe that these standards need adaptation to new contexts, such as social media (2021).

1. Knowledge

41.67% of young journalists have a high level of knowledge of their national Code of Ethics, while 16.67% have a medium level of knowledge and 8.32% have a limited level of knowledge. Another 16.67% know the Code but haven't read it and the remaining 16.67% don't know the Code. This is the age group with the least knowledge. In comparison, most of the journalists surveyed have a medium or high level of knowledge of the Code (69.9% in total) (Masip, Suau and Ruiz, 2021, p.11).

KNOWLEDGE OF CODE OF ETHICS FOR JOURNALISTS BY AGE



Source : Masip, Suau and Ruiz, 2021

2. Values regarding online ethics

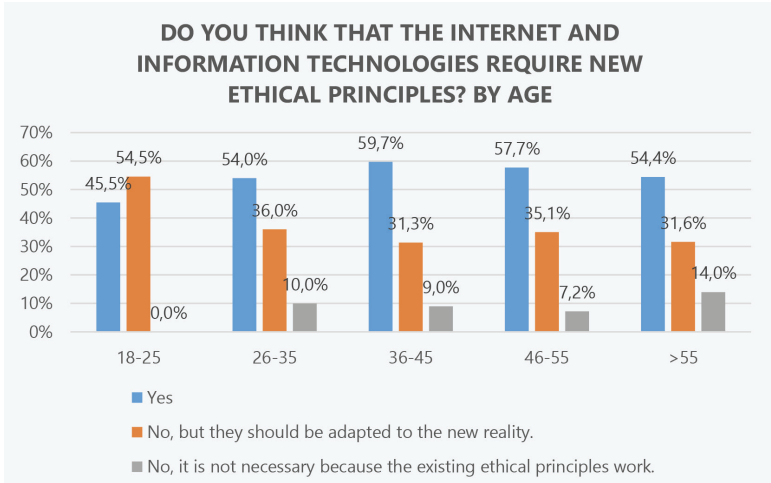
35.7% of journalists with 0-2 years of experience believe that their Code isn't adapted to new ethical challenges arising from digitalisation, while 21.4% believe it is and 42.9% don't know. On the contrary, journalists with 3-5 years of experience is the most confident group (37.5%). Furthermore, 54.5% of young journalists assert more frequently than other age groups that digitalisation doesn't require new ethical principles but adaptation to the current reality. The remaining 45.5% call for the need of new principles (Masip, Suau and Ruiz, 2021, pp.12-30).

All age groups think that public content available on personal profiles can be used for a story. 18.2% of young journalists think that such content can be used in all cases. The other 81.8% insist on requesting the authorisation of the people involved first. Young journalists are less likely than older ones to identify themselves as journalists when participating in a conversation on social media and public forums. Young and less experienced journalists consider that media outlets (and not themselves) are responsible for the quality or the politeness of comments related to their journalistic work (*ibid.*).

Young journalists (72.7%) find it acceptable to publish information of public interest provided by whistleblowers or leaked anonymously and think that journalists and whistleblowers should be protected. 27.3% of young journalists find it appropriate to delete stories if ordered by judicial authorities ; 9.1% of respondents find it appropriate to delete stories if indicated by a self-regulatory body ; 45.5% find it appropriate in both circumstances. The remaining 18.2% are against it because it would affect the right to information (*ibid.*).

96.9% of the respondents think that content produced by robots should be identified as such. There's a clear consensus on this matter because no significant differences by gender,

age or years of experience appear. On the same subject, 91.1% of the respondents think that this specific content should respect the same ethical standards as journalists. Most of the respondents consider that clickbait (91.92%) and web analytics (77.2%) dilute some journalistic principles, such as public interest. 45.5% of young journalists don't consider web analytics as a debatable practice. Finally, most of the respondents (82.2%) didn't encounter any ethical problems during the Covid-19 crisis, including 60% of young and less experienced journalists (*ibid.*).



Source : Masip, Suau and Ruiz, 2021

3. Comparison with media councils’ members

Are European Codes of Ethics adapted to respond to new ethical challenges arising from digitalisation? The answer to this crucial question depends on the stakeholder surveyed, with significant differences linked to age groups and/or countries. While most media councils’ members consider that their national Code of Ethics is adapted, only one young journalist out of five shares this view. But at the same time, a majority of media councils’ members and of young journalists

both call for an adjustment of the norms to the digital age, instead of the formulation of new ethical principles (Masip, Suau and Ruiz, 2021, pp.32-60).

The results show a fairly common view among young journalists and media councils’ members regarding the many ethical challenges emerging from digitalisation, such as the use of public content available on social media, the publication of information provided by whistleblowers or the identification of automated news. Different views can still be identified on some other practices, such as the identification of journalists on social media. These divergences indicate the need for increased dialogue between journalists and media councils, as well as between journalists and the media (*ibid.*).

4. Public engagement

In late 2020, the Flemish *Raad voor de journalistiek* released the first comprehensive overview of journalistic self-regulation in Europe. The research looked at the public engagement of 28 press councils and showed that 23 of them are engaged in activities aimed at educating or informing journalists about ethics. Most councils (from Denmark, Estonia, Ireland, Germany and Albania, to name a few) take part in conferences, workshops, seminars or academic lectures on journalistic ethics when requested (2020).

More precisely, the Catalan press council delivers a masterclass on ethics and self-regulation in universities from time to time, but it doesn't organise specific trainings for journalism students or young journalists, because the Catalan Journalists Association already does. The Finnish media council receives invitations to give presentations to journalism students quite often, while its trainings are meant for journalists from all age groups. The Russian press council invited 50 students from five journalism schools in 2021 to attend the council's sessions and discuss the cases under examination (February 2nd, 2021).

Moreover, for the Finnish and Russian media councils, the most problematic ethical issue among young journalists today is combining the role of a social media influencer and of a journalist or more globally the apparent contradiction between journalism and a social media activity. For the French CDJM, the main problems are the urgency to publish and the pressure to reproduce information without verifying or enriching it (*ibid.*).

What could press councils do to promote the respect of ethics among young journalists? According to Roger Jiménez from the Catalan press council, the solution lies in disseminating the press council and the Code of practice' visibility in universities, schools and professional forums. For Sakari Ilkka from the Finnish media council, supporting the teaching of the Code of Ethics in journalism schools is the main way. For Pierre Ganz (CDJM), councils should show that deontology is not a constraint but one of the means to fight « the excesses of fake news and other alternative truths » (*ibid.*).

5. The Norwegian example

The Norwegian press council goes further than some by organising workshops and courses on ethics at schools, universities and at the Norwegian Institute of Journalism, a knowledge and resource center for media practitioners whose first of three missions is the « training and further education of journalists and editors » (2020). Elin Floberghagen doesn't think specific workshops for young journalists should be organised, as they seem rather « ethically aware » (February 11th, 2021).

Indeed, the Secretary General has a rather optimistic vision of « the ethical future » of journalism and doesn't necessarily think that there are specific ethical issues targeting young journalists today. The only example she points out is the tendency to slip into partisan journalism, in which case some younger journalists don't always seek a balanced reporting when working on polarising subjects (such as environmental

or immigration questions). She also states that online journalism in Norway is not confined to young journalists anymore (*ibid.*).

There is a solid cooperation between the Norwegian press council and schools and universities, where courses on journalistic ethics are based on the analysis of real cases. Elin Floberghagen believes that « ethics are a practical issue, open for discussion and reflection ». It is in this spirit that the University of Oslo holds a shadow press council meeting with journalism students once a year. The press council is invited to compare its decisions with the students, who are « way stricter on some ethical rules ». The press council also helps students with their master's thesis on ethical issues. It should finally be noted that some teachers have already helped the council when reviewing its Code of Ethics. The Code was indeed recently adapted to address several issues, such as handling data from inexperienced young sources (*ibid.*).

C. Webinar key-points (by Marc de Haan)

How can media councils be more efficient and visible to address (young) journalists' concerns? The Norwegian example illustrates that student participation in a council session helps to make its role more visible and certainly more efficient, especially if the topics studied are selected according to the issues of interest raised by the students. Opening the meetings to the public is also a way to gain visibility¹. However, some stakeholders are not in favour of full transparency, pointing out that the protection of sources would be endangered with a public debate.

¹ While 20 percent of complaints are handled confidentially, the Norwegian press council aims to better communicate to gain visibility and to be transparent, including by making it possible to follow the sessions via streaming for the public and journalists. The council also writes on the findings of case studies for journalists and organises an annual conference on trends and statistics. In this respect, two trends emerge in the press council's statistics regarding non-compliance with ethics, namely fact-checking and the absence of a right of reply.

Should media councils sanction media companies (which create the working conditions that can allow or prevent the respect of deontology) more than journalists for an ethical breach? As seen in the study presented by Marie Fierens, some students think that media should be sanctioned rather than individual journalists. On a different note, the Norwegian example shows that complaints can only be lodged against journalists who are members of a journalists' association.

Should media councils impose « heavier » sanctions in order to have a dissuasive effect? First of all, it would be interesting to question students on the tools which are available to councils through their Codes of Ethics. Strengthening sanctions is in contradiction with the characteristic of self-regulation, defined according to the name-blame principle. Self-regulation allows above all for dialogue and the exchange of points of view. Furthermore, some stakeholders were surprised by this demand (which essentially calls for more ethical journalism), even though most complainants do not expect sanctions. Speakers pointed out that ethical journalism is a question of responsibility on the part of the media, journalists and the public itself.

How can media councils improve their teaching skills towards (young) journalists and the public? Speakers agreed that media councils should invest more in media literacy to facilitate the understanding of ethical norms among the general public. Another issue is how to reach minorities and how to deal with the lack of diversity in the newsrooms. This can be explained by the fact that students in journalism schools, for instance in Norway, come from higher living standards, which effectively excludes minorities from the newsrooms, since a degree is required to work there.

Should the role of the journalist be clarified (to avoid confusion with the role of the community manager for example)? Stakeholders agree that it is very difficult to define what journalism is (see chapter 4). Nevertheless, it is necessary to be able to transmit the tools that will allow the

general public to distinguish journalistic content from other content.

How is deontology passed on to young journalists? Courses on journalistic ethics are organised in universities, as well as practical sessions, both in Belgium and Norway. The speakers insisted that theory must be taught in parallel with practical cases, as ethics are an everyday issue. Students need to be confronted with cases to better understand ethics. For instance, workshops can also be used to understand ethics through the choice of a title or a photo, so their importance should not be overlooked, especially as students expect more practical training. The coverage of ethical issues by the media themselves is not the same in all European countries: some have more experience such as Norway or Belgium (where the CDJ has existed successfully for 10 years). Furthermore, the French-speaking Belgian public broadcast service has created Inside, a new medium devoted to professional journalistic questions.

How can media councils make young journalists think more about deontology? In Norway, the press council is considering tools to work with graduate schools and high schools to train young students in order to clarify certain ethical concepts such as fact-checking. In France, two of the main journalism schools are members of the press council.

Should media councils rethink ethical norms specifically for young journalists or specifically for online journalism? According to Marie Fierens, it is not so much a change in the Code that young journalists want, but rather a change of attitude towards meeting these standards. Elin Floberghagen insists on the impact of visibility on increasing exchanges between the public and press or media councils, which implies getting more feedback from the public. Should the Code be systematically adapted to this feedback? Councils need to be able to retain what is relevant. One speaker pointed out that the basic foundation of ethics must remain intact, adjustments must be made according to the problems

encountered, such as the example of the use of hidden cameras by journalists. Another speaker mentioned the wish of Russian students to set up a Code especially designed for bloggers **(see chapter 3)**.

D. Conclusion

As long as the students are waiting for a specific adaptation to their conditions, it is not definitely necessary to target youth-specific regulation. Young journalists have significant resources to adapt to the digital age in which most of them were born. Given that they are aware of the need for more ethical journalism, they are able to identify its characteristics. Clearly, technological progress and the emergence of new channels require an adjustment of the basic foundation of press and media ethics to clarify the complexity of the multitude of media in the field of online information.

In addition, young journalists coming out of universities are confronted with the gap that can exist between the theory they learnt and the practice of journalism. Enabling close collaboration between press and media councils, universities and journalism schools is an efficient tool to reduce this gap. In conclusion, given that the councils were created on the basis of self-regulation, they have to encourage dialogue and the exchange of views. Even if the ethical ground of the Codes (as the respect for the truth for example) cannot be contested, it should be discussed and should be able to evolve, in order to be transmitted and to continue to be applied. ■

The « Young journalists and (online) ethics » webinar happened on March 1st, 2021. The invited speakers were ULB researcher Marie Fierens and secretary general of the Norwegian Press Association Elin Floberghagen. This first session was moderated by Ricardo Gutiérrez, civil society representative for the CDJ and secretary general of the European Federation of Journalists. Marc de Haan, editors' representative for the CDJ and then AADJ president, acted as rapporteur.

Disinformation, trust and ethics in times of Covid-19

How can the impact stemming from the Covid-19 crisis help to develop a common understanding on the challenges faced by the media sector, especially regarding disinformation, trust and ethics?

« The coronavirus crisis plaguing the world since the beginning of 2020 has transformed the way journalists and media function, their working conditions, and safety. It has left a profound impact on the economic status of media professionals and organizations, as well as overall access to information. Following the spread of the virus, states and governments have, justifiably and necessarily, taken various restrictive measures to protect public health in times of crisis [...] In such a confusing and tense atmosphere, journalists across the world have also faced growing verbal and physical attacks, censorship, and difficult access to information and locations. These threats to media freedom come at a time when access to verified information has become critically important to save lives and help people debunking the disinformation circulating on the virus [...] » (Tuneva, 2020, p.1).

Furthermore, « many news organisations are working hard to serve growing audiences as well as possible during the crisis, complementing traditional reporting often done under extremely challenging conditions due to lockdowns and social distancing measures (as well as financial pressures on the business of news during this crisis) with many impressive examples of editorial innovation including increased use of data visualisation, interactives, and various forms of simulation. Television and online [media] are the most popular way of getting news [...] The figures for newspapers are lower than normal, as countries have entered lockdown, complicating print distribution and greatly reducing single copy sales [...] » (Nielsen, Fletcher, Newman, Brennen and Howard, 2020, p.8).

The consequences of this pandemic for news organisations, journalists, media councils and citizens are too numerous and various to be fully developed in this report. In short, the Covid-19 pandemic will most certainly have « a dramatic and unequal impact on independent news media, with few winners and many losers » (Nielsen, Cherubini, and Andi, 2020, p.27). With this in mind, this report focuses on three major aspects of the challenges currently faced by the media sector: disinformation, trust and ethics.

A. Mis- and disinformation

In February 2020, the World Health Organization (WHO) declared that the Covid-19 pandemic was coupled with an “infodemic”, which can be defined as « a huge and incessant flow of information, true and false, difficult for individuals to manage ». This infodemic can generate a misunderstanding of the sanitary crisis as well as anxiety among the population (Lits, Coughnon, Heeren, Hanseeuw et Gurnet, 2020, p.4).

The infodemic is more related to the phenomenon of “misinformation” (being misinformed, too informed or informed too quickly)¹ rather than “fake news” (false information produced and disseminated intentionally) or “disinformation” (information produced and disseminated intentionally with the aim of destabilising a third party, while generating profit for its producer). “Fake news” and “disinformation” represent

¹ The term “misinformation” can be used to refer broadly to any type of false information, including “disinformation” or « knowingly false content meant to deceive » (Brennen, Simon, Howard and Nielsen, 2020, p.2).

a significant aspect of the infodemic, but they aren't the core of it alone (Lits, Coughnon, Heeren, Hanseeuw et Gurnet, 2020, p.2). Misinformation and disinformation are neither new nor unique to the Covid-19 pandemic. But many journalists, policy makers and academics have stressed that it presents a serious risk to public health and public action amid this unprecedented global health crisis (Brennen, Simon, Howard and Nielsen, 2020, p.2).

1. Measuring the infodemic

We focus here on the main results of several studies which aimed to measure the infodemic arising from Covid-19 among the population during the first wave of the pandemic. Some aspects (i.e., the perception of misinformation and the level of trust of citizens) will be more developed than others (such as their level of anxiety or their level of knowledge). It is indeed important to note that questions around misinformation provide only information on people's perception of the problem, not an objective measure of how much false information they have – perhaps unintentionally – engaged with (Nielsen, Fletcher, Newman, Brennen and Howard, 2020, p.8).

a) Globally

Between late March and early April 2020, researchers from the Reuters Institute for the Study of Journalism have analysed the infodemic in six countries with a combined population of more than 600 million and representing different media and political systems: Argentina, Germany, South Korea, Spain, the UK and the US. The goal of the research was to document and understand how people in these countries accessed news and information about Covid-19 in the early stages of the global pandemic; how they rated the trustworthiness of the different sources and platforms they relied on; how much misinformation they said they encountered. It also aimed to evaluate the participants' knowledge of the crisis (Nielsen, Fletcher, Newman, Brennen and Howard, 2020, p.3).

The results showed that at the time, news use was up across all six countries and most people were using either social media, search engines, video sites, and messaging applications (or combinations of these) to get news and information about Covid-19 (Nielsen, Fletcher, Newman, Brennen and Howard, 2020, p.3). Television and online news were the most popular way of getting news in all six countries. And while only a small minority identify social media as their main source of news, it is clear that various platforms (such as Google, Facebook, Twitter, YouTube and Instagram, to name a few) play a key role in how people access and find news and information about the pandemic (*ibid.*, pp.9-12). It appears that people with low levels of formal education are much less likely to say that they rely on news organisations for news and information about coronavirus, and more likely to rely on social media and messaging applications. In Argentina, South Korea, Spain and the US, young people are much more likely to rely on social media, and in Germany, the UK and the US, to rely on messaging applications groups (*ibid.*, p.3).

For every source and every platform in every country covered, it is a minority who say they have come across a lot or a great deal of false or misleading information around Covid-19. Among sources, « bottom-up » false or misleading misinformation (spread by people whom respondents do not know personally) is most widely identified. On average, about a third say they have seen a lot of false or misleading bottom-up misinformation in the last week. Among platforms, concern is focused on social media and messaging applications, where on average about a third of respondents say they have seen a lot of false or misleading information in the last week. While concern about false or misleading information from news organisations and national governments is less widespread than concerns over ordinary people, social media and messaging applications, about a quarter are still worried (Nielsen, Fletcher, Newman, Brennen and Howard, 2020, p.4).

A majority of respondents in every country say that the news media have helped them understand the crisis and explain

what they can do. However, about one in three also say they feel the news media have exaggerated the pandemic. Most people do relatively well when asked a series of factual questions about coronavirus and it appears that using news organisations as a source of information is associated with a statistically significant increase in coronavirus knowledge in every country, except Argentina and Spain. Almost a quarter of the respondents incorrectly believe the coronavirus was made in a laboratory (Nielsen, Fletcher, Newman, Brennen and Howard, 2020, p.4).

b) In Spain

Researchers from the Blanquerna School of Communication and International Relations have conducted a national survey among the population during the most severe confinement phase (between April 4th and April 10th, 2020). The results show that most Spanish citizens (78%) have received more news and more frequently than before the crisis and that they maintain a critical attitude towards the media coverage of the outbreak. 77.4% of people surveyed believe that the coverage is conditioned by the ideology of the media and 44.6% of them think reporting is done in a sensationalist way, generating unnecessary social alarm (Masip et al., 2020, p.2).

The survey also shows a tendency to take refuge in well-known media. Digital newspapers (38.3%) and television news (33.9%) are the most popular sources of information. It's interesting to note that 6.1% of people surveyed have subscribed to some digital medium during the confinement, suggesting the need for trusted media in a country not usually predisposed to pay for information (Masip et al., 2020, p.2).

Although 80.3% say they have received false news or news of dubious veracity, these mostly come from social networks and instant messaging applications (64.3%), with WhatsApp being the main gateway for "fake news". The media appear as « a vaccine » against hoaxes, since they are the second used route behind Google. However, fact-checking verification

systems are used only by 10% of people surveyed (Masip et al., 2020, p.2).

Finally, social networks emerge as an escape for citizens, used more as a form of entertainment than as an information channel. Indeed, 71% of citizens surveyed claim to have shared a meme about the coronavirus crisis and 69% of them say it was only for fun (Masip et al., 2020, pp.3-4).

c) In French-speaking Belgium

Researchers from UCLouvain have also analysed the infodemic by conducting a national online survey between March 30th and April 10th, 2020. They found out that 90% of the population obtained information mainly through traditional media (i.e., television, radio, print and online newspapers) at the beginning of the first lockdown. Furthermore, one in two French-speaking Belgians shared information about the coronavirus on social networks. Among them, 10.4% admit to having inadvertently shared false information, which represents around 214,000 people (Lits, Coughon, Heeren, Hanseeuw et Gurnet, 2020, pp.4-5).

42% of young people (under 26) have chosen social networks as their main source of information. Young people were also the most likely to combine traditional media and social networks (24%). A greater proportion of young people are aware of having been exposed to false information (62%, compared to 49% for the general population and only 18% for those 66 and over). People under 26 were less likely to share information about the coronavirus and fewer have realised that they have shared false information. They were also less likely to believe the laboratory theory (8% versus 12% of people aged 26-65). If young people got more information than other age groups on social networks, they seem to have used it more critically (Lits, Coughon, Heeren, Hanseeuw et Gurnet, 2020, pp.4-5).

Finally, the group which was the most at risk regarding the infodemic at the beginning of the pandemic is also the most exposed group to the virus (i.e., people aged 66 years and over). 38% of seniors have shared information on social networks and they were proportionally more likely than others to admit having shared false content on social networks (Lits, Coughnon, Heeren, Hanseeuw et Gurnet, 2020, pp.4-5).

2. The importance of fact-checking

Could the Covid-19 pandemic be « the biggest challenge fact-checkers have ever faced »? To briefly illustrate the importance of fact-checking, we present the results of a study conducted by the Reuters Institute between January and March 2020 in the UK (Brennen, Simon, Howard and Nielsen, 2020, p.2). In terms of scale, independent fact-checkers have moved quickly to respond to the growing amount of misinformation around Covid-19. The number of English-language fact-checks rose more than 900% from January to March 2020. Keeping in mind that fact-checkers have limited resources and cannot check all problematic content, it is possible that the total volume of different kinds of misinformation has grown even faster (*ibid.*, p.1).

In summary, misinformation about Covid-19 during the first wave of the pandemic came in many different forms, from many different sources and made many different claims. In terms of formats, most of the misinformation observed (59%) involves various forms of reconfiguration, where existing and often true information is twisted, recontextualised, or reworked. Less misinformation was completely fabricated (38%). Despite a great deal of recent concern, no examples of deepfakes were found. The manipulated content rather includes « cheapfakes », produced using much simpler tools. The reconfigured misinformation accounts for 87% of social media interactions in the sample and the fabricated content for 12% (Brennen, Simon, Howard and Nielsen, 2020, p.1).

In terms of sources, « top-down » misinformation (from politicians, celebrities and other prominent public figures) made up just 20% of the claims but accounted for 69% of total social media engagement. While the majority of misinformation on social media came from ordinary people, most of these posts seemed to generate far less engagement. However, a few instances of bottom-up misinformation had a large reach, but this analysis was unable to capture spread in private groups and via messaging applications. Misleading or false claims about the actions or policies of public authorities (including governments and international bodies like the WHO or the UN) are the single largest category of claims identified, appearing in 39% of the sample (Brennen, Simon, Howard and Nielsen, 2020, p.1).

Finally, in terms of responses, social media platforms have responded to a majority of the posts rated false by fact-checkers by removing them or attaching various warnings. There is significant variation from company to company, however. On Twitter, 59% of posts rated as false in the sample by fact-checkers remained up as of March 31st, 2020, while 27% remained up on YouTube and 24% on Facebook (Brennen, Simon, Howard and Nielsen, 2020, p.1).

Researchers from the Reuters Institute believe that addressing the spread of misinformation about Covid-19 will take « a sustained and coordinated effort » by independent news media and fact-checkers, platform companies and public authorities to help the public understand and navigate the pandemic (Brennen, Simon, Howard and Nielsen, 2020, p.8). With this in mind, we can point out that the European Commission announced in early 2021 an important extension of the Covid-19 Disinformation Monitoring Programme – a transparency mechanism designed to ensure public accountability for the measures taken by signatories to the EU Code of Practice on Disinformation – in specifically tackling Covid-19 disinformation, with a special focus on vaccine mis- and disinformation (O Fathaigh, 2021).

The Commission also published a set of reports on measures taken by the signatories to tackle Covid-19 disinformation, including Facebook, Google, Microsoft, TikTok and Twitter. In short, these platforms have blocked hundreds of thousands of accounts, offers and advertiser submissions related to coronavirus and vaccine-related misinformation. They also enhanced the visibility of « authoritative content » with millions of users directed to dedicated informative resources. Finally, they collaborated with fact-checkers to make fact-checked content on vaccination more prominent. However, the Commission has asked platforms to provide more data on the evolution of the spread of disinformation until its further assessment of the situation later in 2021 (O Fathaigh, 2021).

3. How to report on vaccines

Practical advice on how to report during a crisis (including a pandemic) can be found in various Codes of Ethics, additional guidelines and recommendations, some of them published in the last year by news organisations, media councils and others.

The Ethical Journalism Network (EJN) for instance published « 7 points for covering a pandemic ». Its first advice is to « stick to the facts », which means using verified, trusted and diverse sources, checking the date of data, being transparent about methods of data collection, correcting misinformation with facts and recognising that disinformation can generate hate speech and lead to harm. Journalists should also practice accountability (give context to government statistics and death tolls, hold power to account, be accountable to their audiences, avoid fearmongering and recognise that Covid-19 disproportionately affects certain communities and individuals) (2021).

The EJN insists on checking the use of medical and scientific terminology (and avoiding misleading language and labelling); showing humanity (sharing stories of recovering, resilience and solidarity, being sensitive towards the families of the

victims); challenging hate (avoiding ethnic or religious finger-pointing, racial, national profiling and labelling of the disease, discriminatory language)²; avoiding social stigmatisation and stereotyping; practicing duty of care (protecting their physical and mental health, minimising risks) (2021).

Furthermore, the recent approval of a number of vaccines means journalists – including non-specialists – have to explain the current context, while scrutinising pharmaceutical companies and demanding transparency of their government's vaccination policies and programmes. The International Federation of Journalists (IFJ) published a list of guidelines to help journalists in this difficult task (2021):

- Journalists shouldn't automatically trust data coming from authorities and pharmaceutical companies and should clarify what the news means and what it does not.
- Journalists should use trusted and reliable sources (such as the WHO, scientific magazines, academic institutions and universities) and always follow ethical principles.
- Journalists should understand what is known and what is not by following the ongoing studies on vaccines and consulting experts.
- Journalists should explain in detail scientific vocabulary and use clear and familiar language.
- Journalists should explain vaccines from a global perspective as well as a local perspective.
- Journalists should avoid sensationalism and click baiting, which can create unjustified alarm.
- Journalists should educate the public on the importance of vaccines in the past, while addressing the possible side-effects.
- Journalists should collaborate and learn from each other because competition will only speed up the spread of inaccurate coverage and misinformation.

² It is worth mentioning that the Council of Media Ethics of Macedonia (CMEM) published guidelines for inclusive reporting on Covid-19, highlighting the importance of portraying diversity (of race, ethnicity, gender, sexual orientation, socioeconomic status, religion, age, ability, etc.) in the right way during this challenging time (Tuneva, 2020).

On this matter, Jean-Pierre Jacqmin (CDJ member and director of information for the public service broadcaster of French-speaking Belgium) indicates that the coverage of the vaccines has highlighted several challenges for journalists, namely: understanding the science before informing the public; choosing the right experts; giving room to diverse opinions; criticising the effectiveness of the vaccination campaign while avoiding a moralising tone; etc. In early 2021, he already noted an important weariness of the population regarding the media coverage of the Covid-19 crisis, sometimes accompanied by anxiety. But according to him, journalists can't ignore the gravity of the situation and thus have to keep on showing reality, while remaining professional at all times (March 4th, 2021).

B. Trust

The WHO has stated that the propensity to believe false information is closely linked to the lack of trust in the authorities and the government. The level of trust of the citizens in the various authorities involved in the management of the crisis – including the media – is therefore crucial, as a high level of trust will help to put in place effective strategies to fight the pandemic (Lits, Cougnon, Heeren, Hanseeuw et Gurnet, 2020, pp.8-9).

1. The first wave

In every country covered by the aforementioned Reuters Institute international study, very high numbers of people across age groups, levels of education and political views rate scientists, doctors, and other health experts as trustworthy sources of information about Covid-19. Three-quarters of respondents trust national or international public health organisations, a majority of participants rate news organisations relatively trustworthy, and in every country (apart from Spain³ and the United States, deeply polarised

countries), a majority rates their national government trustworthy as well. While levels of trust in scientists and experts are consistently high, and levels of trust in ordinary people are consistently more limited, there are significant political differences in trust in news organisations and in the government, especially in the United States (Nielsen, Fletcher, Newman, Brennen and Howard, 2020, p.3).

When asked how trustworthy they find news and information about Covid-19 from different platforms, most respondents rate platforms less trustworthy than experts, health authorities and news organisations. Results vary significantly across different types of platforms: the « trust gap » between information from news organisations and information from social media is 33 percentage points, between news and video sites 30 percentage points and between news and messaging applications 35 percentage points. The gap is 14 percentage points on average between news and search engines (Nielsen, Fletcher, Newman, Brennen and Howard, 2020, p.3).

The majority say they feel news media have helped them understand the pandemic. But a less widely recognised but equally concerning phenomenon is that young people and people with limited formal education in almost every country rely less on news organisations for news and information about Covid-19, trust both news media and the government less, are less likely to say that either the media or the government have helped them understand the pandemic. Large minorities in every country do not engage with news and do not trust it and in turn, often know less about the crisis (Nielsen, Fletcher, Newman, Brennen and Howard, 2020, p.30).

The study from UCLouvain shows that experts and health professionals are the sources of information that French-

³ The results from another research conducted by the Blanquerna School of Communication and International Relations reveal a polarised media

consumption in Spain. The trust that Spanish citizens place in the media is conditioned by their ideological positioning. Ideology also affects the perception of media as creators and spreaders of disinformation (Masip, Suau and Ruiz-Caballero, 2020, p.2).

speaking Belgians trusted the most at the beginning of the lockdown (between 93% and 83% of confidence, depending on the source of expertise). Surprisingly, the federal government is considered to be a more reliable source of information (81% confidence) than all the traditional media (between 78% and 67% depending on the media). Blog posts (21%) and social media influencers (14%) are the least credited sources of trust. 57% of the people surveyed think that we should only trust the experts to make decisions, while the government should simply apply them without questioning them. Only one in five French-speaking Belgians does not agree with this statement. It is also worth mentioning that after two to three weeks of lockdown, one in four Belgians experienced a high or very high level of anxiety (Lits, Cougnon, Heeren, Hanseeuw et Gurnet, 2020, p.5).

2. The second wave

In a research titled « Lessons for the second wave », the Reuters Institute points out that in the UK, from mid-April to mid-August 2020, news use has declined (after the initial surge), trust in news has fallen, trust in the government as a source of information about Covid-19 has dropped dramatically and a large minority of the public – an estimated 20 million people – do not feel that the news media and/or the government have explained what they can do in response to the pandemic (Nielsen, Fletcher, Kalogeropoulos and Simon, 2020, p.7). Indeed, while the early stages of the crisis saw both a « rally around the flag » effect (contributing to a brief period of high trust in the government) and a parallel « rally around the news » effect (as people came together around widely used and broadly trusted news media), much of this had evaporated by late June 2020 (*ibid.*, p.12).

Furthermore, information inequality is a real and growing problem, with systematic disparities around age, gender, as well as income and education in how people engage with information about the coronavirus. The “infodemically vulnerable” are a small but significant and growing part of the

UK public, i.e., a minority of the public who consume little to no news and information about Covid-19 and say they would not trust it even if they did. It appears to have grown from a small minority of 6% early in the crisis to a significantly larger minority of 15% by late August 2020 – an estimated 8 million people who are more at risk of being at best less informed and at worst, uninformed or misinformed (Nielsen, Fletcher, Kalogeropoulos and Simon, 2020, p.12).

C. Ethics

As the UK Independent Press Standards Organisation (IPSO) explains it clearly, « reporting on Covid-19 is not always easy⁴. There are still many unknowns, much is open to debate and interpretation, and in certain circumstances harmful misinformation is circulating widely online. In these challenging circumstances, [the media] may not always get it right, but the key difference between them and content in the wilds of the internet and social media is accountability » (Julian, 2020).

Indeed, to ensure that citizens trust the information they receive from media, ethics and accountability mechanisms play a critical role. Since the start of the pandemic, self-regulatory bodies across the world have thus intensified their work to respond to the new waves of disinformation and the need for additional guidance and support to the media community in covering the crisis (Tuneva, 2020, p.2).

In its January 2021 newsletter, the CDJ states that the reporting of the sanitary crisis has not dominated its agenda

⁴ After one year of coverage of the Covid-19 pandemic, Jean-Pierre Jacqmin (RTBF) draws up a rather positive assessment. In 2020, the public broadcaster has indeed produced as much information as in 2019, with two-thirds of journalists working from home most of the time. The director of information underlines their responsiveness, as they had to keep on informing the public despite the sanitary measures, while protecting themselves to avoid spreading the virus. According to him, basic ethical standards (such as the respect for the truth and the respect of victims' rights) were respected and sensationalism was avoided, even if emotion has been present in certain reports (March 4th, 2021).

until today. Nevertheless, the press council sheds light on two particular issues. At the beginning of the pandemic (March–April 2020), there were some complaints regarding the alleged irresponsibility of journalists, such as the disrespect of sanitary rules (which is not considered as an ethical breach). The second issue revolved around the respect of people's rights – mainly the protection of one's image – and the relevant mention of personal characteristics. The CDJ jurisprudence on these specific issues has thus been a solid benchmark for the profession during this crisis. Despite its particular nature and the high volume of information produced, the journalistic coverage of the pandemic led to few complaints in French-speaking Belgium until early 2021. In the end, valid complaints were only based on the rather usual questions of balancing private interests and the public interest (Hanot, 2021).

The Council of Media Ethics of Macedonia (CMEM) has been very active since the beginning of the pandemic: the rather young organisation has notably published a research on the role of press councils, as well as guidelines on inclusive reporting. From July to September 2020, the Council collected data on the experiences, practices and challenges faced by press councils from the Alliance of Independent Press Councils of Europe (AIPCE) during the ongoing pandemic. The research insisted on the critical role played by self-regulatory bodies in helping journalists navigating this crisis (Tuneva, 2020, p.2).

1. Providing specific guidance to media on the ethical coverage of the pandemic

Because the demand of citizens to access reliable information about the crisis increased day by day, some media councils decided to react by reminding journalists and media across their countries about their Codes of Ethics. Several councils – sometimes together with journalists' associations – issued statements and recommendations on how to report professionally and avoid sensationalism while covering a

pandemic, while others worked with the authorities to remind journalists of their ethical standards and of existing guidelines. Additional guidance was also produced by international organisations, such as UNESCO (Tuneva, 2020, pp.3–4).

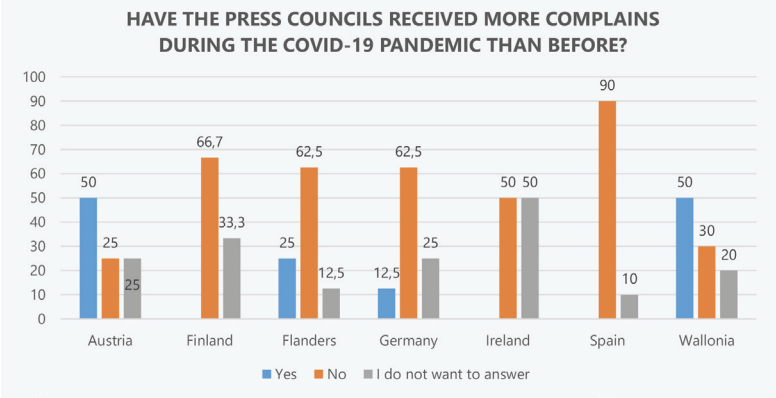
2. Defending media freedom and access to information

As various reports showed increased threats to press freedom in connection with the pandemic (disproportionate laws to counter disinformation, denials of the right to access information, enhanced surveillance of journalists, etc.), a number of press and media councils have reacted to these threats, notably by publishing press releases and issuing public reactions, often in partnership with journalists' and/or newspaper associations (Tuneva, 2020, p.5). Considering the critical importance for journalists to access information about the pandemic, many councils have been vocal and actively requesting respect for that right. Some councils pressured authorities to publish more information and figures from health institutions and to stop with the practices of informal briefings and press conferences with no or few questions allowed (*ibid.*, pp.6–7).

3. Handling complaints about potential breaches of the Code of Ethics

The number of complaints received by press and media councils about potential breaches of their Code of Ethics⁵ varies considerably from one country to another. Therefore, we cannot say there has been a general increase in the number of complaints received by self-regulatory mechanisms. It is nevertheless possible to highlight the main types of potential

⁵ From a survey conducted in late 2020 by the Blanquerna School of Communication and International Relations, it appears that most media councils surveyed (58%) did not receive more complaints during the pandemic (Masip, Suau and Ruiz, 2021, p.52). Furthermore, a clear majority of the journalists surveyed (82.2%) did not encounter any ethical problem during the crisis and young/less experienced journalists experienced even less problems than other groups (*ibid.*, p.30).



Source : Masip, Suau and Ruiz, 2021

breaches and violations of the Codes of Ethics (Tuneva, 2020, pp.8-9).

The spread of false, unverified and half-truthful information about the coronavirus, their sharing either on social media or in other media, as well as the speed of their spread has been the number one reason for complaints of citizens to press councils. This includes allegations of publishing inaccurate and unverified information, failing to correct an essential error and making no distinction between news, opinions and speculations. Unsurprisingly, press councils did not receive complaints about the circulation of false information in countries where the information was completely centralised by the government, such as in Albania (Tuneva, 2020, pp.8-9).

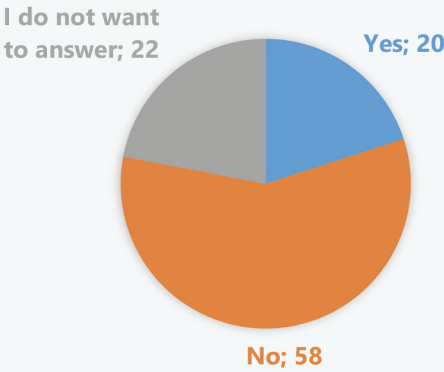
Sensationalist media reporting was another frequent complaint, mostly referring to the vocabulary or the approach used to deal with the issue. This problem is predominantly related to clickbait headlines, which can give false and unfounded hopes or upset and shock people who are sick (Tuneva, 2020, pp.9-10).

As the pandemic spread, so did concerns about privacy and data protection in media reporting. Many cases of violation of these principles have been reported to press councils in

several countries. We can point out the publication of names of people infected; the publication of information that allows the identification of people and the publication of photographs of medical personnel; the alleged infiltration of a journalist in a Facebook group dedicated to doctors. We can also refer to the discrimination and stigmatisation of the victims, where the Ukrainian press council reacted pro-actively against a case of hate speech. Finally, the lack of a clear distinction between journalistic content and advertising was the reason for several complaints in Germany (Tuneva, 2020, pp.10-12).

Overall, citizens mainly complained about media exaggerating or neglecting problems related to Covid-19. They also often criticised journalists who didn't wear masks or didn't respect social distancing, even though this "irresponsibility" is not covered by the Codes of Ethics (Tuneva, 2020, p.8). In addition, Executive Director Marina Tuneva explains that ethical breaches in North Macedonia were mostly about one-sided reporting, while complaints regarding hate speech significantly decreased (February 18th, 2021).

HAVE THE PRESS COUNCILS RECEIVED MORE COMPLAINS DURING THE COVID-19 PANDEMIC THAN BEFORE?



Source : Masip, Suau and Ruiz, 2021

4. Informing and educating the audience to address online mis- and disinformation

As misinformation about the virus has been increasingly spreading online, press and media councils have actively taken a step to tackle this issue and help citizens debunk it, informing them about their right to complain. This was done through various activities: taking part in online awareness-raising, participating in TV programmes, disseminating micro-learning materials on media and information literacy for citizens, etc. This example highlights, once more, the importance of making press councils more visible among the general public. Furthermore, the crisis has brought forward a major challenge for some press councils in relation to the increasing number of complaints received from citizens about information circulating on social media and not necessarily under the supervision of a self-regulatory body (Tuneva, 2020, p.13).

In conclusion, press and media councils have shown the critical role they played and still play during this pandemic. By strengthening media ethical standards and helping restore public trust in media, they are an important part of the solution to address online disinformation on social media and should be further supported. Yet, one crucial challenge, which is not new but is expected to intensify, is the lack of self-sustainability and financial resources of some press councils. This challenge is clear for councils in South East Europe, whose funding entirely depends on donor assistance. But such concerns about future funding are also expressed by some European self-regulatory bodies, for instance in Ireland and Sweden (Tuneva, 2020, p.14).

5. A less proactive approach?

The impact of the Covid-19 crisis reveals various disparities between broadcast, print and online media, as well as between countries regarding many issues (including access to information, ethical breaches, the economic status and

working conditions of journalists and news organisations). For this reason, media councils haven't reacted similarly in every country.

Was it then preferable for media councils to prevent breaches by reminding ethical principles or to wait for potential breaches by trusting the self-regulation process? As seen above, media councils such as the Council of Media Ethics of Macedonia were really pro-active during the crisis. Others, including the CDJ, didn't meddle with the work of journalists' associations (considering that their Code of Ethics was enough to guide journalists) and thus only handled complaints about potential breaches.

For Jean-Pierre Jacqmin (RTBF), the Code of Ethics of the CDJ was (and is still) comprehensive and sufficient to inform journalists on their duties during crises such as this one. Therefore, he does not think that the council should have been particularly proactive regarding this matter. At the RTBF, discussions with journalists and with representatives of other French-speaking public services played a great role in sharing and solving possible questions and problems. In short, if the CDJ had felt it was necessary to speak up on the coverage of Covid-19, it would have done so by now. Jean-Pierre Jacqmin also insists on the urgent need to cooperate with other European media councils to reaffirm the journalists' duty of informing the public, who has partly lost trust in the media. To this end, « establishing a strong deontology is one of the best ways to ensure press freedom » (March 4th, 2021).

D. Webinar key-points (by David Lallemand)

How can journalists, media councils, public authorities and platform companies coordinate their efforts to prevent the spread of mis- and disinformation, while ensuring press freedom? As explained by researcher Jaume Suau (Blanquerna School of Communication and International Relations), disinformation spreads where there is distrust regarding traditional institutions (such as political parties)

and polarisation, which has increased in the last decade in western societies. In highly polarised societies such as the US or in Spain, news media are identified according to their ideological or political position. To what extent media contribute to the polarisation of the society (or reflect it) is another issue of interest. The role of media and press councils might be different depending on the country and its degree of polarisation. The solution cannot thus be the same everywhere, but it is very important to put media councils in the middle of the debate, for citizens to see that journalism can be trusted and that journalists self-regulate. For Jaume Suau, any initiative that connects citizens, journalists and media councils is positive in this respect.

How can media councils help restoring the trust of the public in the media, without stepping on the role of journalists' associations and without interfering with editorial choices?

Marina Tuneva (Executive Director of the CMEM) agrees with the fact that press councils should work together with citizens on restoring trust in journalism, notably through media literacy, while the government should stay away. But according to her, media councils shouldn't be the only ones reacting to disinformation, hate speech and discrimination either. She also believes that councils can stimulate professional journalism, for example by awarding prizes (notably on the coverage of the pandemic). For Jaume Suau, press and media councils could establish ethical guidelines on situations where journalism is perhaps too close to a certain political position or even propaganda. The researcher indeed wonders to what extent partisan journalism could be having the same effect as disinformation on citizens.

In the end, did the Covid-19 pandemic influence the type of complaints received by press and media councils? In Germany, the council received about 500 related complaints, with a vast majority regarding journalistic accuracy and care. But 80% of these complaints were declared unfounded, which shows an important mistrust in the media as well, as explained by Sonja Volkmann-Schluck. She thus believes councils should remind

the public of the essential difference between opinions and facts. Indeed, an opinion cannot be wrong nor right, but it has to be based on facts. Muriel Hanot from the CDJ notes that the pandemic revealed a tendency of citizen complainants, i.e., people who are not directly concerned but still keen on ethical journalism. In French-speaking Belgium, most complaints related to truth, accuracy and confusion between opinions and facts as well. In summary, the secretary general also thinks press and media councils are a crucial tool to fight mis- and disinformation and should thus be in the middle of the discussion between the media, journalists and the public.

E. Conclusion

The Covid-19 pandemic is unfortunately still not over, and many problems remain to be solved. Indeed, how can media councils address the negative consequences of the infodemic (such as social alarm and anxiety) and the issue of information inequality? How can media councils cooperate and prepare for future global crises? In the end, does the Covid-19 crisis worsen the issues of disinformation, lack of trust in the media and ethical breaches, or does it simply help to shed light on these challenges faced by the media sector nowadays?

For Jaume Suau and Marina Tuneva, the answer lies somewhere in-between: these challenges aren't new, but they might have been reinforced by the ongoing pandemic. While the coverage of the crisis, notably on vaccines, has been heavily politicised in countries such as Spain and North Macedonia, one thing is certain: the media sector in its whole will need time to recover from the consequences of Covid-19. Media councils should thus be united to face these challenges and cooperate as of now for future crises. ■

The second webinar (« Disinformation, trust and ethics in times of Covid-19 ») took place on April 2nd, 2021. Speakers included Marina Tuneva, executive director of the Council of Media Ethics of Macedonia, and researcher Jaume Suau, from the Blanquerna School of Communication and International Relations. CDJ civil society representative David Lallemand acted as moderator and rapporteur for the debate.

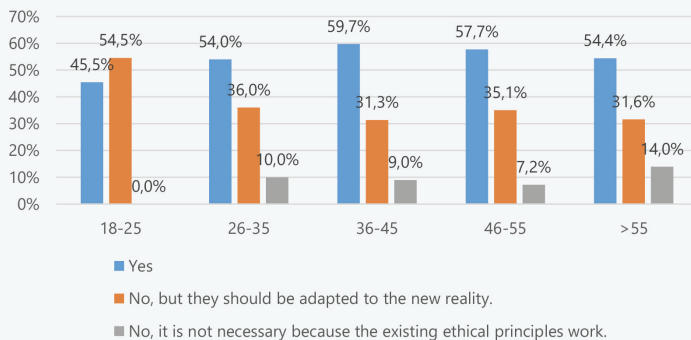
How to make self-regulation a motto for “new” media and journalists

What are the different strategies to encourage “new” online media and journalists to adopt ethical standards and join press and media councils?

Broadcast media and newspapers have had to combine “traditional” and online journalism for about two decades now, while respecting the ethical standards of the profession. Across Europe, a majority of them have joined the self-regulation process. However, this is not the case for most of exclusively online media (such as pure players, blogs and alternative media, to name a few). And « although the first wave of digital native media outlets have become household names in the minds of the average media consumer, they tend to remain outsiders in the media landscape » (Harder, 2020, p.19). Therefore, how could media councils encourage these “new” media and journalists to, on one hand, adopt ethical standards and on the other hand, to join them?

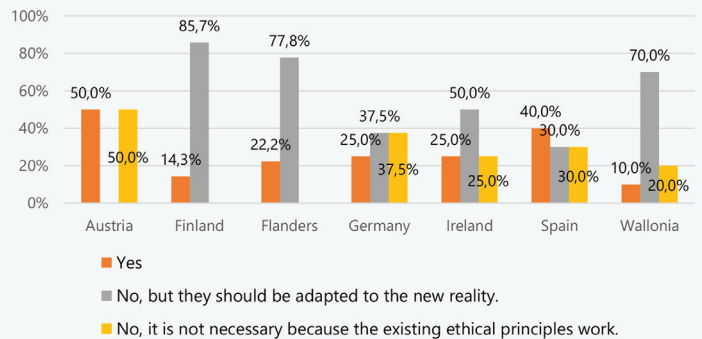
Furthermore, « the ideas, models and structures of media councils as a form of self-regulation are largely based on

DO YOU THINK THAT THE INTERNET AND INFORMATION TECHNOLOGIES REQUIRE NEW ETHICAL PRINCIPLES? BY AGE



Source : Masip, Suau and Ruiz, 2021

DIGITALIZATION REQUIRES NEW ETHICAL PRINCIPLES



Source : Masip, Suau and Ruiz, 2021

assumptions that relate to the pre-digital situation in the media [...] Those fundamentals, as we now know, are shaky at best after twenty years of disruptive innovation caused by digitalisation » (Harder, 2020, p.18). As a reminder, most European journalists (see age groups) and media councils' members (see countries) tend to defend that the principles of journalistic ethics are still necessary in the digital age, but they need adaptation in order to be able to apply them in new contexts, such as social media (Masip, Suau and Ruiz, 2021).

Does this mean that Codes of Ethics are bound to evolve? And could this be an opportunity to attract “new” media and journalists into press and media councils? Some self-regulatory bodies, such as the Council of Media Ethics of Macedonia, assert that « the fast-changing circumstances in which both traditional and online media work requires continuous upgrade of an ethical framework » (2021).

A. Who are these “new” online media and journalists?

First and foremost, we need to clarify some of the vocabulary used in this report. The following definitions, despite not being universal, reflect our current approach.

- **“Information”** refers to facts brought to the attention of the public. To be considered as such, it must be of interest to the public, factual and verified, thus based on facts that are proven and, as far as possible, verifiable by everyone (2017). In other words, « information covers all current issues and targets the general public » (CSA, 2015) (**see chapter 4**).
- A **“media”** is a natural or legal person whose activity is the production and/or dissemination of journalistic information, regardless of the medium used (CDJ, 2017, p.13).
- A **“pure player”** is an example of an online medium, as it is « a [news] company that operates only on the Internet » (Degand and Grevisse, 2012, p.326).
- A **“journalist”** is any person who contributes directly to the collection, editorial processing, production and/or dissemination of information, through a media outlet, intended for the public and in the interest of the public (CDJ, 2017, p.13) (**see chapter 4**).
- A **“platform”**¹ is a service that acts as an intermediary for access to information, content, services or goods published or provided by third parties (2015, p.395). Blogs and social networks can thus be considered as platforms.

¹ Moreover, as stated in the European Audiovisual Media Services Directive (AVMSD), a “video-sharing platform service” is « a service [...] where the principal purpose of the service or of a dissociable section thereof or an essential functionality of the service is devoted to providing programmes, user-generated videos, or both, to the general public, for which the video-sharing platform provider does not have editorial responsibility, in order to inform, entertain or educate, by means of electronic communications networks [...] and the organisation of which is determined by the video-sharing platform provider, including by automatic means or algorithms in particular by displaying, tagging and sequencing » (2020).

Before we go further into this report, we also have to acknowledge the fact that « “new” online media and journalists » is a rather vague term to encompass the growing number of online news stakeholders, which are quite different from each other. Indeed, a number of pure players, web portals and blogs could be associated with the concept of “alternative media”² because they practice “citizen (or participatory) journalism”³... While lots of other online media and journalists embrace a rather “traditional” way of practicing journalism.

In addition, potentially anyone could become a blogger through a dedicated platform nowadays, including journalists. Benoît Grevisse labels this particular phenomenon as “brand journalism”, which refers to « the enhancement and management of the journalist’s signature as a brand with a market value of its own, notably through a blog » (2012, p.218). And it would seem that today, the blogger has « *a sui generis* status, considered in the same way as a journalist when the protection of his sources is at stake, and [considered in the same way] as a citizen using his freedom of expression with regard to the obligations of accuracy, objectivity and research, requirements inherent to the status of the journalist » (Degand and Grevisse, 2012, pp.237-239).

Some of these “new” media and journalists are indeed non-professionals, who intervene in the field of information through social networks, citizen journalism sites and publications, blogs, etc. In 2013, CDJ member Jean-Jacques Jespers was rather critical of this shift: « The self-regulatory bodies are faced with a dilemma: either declare themselves

² « [...] Media which are not corporately owned, and which circulate political messages felt to be under-represented in “mainstream media” (seen as geared towards maximizing profits and supporting a “free-trade” agenda) (Oxford Reference, 2013).

³ « The act of a citizen, or group of citizens, playing an active role in the process of collecting, reporting, analyzing and disseminating news and information. The intent of this participation is to provide independent, reliable, accurate, wide-ranging and relevant information that a democracy requires » (Bowman and Willis, 2003, quoted by Degand and Grevisse, 2012, p.324). Moreover, the term “open journalism” can be used to describe participatory journalism which does not only relay information to an audience, but also gives it a voice and possibly introduces it into the system of content production (*ibid.*, p.326).

as incompetent for this “parallel” journalistic activity which collects more and more audience (and therefore accept that these fields escape deontological regulation), or to make room for “representatives” of this intangible nebula » (2013). But can we still speak of an « intangible nebula » today? And how have media councils responded to this in recent years, assuming that they have already taken up this challenge?

B. The field of competence of media councils

Not all media councils cover all forms in which information is produced. « While complaints about traditional print media, as well as their online equivalents are universally accepted, the question is more complicated for other media forms. Editorial content on television and radio might be excluded for historical reasons, as the local audio-visual regulator (the government agency that grants broadcast licenses) may be in charge of dealing with the ethics of their coverage. This extrapolates to the online realm as well. The fact that website content can be dealt with, does not always mean that all content on that website can be considered by media councils. In Kosovo, for instance, the media council only takes complaints about the textual information that is provided on these websites – audio-visual material (like an embedded video report, or a podcast about some news story) is the competence of another organisation. This may be a source of confusion for potential complainants » (Harder, 2020, p.12).

More generally, it is sometimes difficult to assess what is and what isn't information in the various content that is published online. Whereas some councils only deal with complaints regarding “traditional” media and/or their members only, others have adopted a different approach. Indeed, when the French CDJM was founded in late 2019, it decided to base its field of competence following the definition of « the journalistic act » in its whole, which refers to « the act of collecting and making public facts of public interest for the sole purpose of informing the public », according to Pierre Ganz (2020). For example, the CDJM has already dealt with a complaint

regarding a live tweet, i.e., « a journalistic exercise that has become common on [Twitter], consisting of a journalist reporting an event minute by minute using texts, photos and short videos (usually unedited), which he or she publishes from his or her smartphone without waiting to return to the newsroom » (2021). Another example is the Flemish press council of Belgium, which decided – after many discussions – not to define journalism in its Code of Ethics and to work on a case-by-case basis (see chapter 4) (Knapen, 2020).

C. The issue of membership

According to Adeline Hulin (UNESCO), the first question to ask oneself – before identifying strategies to encourage “new” online media and journalists to join media councils – is: do media councils have the necessary tools to welcome these “new” stakeholders? This crucial question refers to the structure, notably the membership system, and the lack of time and/or financial means of most media councils to deal with new kinds of complaints on a daily basis. On the other hand, do “new” online media and journalists want to join media councils, assuming they know about these self-regulatory bodies?⁴ (March 18th, 2021).

Indeed, some of them might not have the financial means – or the aspiration – to establish umbrella organisations and/or to finance the self-regulation system, at least in countries where the media council asks for a membership fee. Even though the task is challenging, Adeline Hulin believes that both parties could benefit from this. On one hand, media councils could gain representativity among their members and become more aware of ethical issues related to the digital age. On the other hand, these “new” media and journalists could have an

⁴ It appears from a survey conducted in late 2020 by the Blanquerna School of Communication and International Relations – in which 11.9% of journalists surveyed worked for online-only news media – that 13.99% of respondents don't know if there is a press or media council in their country. Another 17.89% inaccurately say there is none (Masip, Suau and Ruiz, 2021, p.9). We thus have to take into account that press and media councils are still unknown to many journalists.

increasing impact on online ethics and on the way complaints are handled (March 18th, 2021).

In late 2020, the Flemish press council of Belgium published the first comprehensive overview of journalistic self-regulation in Europe. In this research, it was highlighted that the shift towards the online sphere has proven to be problematic for many media councils. Indeed, whereas print media and their online counterparts, as well as broadcast media would be included by convention (because they are usually members of the news media association that participates in the media council) or by definition (because the media council claims “jurisdiction” over any print or broadcast outlet), digital native media are not included in the self-regulatory system by default (Harder, 2020, p.19).

In summary, on the 28 media councils surveyed by the *Raad*, a majority accepts journalists’ unions and organisations (61%) and individual media outlets (50%) as members, while a minority accepts umbrella organisations (46%) and individual journalists (21%). 75% of councils surveyed say their membership covers a majority of their country’s media landscape. Furthermore, “online media” are represented within 71% of these councils – as some of them are only competent for print and/or broadcast media – but currently, no distinction is made between the online versions of traditional media, pure players and other stakeholders in this database. Finally, the most frequent criterium to join a council by far (39%) is to sign a Code of Ethics (2020).

In French-speaking Belgium, the CDJ intends to cover all journalistic activities, including all acts and behaviour in the various stages of the news provision process: this includes all media that disseminate information (whether print, broadcast or online and whether general or specialised) and all people engaged in a journalistic activity (regardless of their professional or social status). The council has chosen to work on a case-by-case basis when dealing with a complaint. As for now, there are no “new” media and/or journalists

affiliated with the council (and thus no such representatives in the complaints commission), but it is nevertheless possible.

In early 2020, the young Association of [French-speaking] Belgian Independent Pure Players (ABiPP) conducted a study to better identify the various French-speaking Belgian players which have launched their own project in the last two decades. The ABiPP found 28 pure players which corresponded to each of the following criteria: a) an initiative of one or several professional journalists⁵ (or a team with at least one professional journalist); b) the desire to inform and build a community of readers around very strong editorial choices (which differentiate them from generalist media); c) editorial independence (implying no link with press groups, “traditional” publishers or organisations with commercial or political purposes). 52% of these pure players deal with cultural themes and 13% with information at large, while the others focus on more precise topics (such as tourism, science or finance, to name a few) (2021, pp.2-3). Only a minority of these 28 pure players are members of the ABiPP, which has not (yet) decided to join the CDJ. « For those which do not have a business model, this is probably due to a lack of own financial means », according to secretary general Muriel Hanot, as an annual membership fee is required to be affiliated with the French-speaking Belgian press council (March 29th, 2021).

But what about other councils? We asked media councils’ representatives several questions on the topic and received answers from Pierre Ganz (France), Daphne Koene (Netherlands), Murat Önok (Turkey), Pieter Knapen (Flanders) and a representative of the Catalan Press Council. To the media councils which deal with complaints

⁵ In Belgium, a law from 1963 regulates the official title of the “professional journalist” by conferring rights and imposing duties on its bearer. But holding this title is not a prerequisite for working as a journalist: such exclusivity would violate the principle of freedom of the press as well as freedom of work. This title has been established to distinguish those who practice the profession of informing on a permanent basis, as their main activity and without any commercial objective (Jespers, 2019, p.22).

regarding pure players and autonomous journalistic content published on social media and other platforms, we asked this first question: are these “new” media and/or journalists affiliated with your council? And are there representatives in the complaints commission? The French, Dutch, Turkish and Flemish councils all answered affirmatively to both questions. Some of these “new” stakeholders have joined the council, sometimes through an umbrella organisation (*NDP Nieuwsmedia* in the Netherlands, *Media 21* in Flanders). In the case of the Turkish council, only individual members have joined thus far. Secondly, this membership hasn’t had an impact on the way complaints regarding online media are treated. According to Pierre Ganz, « ethics are the same for all journalists, whatever the medium ». Which is why, for the *Raad*, « complaints against online media are handled like complaints against other media » (March 30th, 2021).

Back in 2016, Adeline Hulin raised several questions on the rise of bloggers and “citizen” journalists and the lack of action of media councils faced with this new challenge. According to her, if self-regulatory bodies were originally set up to deal with complaints about traditional media (and now deal with the online versions of these outlets), these systems still need to do more to incorporate new forms of journalism, including online-only news websites. There have been increasing complaints against these new forms of journalism because most readers assume that such websites are subject to the same standards as traditional media, proving the need for clarification among media councils. In practice, online news bloggers and “citizen” journalists rarely sign up to the various self-regulatory systems that exist across Europe. For Adeline Hulin, there’s still much work to be done to encourage them to voluntarily apply for membership to media councils – and to encourage councils to change their membership rules (2016).

Indeed, many media councils sideline the issue as it partly depends on how they define and deal with « the tricky issue of membership ». For councils that only handle complaints about members (which is notably the case, as stated on the AIPCE

website, in Denmark⁶, English-speaking Canada⁷, Ireland, the UK (IPSO), Finland and Norway), a change in the membership rules to include bloggers may be a possible solution according to Adeline Hulin. Among the reasons given by councils for not extending their membership, one argument is that membership to the self-regulatory body is meant for those exercising journalism as a profession, and that this distinction is insisted on according to the council’s rules. This takes us into difficult territory about what, exactly, journalism is at the present time, and if and how it can legitimately be defined as a profession (see above) (2016).

Furthermore, several councils fear that being able to investigate complaints about online bloggers and “citizen” journalists may open up « a Pandora’s box » in terms of the number and complexity of complaints. And for the councils which handle complaints about non-members, the availability of resources is an issue. In 2015, the Flemish Press Council of Belgium took up that challenge anyway, agreeing to deal with a complaint about a consumer blog, regardless of the fact that the authors denied practising journalism (or being journalists) and were not members of the council (Hulin, 2016).

In conclusion, crucial questions raised by Adeline Hulin remain relevant today: is there a need to develop different ethical standards for these new forms of journalism? Or can – and should – “citizen” journalists or bloggers be judged according to the same rules as all other journalists? (2016).

⁶ The scope of the Danish Press Council includes online media or « all kinds of websites, i.e., also on social media, as long as what is published on the website is imparted periodically to the public and has a form of news representation ». But these websites must be either registered in the press council or receive media subsidies in order to fall within the competence of the press council (2020).

⁷ According to Pat Perkel from the Canadian NewsMedia Council, « bloggers [...] generally don’t meet or wish to adhere to [our] membership requirements W», i.e., produce journalism, adhere to its own or a widely accepted Code of journalistic standards and agree to adhere to the complaints process of the council (2020).

D. Possible strategies

1. Umbrella organisations

As stated above, the membership system of a media council can influence the type of complaints it handles. Some digital native media « cannot join the news media association that is part of the media council (because of formal requirements, like having to have a print edition), and in some cases they do not want to join (because their interests are misaligned with those of legacy media companies). Some media councils, like the ones in Denmark and Sweden, therefore give digital media outlets the possibility to submit to the self-regulatory system on a voluntary basis. Yet, it remains tedious for media councils to have to activate these outlets one-by-one. In the interest of media councils, as well as ethical journalism in general, it would be beneficial if digital-only media outlets [established] umbrella organisations that represent that part of the media landscape. In the end, a lack of participation (and funding) in this field means that an (ever more) important part of the media landscape remains a blind spot », according to Raymond Harder (2020, p.19).

Regions like Flanders show that it is possible to create these organisations and integrate them in the system of self-regulation on a voluntary basis. Indeed, whereas the Association of [French-speaking] Belgian Independent Pure Players has not joined the CDJ (yet), several autonomous online journalism outlets are members of the Flemish press council of Belgium, the most famous ones being represented by the association *Media 21*. According to Pieter Knapen, secretary general of the *Raad*, media councils should choose « inclusivity » and cooperation in the digital age, by welcoming as many “new” online media and journalists as members as possible. In countries where it seems necessary (i.e., where such online media take up a lot of space in the media landscape), this process could be facilitated by the implementation of umbrella organisations, as it has worked for the *Raad* so far (Knapen, 2020).

2. Strong incentives

What incentives could be given to “new” media and journalists in exchange for adopting ethical standards and joining media councils? When joining the Catalan Press Council, all media receive a subsidy, thus a financial incentive. In the past, the Turkish press council has considered creating some sort of certification for them but changed its mind in the end (« The problem was rather the other way around: what is their incentive in obtaining that from us? »). According to Pierre Ganz, « the strongest incentive is to consider them as all other media, to integrate them into the general reflection on the ethics of information without making them a separate category », as « they are the future of journalism ». In the same way, for Pieter Knapen: « The main incentive is that through their membership, these media demonstrate their commitment to journalistic ethics and thus underline their credibility to the public. In other words, membership counts as a quality label. With their membership, they distinguish themselves from fake news and other nonsense on the Internet, where they are exclusively active, and make this clear to their audience. Their survival depends on their credibility and commitment to reporting truthfully and independently, which is true of all forms of journalism »⁸ (March 30th, 2021).

⁸ Another question we asked to these media councils’ representatives was: how do they raise awareness on ethics for these “new” media and journalists? The French CDJM has been working on a reminder of the rules regarding editorial corrections with a focus on online media. The Catalan Press Council has revised its Code of Ethics in 2016 to address issues related to the emergence of online media. Similarly, the *Raad* amended its Code in 2019 and notably included several guidelines on online reporting (i.e., corrections of online publications, the right to be forgotten and the use of hyperlinks). On the other hand, the Turkish press council has postponed the inclusion of Internet-related rules in its ethical principles, but it is planning on discussing several specifically online issues (such as clickbait). Finally, the Netherlands press council refers to the preface of its guidelines: « [...] Anyone engaged in journalism must take responsibilities for the information he or she distributes and the manner in which he or she operates. This is irrespective of the medium in or the platform on which this is done [...] The Council assumes that all journalistic organisations and all journalists recognise, acknowledge and accept the departure points formulated here. The Council invites everyone else engaged in journalism to adopt the Guidelines as a departure point » (*ibid.*).

More globally, what are some of the reasons to join a media council nowadays? The Flemish press council of Belgium, which surveyed 28 media councils in 2020, presents many – alleged – motivations for media organisations and journalists to do so. The three main ones are to bear a seal of quality, to access seminars and advice and to rely upon ideological support (2020).

The other motivations are quite diverse and depend on the councils surveyed: joining a media council could be useful to bear a seal of confidence and to access an international knowledge network. It could also be a way to stand out, to receive subsidies, to gain protection from political pressure, to have independent assistance and to be involved in projects, sometimes for free or for a low cost. Finally, some might join to participate in surveys and European media literacy projects, to fight disinformation, to gain protection of sources and for journalists’ rights, to support independent regulation, to commit to ethical behaviour, to receive a press card, to have free legal advice or for tax benefits and/or legal mitigation. It is worth mentioning that some of the aforementioned missions are carried out by (or in collaboration with) journalists’ associations in several countries (2020).

a) To stand out

As seen above, the number one reason for joining a media council would be to bear a seal of quality in most countries, according to their representatives. In some regions, it would even be a way of standing out from the journalists and media which refuse to participate in the self-regulation process. According to Adeline Hulin (UNESCO), « by allowing new forms of journalism to become part of the self-regulation system, readers would be able to distinguish between reliable and potentially untrustworthy news online » (2016). This is the path that the Council of Media Ethics in North Macedonia (CMEM) followed when it established a “Registry

of Professional Online Media”⁹, in partnership with the Association of Journalists and the Economic Chamber in late 2019. This initiative was notably supported by the European Federation of Journalists.

The objective of this registry is to help the public and the business community recognise which online media adhere to the Code of Ethics and belong to the press council, in addition to having transparent ownership and editorial structure (Tuneva, 2020, pp.13-14). In other words, its main purpose is « to contribute to the professionalisation of online media, thereby enhancing their credibility as well as recognising those who uphold standards, in comparison with unethical media that cause damage to the reputation of professional online media » (2020). As of late 2021, there are more than 150 online media registered, all listed on a dedicated website.

By becoming a member of the registry, a media outlet automatically becomes a member of the media council, as the compulsory criteria to join are identical (regularly publish informative content of public interest, have transparent ownership and funding, abide by the principles of the Code of Journalists, publish the CMEM decisions and engage in the mediation process, to name a few). It is an ongoing process, which means that media outlets that are not members yet will be able to join in if they comply with the requirements. On the other hand, members which breach the Code three times in three months will temporarily lose their status of active members – of both the registry and the council – until they improve their work (2020).

The CPPA or Professional Journalists Association of Andalusia (Spain), which has its own Commission of Ethics and Guarantees, has also created an official registry of digital media – i.e., the ROMDA – in 2018. The aim of the registry and the conditions to join are very similar to the Macedonian one.

⁹ « « Online media » comprise « all electronic publications that have special websites and that regularly publish journalistically edited news-informative contents intended for the general public » (2021).

But this label comes with a cost, as applicants have to pay a fee of 60.5€ every two years to be able to display the ROMDA seal on their website (2019).

In short, the ROMDA is presented as « a unique and original initiative developed to offer citizens an easy instrument that allows them to distinguish a journalistic digital communication medium from any other that does not meet the requirements of a journalistic company or comply with the deontological principles of journalism ». According to Eva Navarrete, head of the CPPA, it is a way of making online journalism more ethical, as each registered medium is submitted to the Commission of Ethics and Guarantees of the association (April 22nd, 2021). In exchange, registered media may resort to the association for mediation, for help to request subsidies from the authorities and to access training courses organised by the association, to name a few benefits (2019).

Registering in the ROMDA is voluntary. To be accepted, a digital native medium must be constituted as a journalistic company and it must have at least six months of demonstrable history. Secondly, it must cover information of general interest or specialised information through the production of its own content and it must be updated periodically. Finally, it must respect the ethical and deontological standards which govern the journalistic profession. Among the more formal requirements, there must be at least one person with a degree in journalism who is in charge of selecting, writing and ranking the content for the medium. Failure to comply with any of the requirements may lead to the media outlet's removal from the ROMDA (which hasn't happened yet). The procedure for removal is initiated at the reasoned request of the governing board or as a result of a complaint. The time limit for a medium to apply for reinstatement is increased by six months for each discharge (2019).

Furthermore, the ROMDA is divided into three categories (A, B, C) in regard to the number of people employed by the media (11 or more, 4 to 10, 1 to 3). If a medium is not registered, it

is because the registration is pending, because the medium hasn't demonstrated that it met the requirements or that because it is not a journalistic information medium. As of late 2021, there are 32 registered media in the ROMDA, most of them in the third category. It is continuously updated and evaluated, as « any journalistic media in digital format » can apply at any time. Since the registry was launched in 2018, the association has received 300 requests for information and 50 requests for enrollment. 39 cases have been initiated, of which 31 have been favorably resolved and one has been dismissed. The rest have been suspended for not complying with the necessary requirements.

In conclusion, for Eva Navarrete, most online media register for the ROMDA because they want to be more known to the public, which would explain why « bigger » media have less interest in joining. Moreover, most of them don't comply with all the needed criteria in any case, including respecting journalistic ethics. Among ethical issues, the respect of people's rights is the most problematic one in Andalusia (April 22nd, 2021).

b) To receive subsidies

In French-speaking Belgium, being a member of the legal structure that supports the press council is an obligation for any audiovisual media outlet that broadcasts news programmes as well as for any newspaper publisher that wishes to benefit from direct public financial support to the daily press (2020). Since late 2020, the conditions of eligibility to receive subsidies for the non-commercial periodical press include the application of the Code of Ethics and the recognition of the authority of the CDJ to deal with potential breaches, but it is not explicitly required to join the legal structure that supports the press council. However, state aid to the press doesn't currently include exclusively online media in French-speaking Belgium.

Could reforming this system be a strong argument for “new” online media to join the press council? And if we go into this direction, should the requirements for 100% online media include membership, commitment to respect the Code of Ethics or both? According to the secretary general of the CDJ, it is always more favourable for a media to join the system in its whole than to adhere to the rules only (Hanot, March 29th, 2021).

c) To gain protection from government regulation

On the website of the German press council, it is clearly stated that « online media, including news sites as well as some blogs, must adhere to journalistic principles in Germany » (2020). The new Interstate Media Treaty, which came into force in late 2020, provides for this and imposes sanctions on anyone who violates these standards. This national transposition of the European AVMSD stipulates that journalistic online media – « telemedia with journalistic-editorial offers that regularly contain news or political information », i.e., journalistic internet portals, blogs and other online media – must comply with recognised journalistic principles and thus be regulated in some way (art. 19). In case of violations, the responsible state media authority can impose measures such as complaints, prohibitions, blocks, withdrawal and even revocation (art. 109). According to Roman Portack, executive director of the *Presserat*, this isn't a form of political pressure – « at least not directly » – but regulation imposed by the state media authorities remains problematic nowadays (April 30th, 2021).

Voluntary self-regulation (i.e., recognising the press code and the complaints procedure of the German Press Council or another self-regulatory body) is thus presented as an alternative for journalistic online media – « both the wide-reaching news portal and the local blog » – which do not want to be subject to regulation by the state media authorities. Furthermore, the German *Presserat* also grants privileges in the area of data protection in relation to journalistic and editorial purposes. According to Roman Portack, data

protection is a far greater incentive than the question of journalistic practices, as no media can work without this media privilege, but it is probably not known enough (April 30th, 2021).

For editorial offices whose publishers are members of the two supporting associations of the press council, the voluntary self-commitment is included in the membership fee. For all other media (i.e., exclusively online media), the cost of this voluntary commitment depends on the circulation or reach of the outlet (from 100€ a year – for less than 500.000 visits/month – to 10.000€ a year – for more than 100 million visits/month) (2020).

Similarly to the ROMDA in Andalusia (see above), the German *Presserat* also offers the possibility for online media to include the press council's logo in their imprint to show that « they recognise the press code as the benchmark for their journalistic work » (2020). Indeed, some online media tend to mention their self-commitment to the press code on their website to avoid any possible confusion with the state media authorities (Portack, April 30th, 2021).

As of mid-2021, more than 30 exclusively online media have joined the self-regulation process by signing a declaration of commitment¹⁰ since the Interstate Media Treaty came into force. But these “new” media are not members, thus not represented in any complaints commission (as these are made up of representatives of the umbrella organisations BDZV and VDZ only, which these “new” media are not members of). According to Sonja Volkmann-Schluck, the principle of voluntary self-regulation remains an important incentive, in contrast with state regulation (April 1st, 2021). For Roman

¹⁰ The council defined a series of criteria, i.e., participation in the formation of public opinion ; dissemination of information to the public ; independent and non-partisan reporting (no media led by specific interests such as lobbying, PR or activism and no state-controlled media are allowed) ; compatibility with fundamental values contained in the Code ; professional journalism (coverage in accordance with journalistic standards, in particular journalistic diligence) ; a long-term business model and a regularly updated coverage ; an imprint (name of the responsible person for content).

Portack, this number should be higher (as it covers a very small share of telemedia, despite not having precise numbers) but it is probably due to a lack of knowledge of the system (April 30th, 2021).

For Roman Portack, the best argument to make the *Presserat* more attractive to online media and journalists, for the time being, has been given to the council by the lawmakers through the Interstate Media Treaty. But even before this treaty came into force, the press council already encouraged online media to join the self-regulation process, believing that « a strong, private regulation of the free press is the best safeguard to not have regulation by media authorities or direct government action towards media ». Indeed, « as long as a relevant part of the media is subject to self-regulation by the press council, there is no danger that politicians and lawmakers will think of new forms of regulation ». In conclusion, « everybody has to take part so that nobody will be regulated directly by media authorities ». But unfortunately, media which only focus on their own advantage « will only recognise this when the problem has arisen » (April 30th, 2021).

d) To gain additional protection on platforms

Practical questions aside, Adeline Hulin firmly believes that media councils need to find a strong incentive for these “new” stakeholders to join them, as the self-regulation process remains voluntary. For her, this incentive should not be financial but related to a kind of recognition. It could take the form of additional protection, for these “new” online media and journalists, of their content on platforms – where algorithms sometimes automatically censor subjects of public interest. Indeed, « on platforms, there is no difference between the freedom of expression of an ordinary citizen and of a journalist » as of now. This strengthened protection would imply a significant cooperation between media councils and platforms (see chapter 6). And in more practical terms, platforms should be able to make a distinction between those who claim to be journalists and other users. According to

Adeline Hulin, this differentiation should be rather simple: « How else could a journalist be defined than based on his or her respect for the ethical standards of the profession? » (March 18th, 2021).

3. Additional or specific guidelines

Several texts propose an adaptation of the classic provisions of journalistic ethics to the realities of the online world. According to Benoît Grevisse, this deontology navigates between old habits, which are directly derived from classic deontological codes (« be honest and fair », « minimise harm », « be accountable ») and the creation of new routines (for example, indicating the sources available online by using hyperlinks). It could thus be more a question of ensuring a journalistic identity than of providing convincing answers to today’s concrete situations (2012, pp.213-216). With this in mind, is there really a need to develop different ethical standards for “new” forms of journalism? We present two examples of this third possible strategy below.

The Russian press council has been thinking of setting up specific guidelines for online content, such as social media and popular blogs, for over a year now. Citizen journalism plays an important role in the Russian media landscape, with many bloggers (i.e., not professional journalists) helping journalists from the opposition to offer counterweight to state-owned TV channels. But the task has turned out to be difficult for many reasons (February 2nd, 2021). First of all, there are various views on whether such a document is needed and if it is, on what should be in it. Karina Nazareyten, in charge of this project, believes the Russian press council will eventually have to accept complaints dealing with online content at large. And according to her, « no blogger would be able to live up to [the same ethical rules as journalists] and few will even read a document this long » (March 9th, 2021).

Secondly, this document wouldn’t be a code – i.e., « something that is produced and approved within a professional

community » – *per se*, but a document designed for the press council to rely on when asked to handle complaints regarding “new” media. This text will probably end up being a simplified version of the Code of Ethics, containing its basic principles of truth, distinction between fact and opinion, distinction between advertising and editorial content, exposing conflicts of interest, refraining from plagiarism, sourcing wherever possible, correcting mistakes and refraining from discrimination and bullying. However, it will probably not address « specifically journalistic principles » such as the proscription of combining journalistic work and politics or communication for example. Finally, the council hasn’t yet decided if it should distinguish journalists with a blog from influent bloggers who are not journalists. That is why the council is also thinking of writing “ethical recommendations for bloggers”, which could be written in a more « popular » way. At the same time, the organisation is not sure that this would be appreciated by the stakeholders concerned (March 9th, 2021).

In February 2021, the Council of Media Ethics of Macedonia published “guidelines for ethical reporting for online media”. These guidelines apply to all members of the CMEM and to all online media against which complaints are filed¹¹. These were drafted after a broad consultation with the media community to develop « a solid and credible online media self-regulation system » and to « strengthen independent, professional and accountable reporting online ». While the Code of journalists refers to all journalists and applies to all media, the CMEM decided to provide adequate interpretation and guidance for journalists working in the online sphere (2021). The first part of the guidelines provides explanations for the application of the provisions of the Code, with a focus on article 7 (on the respect of privacy) and article 8 (reporting on accidents, natural disasters, conflicts, terrorism and court proceedings). The second part of the document adds special provisions

that apply solely to online media, i.e., on archiving and the permanent recording of published content (art. 18), on transparency (art. 19) and on the responsibility for publishing comments from readers (art. 20).

Adeline Hulin is not (yet) convinced that establishing different rules for “new” media and journalists is necessary. Even if the digital age has brought up new issues and thus demanded clarifications in the Codes of Ethics, journalistic principles remain voluntarily broad and therefore binding for anyone who claims to be a journalist. For now, Adeline Hulin sees more risks (regarding public trust for example) than benefits in writing new standards (March 18th, 2021). On this matter, we had previously asked Karina Nazareytan about the risks linked to the project of the Russian press council to establish specific guidelines for online content. In short, how could the council prevent a two-speed information system from happening if two different codes were to co-exist? According to her, this potential drift would not happen because the Russian council is not as influent as it would like to be : « To think that journalists will want to stop being journalists and become bloggers because the bloggers’ code is lighter [...] is to exaggerate the impact these documents have (or will have), unfortunately » (March 9th, 2021).

In the end, it goes without saying that each council has the right to publish additional or specific guidelines regarding exclusively online media or not. Some might argue that the general principles included in their Code of Ethics are sufficient to encompass all forms of journalism, even the “newest” ones. For example, the German *Presserat* defends the importance of keeping « a monolithic block of rules that applies to all forms of media », thus making no difference between “traditional” and online media or between so-called “quality” journalism and the “yellow press” for example (Portack, April 30th, 2021).

In conclusion, Adeline Hulin stresses the fact that generalising strategies to all media councils is rather difficult. Taking the

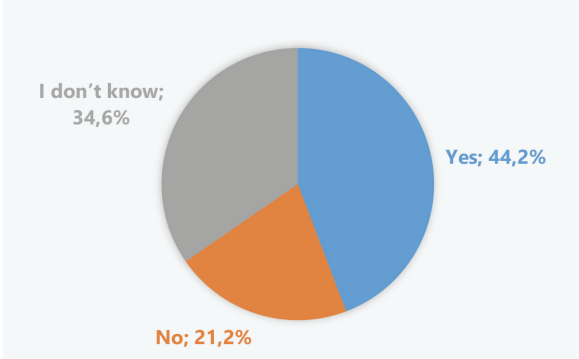
¹¹ The guidelines likewise apply to online media (see above) and all information and content that online media publish on social networks or other Internet platforms.

political, economic and cultural context of a country into consideration is essential to understand its media landscape and therefore the functioning of its media council. This is why she thinks that the « pragmatic approach » behind the registry established in North Macedonia could not and should not be replicated everywhere, for example (March 18th, 2021). Regarding this topic, Marina Tuneva explained that more than a year after its creation, the registry is « not easily implemented in practice ». The executive director of the CMEM is optimistic, as it has had a lot of success already, « because most media want to be seen as credible ». The council actually has to refuse many candidates on a regular basis because they don't meet all the necessary criteria to join. In the end, in the Macedonian case, this registry seems rather useful to make a distinction for the public between professional online media and the others, « which have never cared about ethics or self-regulation and probably never will » (February 18th, 2021).

E. Webinar key-points (by Anna Vidal)

There will always be new ways of reinventing journalism. A recent example is the increase of independent fact-checkers, who have been mushrooming with the Covid-19 pandemic and the growing influence of social media platforms. Could these crucial stakeholders, who face similar threats, be considered

DO YOU THINK THAT FACT-CHECKERS MUST BE OVERSEEN BY MEDIA COUNCILS?



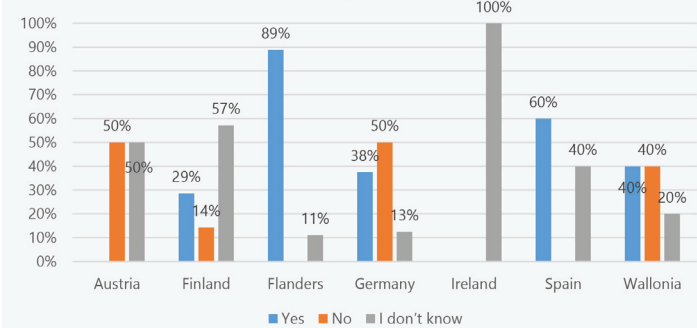
Source : Masip, Suau and Ruiz, 2021

as journalists? While not defining journalists allows to remain as inclusive as possible and to defend all acts of journalism, it brings challenges for regulators, self-regulatory bodies and journalists themselves. Indeed, some of them do not know or at least do not recognise that they are indeed practising journalism. In that case, how could they be committed to self-regulation in the first place?

Why should self-regulation be encouraged for all “new” media practising journalism in the online sphere? On one hand, “new” journalism as a professional activity encompasses online portals which aggregate content, online-only media outlets and social media posts – which are covered by a majority of European media and press councils – as well as fact-checkers, which are not covered by most councils¹². On the other hand, “new” journalism as a non-professional activity includes among others bloggers and citizen journalists, who are covered by a minority of councils or on a case-by-case basis, following their complaints procedure. According to Adeline Hulin (UNESCO), media councils should accept complaints regarding these “new” media because

¹² It appears from the 2020 Blanquerna study that 44.2% of media councils surveyed think fact-checkers should be overseen by them (Masip, Suau and Ruiz, 2021, p.51).

DO YOU THINK THAT FACT-CHECKERS MUST BE OVERSEEN BY MEDIA COUNCILS?



Source : Masip, Suau and Ruiz, 2021

commitment to media ethics is needed to address online disinformation, to mitigate the decline of trust in the media and thus to ensure the protection of democracies.

In order to encourage “new” media and journalists to join the self-regulation process, should media councils insist on a strictly voluntary membership? Making these “new” media actively respect journalistic standards and join the self-regulation system is a further step, as it must be possible by statute in terms of membership. As a reminder, the membership structure of media councils is either based on professional umbrella organisations or news outlets. This brings practical questions in each case, namely: are new forms of journalism represented within traditional forms of umbrella professional journalistic organisations? If yes, is there a possibility for such “new” media to adhere to press and media councils? Are new specific umbrella organisations being developed for those “new” media? If yes, are those new umbrella organisations invited to join press councils and allowed by the statutes? Furthermore, are new forms of journalism allowed to join on a voluntary basis? If yes, can they afford the membership fees if their journalistic work is not remunerated as a profession?

Should press and media councils propose strong incentives? Adeline Hulin highlights three categories of incentives, which are identical for traditional and “new” media. First and foremost, media can self-regulate to avoid regulation, which is a legal incentive (see the Interstate Media Treaty in Germany).

Secondly, they can self-regulate to obtain financial rewards or even subsidies, which is a financial incentive. In French-speaking Belgium for instance, joining the CDJ is a precondition to receive state funding.

Finally, the third incentive might be the most important one, as money is not always a driver for these “new” media: to stand out, which means being recognised by the journalistic community and building trust with the audience. But for

this to succeed, the media council itself needs to be known and recognised by the wider public and the journalistic community. This last incentive can translate into a distinction of journalistic contents in the online sphere, notably through a label created by the council.

How could media self-regulation be recognised by online social media platforms and tech companies? It is indeed critical for these “new” media to be recognised by platforms, which have become important news distributors but still do not formally recognise voluntary adherence to self-regulation. The latter would yet be a practical solution to define public interest journalism. Facebook, for example, has launched a registration system for journalists and freelancers. If platforms themselves are defining new forms of journalism, shouldn't media councils cooperate with them in order to avoid a double regulation of journalistic content?

Finally, should media ethics be universal standards for all media? Would publishing a specific Code for these “new” stakeholders be useful or could it provoke a two-speed information system? Some media councils accept complaints about any kind of journalistic work, even coming from non-members, such as online portals and pure players. But what about bloggers, citizen journalists, partisan journalists, fact-checkers or even influencers and PR companies which shape opinions and frequently find themselves on the border of journalism? Should they be subject to the same requirement of impartiality or the same level of fact-checking, among other ethical standards?

F. Conclusion

In order to be more known and relevant in the eyes of “new” media and journalists, press and media councils could rethink their ideas, models and structures to fit better in the digital age. This might indeed help them to attract more online news stakeholders (such as pure players, web portals, blogs, alternative media, etc.), which could become affiliated

members or at least sign a declaration of commitment to a Code of Ethics. This inclusive approach is undoubtedly interesting but nevertheless challenging. On the other hand, being more restrictive is seen by some as the only viable option but it means not embarking on the challenges brought by the digital age and thus taking the risk of not covering the ever-growing journalistic landscape. Today, press and media councils find themselves at a turning point, but it might be difficult to find common grounds on this issue, which will most likely continue to be resolved case by case.

Welcoming “new” media and journalists into the self-regulation system brings rather existential questions. Indeed, could – and should – media councils define journalism, journalists and/or information? Would defining these terms help to limit the field of competence of media councils or would it make their job (even) more complicated? In the end, does “online” journalism make the difficulty of defining journalism even more complicated than it already is? Or should the deontological approach of media councils remain ideologically neutral, i.e., identical for all media? These issues reflect the difficulty of assessing what is or is not information and journalism in the content disseminated online and thus question the scope of press and media councils in the online sphere, which will be addressed in the following chapter. ■

The third session – « How to make self-regulation a motto for “new” media and journalists » – happened on June 1st, 2021 and was moderated by CDJ civil society representative and then CDJ president Jean-Jacques Jespers. It welcomed as experts Adeline Hulin, project officer at UNESCO, and Roman Portack, executive director of the German *Presserat*. Anna Vidal, project manager for the CDJ, acted as rapporteur.

The scope of information and journalism in the online sphere

How can press and media councils assess what is or is not information and journalism in the content disseminated online, including on social media?

In the online sphere, « the horizontal circulation of information has the effect of placing all the disseminated content on the same level: rumours, opinions, analyses, gossip, parodies, propaganda, advertisements, entertainment and information all merge in a patchwork where, in the end, everything is equal and therefore nothing is equal » (Jespers, 2019, p.228).

The respect of journalistic ethics only applies to those who practice journalism. Within both the academic world and self-regulation bodies, the link between journalism and information is frequently tautological: a journalist produces information and in the same way, information is produced by a journalist. For example, in a recommendation regarding the distinction between advertising and journalism, the CDJ has defined the latter as « the activity of collecting, writing, producing and/or disseminating information through a medium for the benefit of the public » (2015, p.13).

The question of whether or not a message can be considered as information remains essential for many media councils, as some of them are faced with an increasing number of complaints related to online journalism and social media today. The definitions of journalism and information could thus be clarified to clearly delineate the field of competence of press and media councils in the digital age.

Indeed, « given the concerns about potentially receiving a torrent of complaints about Facebook and Twitter, the question remains what the optimal amount of effort into taking up complaints about content on these platforms should

be. On the one hand, a major part of the audience encounters their news habitually on social media platforms, especially those people who do not consume journalistic content in legacy media forms. In the long term, ignoring these media may be unwise for media councils. On the other hand, there is a question whether there is much real journalism at all being done on these media. Often, these are merely hyperlinking to the main news websites. Moreover, as some councils already feel that they are being overwhelmed without treating complaints about social media (and with few prospects of receiving more resources), it is clear that not all editorial content on social media can be dealt with. Media councils should therefore contemplate pragmatic approaches to strike a balance between inclusiveness and feasibility » (Harder, 2020, p.19).

A. What is journalism and/or a journalist?

According to Adeline Hulin (UNESCO), media councils have always faced the key question of who can claim to be a journalist or not. On one hand, she believes it could be dangerous to define the profession, as it would exclude some stakeholders by default. But on the other hand, this lack of definition would favour « an artistic blur » in the current media landscape. « It is important to keep in mind that media councils have the same goals and that they all face the difficulty of defining journalism. Almost no one wants to define it because it seems wiser. But how else could a journalist be defined than based on his or her respect for the ethical standards of the profession? » (March 18th, 2021). For the Swiss Press

Council, voluntary submission to the Declaration of the Duties and Rights of Journalists is not sufficient as a reference point for defining its competence – which extends to any publication of a journalistic nature – « if only because it may seem to imply a contrario that those who proclaim not to be subject to [these rules] should be freed from them » (January 4th, 2019).

In late 2020, the Flemish press council of Belgium published the first comprehensive overview of journalistic self-regulation in Europe. In this research, it was highlighted that the surveyed press councils had no definition of journalism as such: « Some of the interviewees mentioned that their media council had been thinking of a definition that captured all of the relevant content while leaving out the content that they do not want to deal with, but could not come up with any. This was because on the one hand, some proposed definitions were too narrow, meaning that some editorial content would be incorrectly left out. On the other hand, some suggested definitions were too broad, making it unusable, as media councils would suddenly have found themselves having to deal with any social media content. This was undesirable for them, both because a broad definition would go against the basic premise of media councils (which is that they deal with journalistic content) and because of pragmatic considerations (the workload would be too high). To resolve the problem of deciding what is journalism and what is not, some organisations have taken an indirect approach to define the concept (for example, the Finnish Council for Mass Media mentions that “[editorial content] concerns material that is editorially prepared, ordered, processed and selected for publication on journalistic principles or with journalistic emphasis”), or take an “I know it when I see it” approach, in which the question whether or not some content is ‘journalism’ is decided on a case-by-case basis without using any pre-defined characteristics (like Hungary’s Editors’ Forum) » (Harder, 2020, pp.12-13).

As Benoît Grevisse puts it, « Deontology is often seen as a kind of code of standards that would define the journalistic

profession. It maintains the illusion that there is a profession from which we could exclude the black sheep. But is journalism a profession? The question may seem naive, iconoclastic... But it is essential [...] » (2016, p.50). Indeed, in principle, deontology and ethics serve to guide journalists in their professional practice. But what is a journalist exactly? There is no unanimously accepted legal or scientific definition of this term and neither professional associations nor international bodies have defined it (Jespers, 2019, p.67). This can explain why the « corporate answer » in defining the journalistic profession seems tempting to some (Grevisse, 2016, p.61). In Belgium for instance, a law from 1963 regulates the official title of the “professional journalist”¹ by conferring rights and imposing duties on its bearer. But holding this title is not a prerequisite for working as a journalist: such exclusivity would violate the principle of freedom of the press as well as freedom of work. This title has been established to distinguish those who practice the profession of informing on a permanent basis, as their main activity and without any commercial objective. According to Jean-Jacques Jespers, « this is one way of approaching a definition of the journalist, but it is not the only one »² (2019, pp.22-23).

Furthermore, does the semantic scope of the term “journalist” include non-professionals who operate online, in the field of

¹ In order to acquire and keep the title of professional journalist, the following four conditions must be met: 1) to be at least 21 years old and not to be deprived of his or her civil and political rights; 2) « as his or her main profession and in return for remuneration, to participate in the writing of daily newspapers or periodicals, radio or television news programmes, filmed news or press agencies devoted to general information », in particular as « director, editor, cartoonist, reporter-photographer, reporter-filmmaker or correspondent for Belgium »; 3) to have had this activity as a « regular occupation » for at least two years and « not to have ceased it for more than two years »; 4) not to carry on any kind of trade and in particular no activity having as its object advertising. However, this last condition is not required of the « director of a newspaper, news programme, filmed news or press agency », as he or she may have management, and therefore commercial, responsibilities in the company. No one may be allowed to use the title of professional journalist if he or she does not meet these four conditions (AJP, 2014).

² Besides the professional journalist, in Belgium, the “journalist of profession” works as a journalist for a specialised media. He or she does not have a legally protected title, but nevertheless enjoys some legal protection in the exercise of his or her professional activity (Grevisse, 2016, p.62).

information, via social networks, “citizen journalism” sites, blogs, vlogs and in general everything that covers user-generated content? Professional organisations are often reluctant to recognise them as journalists, as they do not derive most of their professional income from this activity. In Germany, a blogger can be legally recognised as a journalist if at least half of his professional income comes from his online activity. This criterion is tending to become more widespread and is taken into account in Belgium by the Commission for accreditation as a professional journalist. On the other hand, other professionals – cameramen, photographers, sound engineers, editors, directors, scriptwriters, production or directing assistants, documentalists, archivists, set designers, graphic designers, computer graphics artists, illustrators, etc. – and even non-professionals – such as local correspondents or interns – may face ethical questions within their news organisations. But not all of them are considered as professional journalists (Jespers, 2019, pp.67-68).

For its part, the Belgian Constitutional Court considered that the law on the secrecy of sources should protect « any person who contributes directly to the collection, drafting, production or dissemination of information, by means of a media, for the benefit of the public ». This definition was taken up almost literally by the CDJ when writing its Code of Journalistic Ethics: « A journalist is [...] any person who contributes directly to the collection, editorial processing, production and/or dissemination of information, through a media outlet, intended for the public and in the interest of the public » (Jespers, 2019, p.68). This definition of the “journalist” is understood in a functional sense, thus not in the professional sense (see above) (Hanot and Michel, 2020, p.196). Moreover, it is mentioned in the preamble of the Code that « any other person who disseminates information is invited to adhere to these [ethical] standards » (CDJ, 2017, p.5).

For the purposes of self-regulation, should the definition of the “journalist” also include editors of thematic media for example, who often have another job outside the editorial

office? The question is controversial, as it is impossible to draw a clear line of demarcation below which one is a journalist, and beyond which one is not. At the very least, it is generally accepted to exclude from the scope of journalism any activity consisting in promoting, for remuneration, the image of a person, a company or an organisation (Jespers, 2019, p.68). It is also worth mentioning that several media councils (notably in Flanders and Germany) strongly believe in making no difference between so-called “quality” journalism and “popular” journalism – or even the “yellow press” (Knapen, 2020 ; Portack, April 30th, 2021). Indeed, « people who read regional and popular newspapers – which have way more readers and subscriptions than so-called “quality newspapers” – or popular magazines are also entitled to ethical quality » (Knapen, May 27th, 2021).

In summary, according to Benoît Grevisse, the scope of application of ethical standards can follow a restrictive definition of the journalist (« A journalist worthy of the name »), a limited broad definition (via a generic term, such as a particular professional association or an explicit professional category), a broad definition (which covers all contributors, as set out in the Code of the CDJ) or an open definition (which relies on the principle of collective freedom of expression and deduces that no one is exempt from ethical responsibility, as long as they are involved in the processing of information). This conception of the extension of the application of deontology to any person involved in the production of information is gaining ground. And « one can only observe that the extension of the scope of application to collaborators is desirable, while cooperative practices are developing strongly under the influence of digital technologies » (2016, pp.121-122).

1. Material competence

Some European press and media councils already specify that journalists are bound to respect their ethical rules regardless of the medium on which they express themselves.

For instance, when it published a recommendation regarding the use of social media by journalists in 2010, the CDJ from French-speaking Belgium considered that when a person carrying out an information activity disseminates information messages on a digital medium intended for an undefined and unrestricted public (i.e., a platform), it must be considered that he or she is carrying out a journalistic type of activity. This person is therefore obliged to respect professional ethics (2010).

The Code of Ethics of the CDJ (art.7) also states that « journalists shall respect their professional ethics regardless of the medium, including the professional use of social networks, personal websites and blogs as sources of information and as vehicles for disseminating information » (2017, p.7). Indeed, the Council intends to cover all journalistic activities, including all acts and behaviour in the various stages of the news provision process. This includes all media that disseminate information (whether print, broadcast or online and whether general or specialised) and all people engaged in a journalistic activity (regardless of their professional or social status). Any person can thus be challenged before the council, as soon as he or she publishes information content, regardless of whether he or she is a professional journalist or a member of a journalists' association (April 8th, 2021). Finally, if the CDJ is not competent for non-journalistic expressions (such as advertising or entertainment), it does become competent when there is a risk of confusion between such expressions and the journalistic approach.

Similarly, the Dutch press council states in its guidelines that « anyone engaged in journalism must take responsibility for the information they distribute [...] regardless of the medium or platform » (January 4th, 2019). In its Guidelines, the Dutch *Raad* defines journalistic conduct as « an act or omission by a journalist in the course of his profession or an act or omission within the framework of journalistic activities by someone other than a journalist who regularly and against payment

contributes to the editorial content of publicity media »³ (2021, p.2).

For its part, the Swiss Press Council declared itself competent in January 2019 for « any publication of a journalistic nature », i.e., « any publication resulting from work consisting, in an independent approach, of gathering, selecting, formatting, interpreting or commenting on information related to current affairs ». This definition, according to the Council, « excludes any form of propaganda » (Jespers, 2019, p.69) or more precisely « pure propaganda content, just as publications of political parties, economic organisations or associations are excluded in principle when the content in question reflects militant or ideological concerns without any concern for independence or pluralism ». In summary, « the competence of the Swiss Press Council extends – irrespective of the medium of publication – to the editorial part of news-related public media as well as to individually published journalistic content » (January 4th, 2019).

More recently, when the French CDJM was founded in late 2019, it decided to base its field of competence following the definition of « the journalistic act » in its whole, i.e., « the act of collecting and making public facts of public interest for the sole purpose of informing the public ». For Pierre Ganz, this excludes « fake news, commercial or partisan propaganda, advertising, scientific and academic communications, fiction, etc. » (June 11th, 2020).

³ It is specified in the articles of the association that the term “journalist” refers to « a person who, either in employment or on a self-employed basis, makes it his main occupation to contribute to the editorial direction or composition of publicity media, including – a daily newspaper, newspaper, free local paper or magazine insofar as the contents consist of news, photographs and other illustrations, reports or articles, – a news agency, insofar as its production consists of news, photographs and other illustrations, reports or articles destined for newspapers, door-to-door papers, magazines, radio, television, film, teletext or view data, – programmes distributed by radio or television, insofar as they consist of news, reports, reflections or sections of an informative nature, – films, audio-visual tapes, insofar as they provide news, are of a documentary nature or are useful for informative purposes; and/or internet, teletext or viewdata, insofar as their content consists of news, reports, reflections or items of an informative nature » (2021).

On the other hand, the Flemish press council of Belgium decided – after many discussions – not to define journalism in its Code of Ethics and to work on a case-by-case basis (Knapen, 2020). For instance, similarly to the CDJ, the *Raad* accepts complaints about social media posts, « provided that they are journalistic posts and that they have been posted by journalists in their capacity as journalists » (June 11th, 2020).

It is also worth mentioning that in 2014, the Brussels Court of Appeal ruled in favour of the *Raad* in a lawsuit it had been fighting since 2009 against a freelance online journalist. Because he was the subject of a complaint for ethical misconduct, he wanted to forbid the *Raad* from making a decision, considering the council incompetent since, « as a freelance journalist without a press card, he was not accountable to it in any way ». In short, the Court underlined the importance of the self-regulatory body and recognised its competence « for all journalists, whether or not they are members of a professional association, whether or not they hold a press card, regardless of the medium of their journalistic activity » (CDJ, 2014).

Similarly, for the Swiss Press Council, « the journalistic character of a publication [...] must remain the main criterion for determining its competence. Neither the possession of a press card, nor the achievement of a preponderant income in journalism, nor any other criterion of a quantitative nature, can be used as the sole point of reference » (January 4th, 2019).

2. Territorial competence

In addition to raising the question of the material competence of press councils (« is it journalism or not? »), some specific issues (such as political propaganda – see below) raise the question of territorial competence. On one hand, several media complaints usually do not accept complaints lodged against foreign media. For example, the Flemish *Raad* only handles complaints against Flemish media and more broadly

against media in other languages that are established in Flanders or Brussels⁴ and which target an audience there (such as immigrant communities and expats). Therefore, a complaint against a foreign medium, even if it concerns an article written in Flemish and/or by a Flemish journalist, would be inadmissible « in principle » – which means that exceptions are always possible (April 8th, 2021).

The French-speaking Belgian CDJ has opted for a broader approach and declares itself competent for cases « concerning media established or active in the French and/or German-speaking Community of Belgium, insofar as they are intended mainly for the audience of these Communities ». In short, if the media or the journalist targeted by a complaint produces news, addresses a Belgian audience and broadcasts or publishes in French or German, the Council is competent. This has proven to be useful on a regular basis, as the leader private broadcasting group RTL Belgium is based abroad, in Luxembourg. Similarly, the French CDJM deals with complaints « regarding any journalistic act edited, published or broadcast in France or aimed at the French public », which means that a foreign medium broadcasting in French to France could thus be subject to a complaint (April 8th, 2021).

B. What is information?

In this report, we personally opted for the broader definition of “information” rather than the definition of “news”, but both terms can be used in this context. In summary, “news” is « information or reports about recent events ; information about important events in the world, the country or the local area » (Cambridge, 2019) or « new information about something that has happened recently ; a person, thing or

⁴ In order to avoid conflicts of competence or parallel proceedings, the two Belgian press councils have signed an agreement concerning particular cases, such as: the Belga press agency; media with largely common content in both languages; cases where two media cover the same subject as a result of a single journalistic treatment that is then translated; and finally, cases where media broadcast in a language other than the three national languages. In all cases, there is a need for good reciprocal information between both councils.

event that is considered interesting enough to be reported as news » (Oxford, 2021). On the other hand, “information” relates to « facts, details or knowledge about a situation, a person, an event, etc. » (Cambridge, 2021) or more generally to « facts or details about somebody or something » (Oxford, 2021).

1. A first attempt to define information

The notion of information is not defined in any legal text and is not subject to any scientific consensus either. Some of the most convincing elements lie in the aforementioned Belgian law of 1963 and consist mainly of two criteria: on one hand, information (or news) covers all current issues and on the other hand, it is aimed at the public as a whole (CSA, 2015, p.4). Indeed, it is more precisely stated in this text that « by newspapers, radio or television news broadcasts, filmed news or general information press agencies, we mean those which, on the one hand, report the news regarding all current issues and which, on the other hand, are aimed at all readers, listeners or spectators » (AJP, 2014).

In 2015, the French-speaking Belgian audiovisual media regulator published a recommendation on information programmes. The CSA proposed a definition based on several empirical criteria, as « a circumscribed definition of an information programme cannot be proposed, given the diversity of formats concerned and the continuous evolution of the syntax of programmes dealing with current affairs ». For a programme to be qualified as an information programme, several elements must be taken into consideration in a cumulative manner (CSA, 2015).

The notion of “information programme” includes a programme aimed at the public as a whole; devoted to any type of subject (including specialised subjects); dealing with current events in a subject, in connection with the real, the eventual or the factual; which may contain re-contextualisations, historical reminders, retrospectives; characterised by a journalistic

treatment in three stages (the collection or research of sources, the editorial work on the content – selection, hierarchisation, putting into perspective, contextualisation, in different genres –, the communication towards the public); designed solely in the interest of the public (whatever the theme and angle) to respond to a concern of general interest, i.e., relating to life in society in all its aspects, and not only to satisfy curiosity or respond to particular interests; which is not exclusively made up of so-called service information (weather, traffic information, sports results, non-commented cultural diaries, municipal services, etc.); which does not have to be designed and produced by a professional or trained journalist (CSA, 2015).

In short, fall within the category of information programmes « programmes, whatever their format or syntax, designed to communicate to the public [...] news content which is subject to journalistic treatment and may be produced by professional journalists ». This content relates in particular to economic, political, sociological, cultural and sports news and meets objectives of general interest to the public (CSA, 2015).

This recommendation on information programmes raises several questions, by extension, on the definition of journalism. To define the journalistic act more clearly, we could thus also proceed by elimination and go over the cases of communication, (native) advertising, propaganda, parody, opinions, infotainment or more recently, artificial intelligence.

Indeed, as stated by the aforementioned Flemish study: « In terms of content, several media councils do note that it is not just the increased pace that potentially leads to ethical challenges, but also the blurring of boundaries between editorial content, opinion, entertainment, and advertising that results from media’s attempts to appeal to a wider audience online » (Harder, 2020, p.18).

2. The case of communication

It is widely known that the communicator serves a particular interest, while the journalist is first and foremost at the service of the collective interest of his or her audience and, through them, of society (AJP and CDJ, 2012, p.9).

More precisely, as a socio-economic activity, communication consists of creating and transmitting to the public messages expressing the specific interests of an organisation (a company, an administration, a party, a personality, a trade union, an association, etc.) with the aim of inducing behaviour in the target audience. The socio-economic activity of information, on the other hand, consists of elaborating and transmitting to the public, in the general interest, a representation of reality with the aim of providing the public with knowledge, which implies a position of autonomy in relation to the subject matter and the interests of the author or transmitter. In other words, « information must first serve the person for whom it is intended, while communication first serves the person who produces it » (Jespers, 2019, p.16). According to Jespers, « it is through critical distancing that information is distinguished from communication ». Indeed, « unlike professional communicators, the journalist's role is to evaluate and interpret the subjects and sources he or she covers independently and in the public interest » (2019, p.125). Some media productions (such as the free press or newsletters) stand on a fluctuating border between information and communication but are more closely related to the latter. And there are frequent overlaps between information and communication activities (Jespers, 2019, p.16). Furthermore, « online, the value of information would tend towards zero while the value of communication would tend towards infinity » (*ibid.*, p.226).

In summary, information excludes particular interests. In this sense, it differs from advertising and its derivative forms, as well as from communication activities that respond more specifically to the interests of issuers (CSA, 2015).

a) (Native) advertising

« 'Native advertisement', meaning advertisement that is published in such a way that it is barely distinguishable from editorial content, is a concern in multiple countries. As media are looking for ways to monetise their brand value, the traditional rigid separation between editorial and advertisement space does not seem to be set in stone any longer » (Harder, 2020, pp.18-19).

Circumstances that could lead, voluntarily or involuntarily, to confusion between journalism and advertising⁵ have become more sophisticated over time, especially in the context of new media. While advertising content is not the responsibility of the CDJ but of the Advertising Ethics Jury in Belgium, the cohabitation of advertising and journalism, with the risks of confusion and pressure, is a matter for journalistic ethics (and in part for the law). Among the basic principles is the fact that « the juxtaposition of journalism and advertising must be formally differentiated in such a way as to avoid any confusion in the mind of the public, regardless of the medium » (2015, p.7).

Both the CDJ and the *Raad* accept complaints regarding a possible confusion between journalism and advertising (even though it might be more difficult on the Flemish side because a personal stake is necessary to lodge a complaint and, in this instance, it could be rather difficult to prove).

« Editorial advertising » on the Internet takes the form of advertorials or infomercials, also known as sponsored content or native advertising⁶. This sponsored content has

⁵ « In the broadest sense, any promotional activity not guided by journalistic criteria, whether commercial or public relations. This therefore includes advertising in the strict sense, communication by organisations of all kinds, supplements with an editorial appearance but a promotional content, programmes produced on behalf of a client, etc. » (CDJ, 2015, p.13).

⁶ Native advertising is a form of online advertising which aims to attract the consumer's attention by providing content through which one enters the brand's universe rather than through the direct presentation of products. This advertising format therefore adapts to the form and specificities of the medium.

a certain added value and resembles editorial content, but its aim is to « attract the consumer's attention » by entering « the world of the brand rather than the direct presentation of products ». This content is prepared by specialised companies that often hire journalists. It is published as part of the site's journalistic newsfeed, which is why it is sometimes referred to as « branded content within the newsfeed » or « brand journalism ». According to a French survey, only 29% of Internet users notice the difference between journalistic editorial content and native advertising. In order to disseminate advertising content that does not advertise itself as such, the advertiser can also create its own communication medium under the deceptive appearance of a news site (Jespers, 2019, p.225).

Most press and media councils refer explicitly to the need of separating editorial content from advertising in their Codes of Ethics. For example, the Swiss Press Council felt it could give its opinion on a promotional supplement mixing advertorials and editorial content because the publisher claimed in its defence to work according to journalistic standards (January 4th, 2019). But several self-regulatory bodies (namely in Ireland and the Netherlands) have taken the contrary approach, passing on all complaints regarding a possible confusion between advertising and journalism to their national advertising standards authority. In recent years, several media councils have started to deal with complaints regarding native advertising, which can thus be considered and resolved by either – or both – the council and the advertising standards authority.

According to Peter Feeney, « it looks like the commercial exploitation of journalism in Ireland is “less advanced” than in other countries ». The press council of Ireland has had indeed very few related issues, notably because (as stated

above) if a publication is regarded as commercial activity rather than journalism, it is directed to the Advertising Standards Authority. Moreover, « there is sponsored content in many of our newspapers, but so far always well labelled with “Sponsored” or “Promotion” or whatever. We have had no examples presented to us of journalists using their social media profiles to promote commercial activity. So far this seems to be confined to “influencers”, who are mostly minor celebrities and certainly not journalists. We also haven't had any complaints about the use of hyperlinks to encourage purchase of products mentioned in articles » (May 21st, 2021).

On the other hand, infringements of the principle of the division between advertising and information are very common in Germany. In 2020, this confusion accounted for a third of public reprimands (17 out of 53). As explained by Sonja Volkmann-Schluck, « in most of the cases reporting had a commercial character when products of certain firms were highlighted in a way that exceeded the public interest. Furthermore, in some cases it was not recognisable if the report was advertisement or editorial content because of some [inefficient] labelling as “advertorial” or other unclear terms. This problem is most common with magazines rather than with newspapers or online outlets » (May 21st, 2021).

Moreover, the Finnish media council is currently monitoring a new phenomenon of « sponsored journalism » in the media landscape, i.e., « journalistic articles sponsored by an organisation ». According to Sakari Illka, « it is a journalistic choice to cover a particular subject, but if someone with enough means can affect what is being published, it is problematic, even if journalists assert that they are in charge » (April 30th, 2021).

Finally, the Russian press council hasn't received any related complaint but is thinking of accepting « internal “standards” for bloggers where they will be allowed to create native advertising on their own (though of course it should always be marked as such) ». For Karina Nazareytn, « the reality is,

It is called native because it is at the heart of the system. The essence of native advertising is advertising in disguise: indeed, « by deliberately inserting a promotional message into journalistic content, native advertising plays on the confusion in the mind of the public » (CDJ, 2015, pp.13-14).

they already do it, and I doubt we can do anything but accept it » (May 21st, 2021).

b) Propaganda

« With the rise of the Internet and social networks, [...] not only are the media available in all forms, but many news and propaganda websites (journalistic or not) are fueling the public debate ». As already mentioned above, in the case of the Swiss Press Council, « pure propaganda content, just as publications of political parties, economic organisations or associations are excluded in principle when the content in question reflects militant or ideological concerns without any concern for independence or pluralism » (January 4th, 2019).

For Pierre Ganz from the CDJM, media are allowed to have an editorial line which supports a political party and thus propose a reading of current events based on the party's ideology, because this approach is « clearly announced » and even « claimed ». But nowadays, some blogs and online media are linked to political formations « in a real but less transparent way », which poses ethical questions. Furthermore, the French press council has already stated that the content of propaganda media which are dependent on a non-democratic government that does not guarantee freedom of expression cannot be analysed according to the rules of deontology that journalists follow in countries where freedom of expression is guaranteed. Indeed, « when [freedom of expression] is not guaranteed, the analysis of the respect of journalistic ethics is vain ». Pure political propaganda would thus be outside the deontological framework and is therefore outside the council's field of competence (April 8th, 2021).

As a reminder, “usual” situations aside, the CDJ examines on a case-by-case basis the informational and journalistic nature of the content targeted by a complaint. As of late 2021, the council has already issued opinions of non-competence regarding websites of particular nature three times.

When the CDJ received a complaint regarding lying, hatred and racist contents against the website LePeuple.be in 2018, the council first of all set out to determine whether the site fell within its jurisdiction. After examination, the CDJ stated that in the current state of affairs, this website was not a media of a journalistic nature but a communication tool at the service of a political party – the extreme-right wing Popular Party – and an instrument of propaganda of the ideology of the latter. The CDJ recalled that propaganda is « a form of communication that aims to influence, or even modify, certain opinions of others ». Because it seeks to persuade and convince, propaganda can in no way meet the principles of journalistic ethics: by its very nature, propaganda content is characterised by incorrect or distorted allegations (minimisation, exaggeration, embellishment, uglification of facts) and by negative or simplistic value judgements. Noting that LePeuple.be does not fall within the sphere of journalism, the CDJ is not competent to deal with complaints against it. Because it is not a media of a journalistic nature, it does not fall under journalistic deontology and does not fall within the competence of the CDJ **(18-05)**. The CDJ made this decision public to broadly inform potential audiences of the difference between news and this kind of propaganda (April 8th, 2021).

In October 2021, the CDJ declared itself incompetent with regard to an article published on the blog of an anonymous collective fighting against fascism, which in its view was more in the field of political communication (propaganda) than in the field of information. Once again, as the blog was not considered as a journalistic medium, the Council concluded that it did not fall within the scope of journalistic ethics and did not fall within its remit **(19-09)**.

The position of the CDJ is however not shared by all press councils, as some of them consider that all content that appears to be journalistic should be assessed on the basis of professional ethics (Jespers, 2019, p.69). For example, the Russian press council considers complaints related to « media pieces that look much more as propaganda rather

than journalism [...] because the audience perceives it as “journalism” ». Indeed, according to Olga Kravtsova, « it feels important to remind the audience once again how to tell journalism from propaganda, and why propaganda pieces break ethical rules of journalism (even though it breaks it to the extent that it cannot be, strictly speaking, called “journalism”) » (April 8th, 2021). For Sakari Ilkka from the Finnish media council, « it might make sense to handle such complaints to point out to the public this material [...] but if you decide not to handle them, it might be not to give more publicity to these harmful [media] » (April 30th, 2021).

3. The case of parody

When the CDJ received a complaint against the parody site NordPresse in 2016, the council first of all set out to determine whether the site fell within its jurisdiction (see above). Because the purpose of NordPresse is « to provide false, parodic information », the council considered that the website was not comparable to a media of journalistic nature. Furthermore, the manager of NordPresse has already explained that « he does what he wants » with it, therefore placing himself outside of the journalistic approach (« in which no one does what he or she wants » for the council). It is also worth noting that NordPresse cannot be compared to satirical media according to the CDJ, which has already concluded that « freedom of satire must be based on an accurate factual basis ». In conclusion, as NordPresse is not a journalistic medium, it is not subject to journalistic ethics and is not within the remit of the CDJ **(16-17)**. Indeed, declaring a complaint against NordPresse admissible would lead to a dead end: the council would then be responsible for verifying compliance with journalistic ethics, first and foremost the requirement to seek and respect the truth, whereas this site was created to spread false information.

The French CDJM, for its part, has not yet been confronted with such a case. But if it were to happen, « it would most certainly dismiss it » because the council places parody outside of the

journalistic act, as it aims to entertain and not to inform (April 20th, 2021). Media councils such as the NewsMedia Council in Canada or the Council for Mass Media in Finland have not been confronted with this issue because they do not accept complaints against non-members. But according to Sakari Ilkka, the Finnish council could intervene in the case of a lack of distinction between parody and journalistic content (April 30th, 2021).

4. The case of opinions

a) Opinion journalism

On one hand, journalists who express opinions should always respect ethics. Opinion journalism is mentioned in the Code of Ethics of the CDJ for example, which states that « journalists shall clearly distinguish in the eyes of the public between facts, analyses and opinions; when expressing their own opinions, they shall make this clear » (art. 5) and that « facts are binding; commentary, opinion, criticism, humour and satire are free, whatever the form » (art. 10) (2017, pp.7-8).

On the other hand, quoting a third-party opinion in a journalistic work also requires caution. In addition to a dedicated article in its Code of Ethics (which states that « Editorial staffs decide in complete independence which opinion contributions they publish or broadcast. Responsibility for their content lies primarily with the author [...] » (art.14)), the Flemish *Raad* has published the following guideline on opinion columns: « A journalist is not responsible for opinions expressed by third parties. But when he knows that an opinion contribution of a third party, which he publishes, contains relevant and obvious factual errors, he makes this clear to the public » (2019, p.17).

For the French CDJM, « there are basically two kinds of journalistic work: factual journalism which consists of collecting facts and events, verifying them and putting them into context, and opinion journalism where thoughts, ideas,

beliefs or value judgements are expressed in the form of editorials, viewpoints, commentaries, positions ». The council can be seized of a journalistic act that falls under the heading of opinion journalism: « It will examine it by considering first that the expression of convictions or positions must be identified as such for the public and can only be done by exposing the most relevant facts on which it is based and by explaining in a rigorous way the reasoning that justifies it. Where there is extrapolation from the true to the likely, this must be transparent, and if the opinion journalist relies on rumours or hypotheses, he or she must present them as such » (2021).

b) Journalists' opinions on social networks

Several media and press councils, such as the CDJ, consider that when a person carrying out an information activity disseminates information messages on a digital medium intended for an undefined and unrestricted public, it must be considered that he or she is carrying out a journalistic type of activity (see above). On the other hand, people engaged in a journalistic activity have been increasingly using blogs and social networks as modes of expression in the last decade, including to share personal opinions. When they do so, to what extent are they bound to respect journalistic ethics?

For its part, the Swiss Press Council issued a statement in 2019 regarding this issue, explaining that « by their very nature, social networks appeal to spontaneity and are largely devoted to private life. As for the debates of opinion that take place on them, they are characterised by a very broad freedom of expression. For individual journalists, these characteristics should be taken into account. Their ethical obligations do not concern their private lives and must allow for a wide range of free expression of their opinions. These obligations are therefore limited to the contributions of a journalistic nature that they broadcast ».

But « while some latitude should be given to individual journalists expressing themselves on social networks, the same largesse does not apply to journalistic media sites » (January 4th, 2019).

In short, for some councils, if opinion journalism can undoubtedly be considered as information, this is not the case for all content published by journalists on social media, including personal opinions. This observation makes the tautological link between journalism and information less relevant.

5. The case of infotainment

As already mentioned above, the CDJ is competent when there is a risk of confusion between non-journalistic expressions (such as advertising or entertainment) and the journalistic approach. In 2016, a Belgian politician who was concerned about the evolution of media practices in terms of infotainment, suggested that the audiovisual regulator should conduct « a reflection on new rules of journalistic ethics ». The CDJ thus reminded the public that, as a media council, it was perfectly competent and equipped to carry out, if it deemed it useful, a reflection on infotainment, and to receive any possible complaint on this matter⁷. But this hasn't happened (yet) and this position might not be shared by all media and press councils.

6. The case of artificial intelligence

Can information which is selected, produced and/or distributed by artificial intelligence be considered as journalism? First of all, we need to clarify several definitions related to this topic.

⁷ Indeed, the aforementioned CSA recommendation on information programmes states that « Journalistic work does not exclude the expression of opinion, affect or humour. Nevertheless, the reading contract with the receiver, even if implicit, should be clear and defined by the programme genre or the editorial line of the media service. Hybrid genres, such as infotainment, cannot therefore be excluded *a priori* from the qualification of information » (2015, p.6).

According to a definition provided by UNESCO, artificial intelligence systems can be considered as « technological systems capable of processing information through a process resembling intelligent behaviour, usually involving reasoning, learning, perception, anticipation, planning or control ». Furthermore, « AI systems are information processing technologies that incorporate models and algorithms, which generate the ability to learn and perform cognitive tasks leading to outcomes such as anticipation and decision making in physical and virtual environments » (2021, p.16).

Datajournalism, database journalism or data driven journalism is « a multi-faceted journalistic practice based on the analysis and filtering of large sets of computerised data and formatted into a media narrative » (Degand, 2012, p.321). In other words, it consists of exploiting voluminous databases in order to extract information and present it in an engaging way to the audience (Tasiaux, 2020, p.15). Datajournalism generally involves the graphic, dynamic and interactive formatting of data, co-authored by journalists, web developers, computer graphics artists or interaction designers, among other possible professional profiles (Degand, 2012, p.321). In short, it is not a new form of journalism but rather complementary to the traditional journalistic approach.

The development of data journalism has brought a new phenomenon of automation in journalism, which can be implemented at every stage of the editorial production chain. Automation, also called « robot-journalism » in the media field, applies to the collection of sources and data as well as to the creation of information. The term « journalistic robot » refers to « an editorial algorithm that analyses a set of numerical and textual data, both public and private ». These automation systems therefore have the potential to enable rapid execution, larger-scale processing and the use of customisation or personalisation. The personalisation of the information offer, which consists of predictive analysis, makes it possible to detect consumer behaviour and thus to adapt a journalistic content (Tasiaux, 2020, pp.15-16).

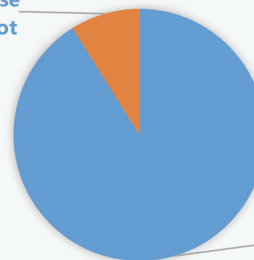
While these new technological innovations offer an opportunity for better and more efficient journalism, media operators implement algorithm-driven solutions as they feel like it, with no obligation to report to media councils or the authorities (Haapanen, 2020, p.5).

Without going into details about the ethical implications of AI systems in the area of information, we can briefly summarise them through a UNESCO report on the matter: « As AI technologies play an increasing role in the processing, structuring and transmission of information ; issues of automated journalism and the use of algorithms to disseminate news and to moderate and organise content on social networks and search engines are just a few examples of issues related to access to information, misinformation, hate speech, the emergence of new forms of societal narratives, discrimination, freedom of expression, privacy, and media and information literacy, among others » (2021, p.6).

With this in mind, what role could press councils play regarding the many challenges posed by the use of algorithms in the journalistic practice nowadays and in the nearby future? The survey conducted in late 2020 by the Blanquerna School of

DO YOU THINK THAT THE INFORMATION PRODUCED BY ROBOTS SHOULD BE GOVERNED BY THE SAME ETHICAL STANDARDS APPLICABLE TO JOURNALISTS?

8,9%; No, because journalists do not produce them



91,1%; Yes, because they are published by a news media

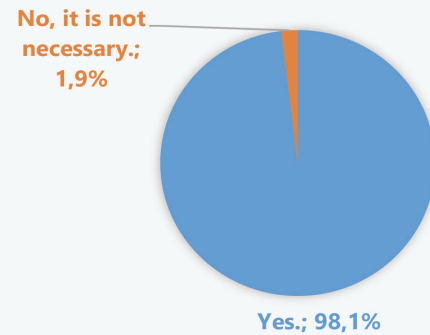
Source : Masip, Suau and Ruiz, 2021

Communication and International Relations for the *Media Councils in the Digital Age* project shows that practically all respondents surveyed (98.1% of media councils' members and 96.7% of journalists) think that « content produced by robots » should be identified as such. Furthermore, this content should be governed by the same ethical standards that are applicable to journalists – because it is published by a news media – according to 100% of media councils' members and 91.1% of journalists surveyed. The minority which answered negatively to this second question said so because this content is « not produced by journalists » (Masip, Suau and Ruiz, 2021, pp. 26-27; p.49).

According to Pieter Knapen, the use of artificial intelligence will not change the basic principles of journalism, i.e., independence, truthfulness, fair-play and respect for privacy and human dignity. Nevertheless, when using AI or databases (including during the research process), « journalists should be in the cockpit » and understand what they're working with. Furthermore, as journalists « have nothing to hide », they should be as transparent as possible towards the public on this use of algorithms and explain it more, in order to be credible. In short, for the secretary general of the *Raad*, « transparency is the new objectivity » regarding journalistic ethics in the digital age (Knapen, 2020). For researcher Lauri Haapanen, transparency would be a way for journalistic media to differentiate themselves from the social media giants, whose use of algorithms has raised many doubts, and could be enhanced by highlighting that a particular content is produced algorithmically, for what purpose the automation system was designed and by whom (Haapanen, 2020, p.15).

News automation, or more generally the use of algorithms in journalism, is not (yet) mentioned in ethical codes or additional guidelines. It would seem that most media councils are « waiting and watching » before doing so, although some of them have already discussed the possible need for guidance. The Finnish Council for Mass Media is so far the only council that has taken a stand, by issuing a statement on marking news

DO YOU THINK THAT THE INFORMATION PRODUCED BY ROBOTS SHOULD BE IDENTIFIED AS SUCH?



Source : Masip, Suau and Ruiz, 2021

automation and personalisation in October 2019 (Haapanen, 2020, p.17)⁸. These guidelines on the use of algorithms and artificial intelligence in newsrooms were published to assure that media outlets act responsibly and transparently and that this use « always constitutes a journalistic choice ».

Indeed, for the council, such decision-making power should not be transferred outside the editorial office, as only the editorial staff bears the responsibility for the effects of algorithms on

⁸ However, the statement has not provoked significant action or debate in the Finnish media industry after its publication. No complaints regarding the topic were lodged with the press council either. According to complaints analyst Sakari Ilkka, there hasn't been any controversy or discussion regarding the statement because it was made in cooperation with the media industry. Indeed, according to him, the lack of complaints regarding the council's recent statement on news automation and personalisation is not surprising, as the public probably doesn't pay much attention to these issues yet (because it is not aware of it). Moreover, « the Finnish media are quite open about the use of news automation, which is developing in baby steps at the moment » and thus hasn't created many ethical problems yet. Sakari Ilkka thinks the council might start to receive complaints if the public feels it is somehow misled and that the media is not acting openly. But at the same time, he doesn't think that the public pays a lot of attention to « how journalistic content is made and distributed » anyway. The statement hasn't changed the way the council defines its field of competence, as the use of news automation is presented as a journalistic choice (because it is a part of the journalistic process which is given to algorithms) (April 30th, 2021).

journalistic content. Furthermore, media outlets should have a sufficient understanding of the effect of algorithmic tools on content. It is also important for the credibility of journalism that the public considers the operations of media outlets to be transparent: as said before, the public has the right to know about the use of these tools (January 24th, 2020).

The first recommendation deals with how to mark news automation⁹ (i.e., *news robots* and other algorithmic tools that generate and publish journalistic content automatically, such as texts and infographics). For the council, media outlets are obligated to disclose to the public if journalistic content published by them has, to an essential extent, been generated and published automatically. In such cases, media outlets should disclose the use of automation and the source of published information alongside the content. Regarding articles which are both automatically generated and automatically published and updated, the following addendum could be inserted next to the articles: « This is an automatically generated/updated article, and the source of information is [source] » (January 24th, 2020).

The second recommendation is on how to mark personalisation¹⁰ or customisation (i.e., the method used for targeting contents differently based on the user's past activity, such as customised website pages and lists of recommended articles), which is more frequent than news automation as

⁹ « The term refers to algorithmic processes that convert data into a user-friendly form with limited human intervention. Speaking from a perspective that may still be a little premature, news automation can – when working well – speed up production, increase the breadth of coverage, enhance accuracy and enable new types of personalization [...] News automation so far takes place mainly in the form of various infographics and up-to-date counters, the main emphasis of which is on numerical information instead of long stretches of text » (Haapanen, 2020, p.4).

¹⁰ « Personalization is often referred to not just as a part of news automation but as a separate process. It is practical because its applications are primarily about the user's previous online behaviour affecting "read more" recommendations or, less commonly, the order in which news headlines are displayed on the front page of a web page. It is like an automated search function into the archive of that media that reads the user's thoughts. To sum up, the personalization that has taken place so far affects mainly the logic in which media operators offer their articles to their users, and only rarely the content of individual articles » (Haapanen, 2020, p.4).

of now in most countries. Once again, if media outlets target content to different users in different ways, they are obligated to inform the public openly about the practice and the collection of their data according to the Finnish council. If a significant amount of content on a given page view is targeted content based on user data, targeting should be disclosed in a manner that requires little effort by the user to find the information. The information should also be presented in an understandable way (January 24th, 2020).

Researcher (and former member of the Council of Mass Media in Finland) Lauri Haapanen published a report in December 2020 on the ethical considerations raised by news automation. Based on a European-wide research project, he presented three main takeaways. First of all, « full-blooded news automation » is still rarely used: large media players use automatically updated counters and infographics, but the software-driven generation of text is mainly experimental. Despite the lack of urgent issues, the researcher still believes that media councils need to keep their eyes open to the possible need for self-regulatory guidance on news automation. As of now, it is probably too early to revise the Codes of Ethics. Indeed, these Codes should only be revised after a clear and lasting change has taken place in the industry according to him (2020, p.10). In other words, given the speed and diversity of these new technological developments, it would probably be unwise to define detailed, but above all binding, rules on artificial intelligence as of now (Tasiaux, 2020, p.35).

Secondly, media councils should be prepared for news automation and not underestimate the technical progress already made in the field. Issues regarding data, agency (or responsibility) and transparency should not be overlooked when discussing news automation today. In order for software developers to adhere to the journalistic set of values, journalists and media councils will be forced to explain and define vague concepts such as « journalistic decision-making power », « journalistic principles » and « news value » (Haapanen, 2020, pp.14-15).

Finally, for Lauri Haapanen, media councils should critically revisit their complaints procedures « so that audiences have a genuine opportunity to bring up their grievances with automation ». Indeed, the rules of media councils are formulated positively, in the sense that they only allow people and organisations to complain about things that have already been published. And for a significant number of councils, a personal stake is required, which makes it « next to impossible » to lodge a complaint. In addition, councils should maybe act proactively with regard to the changing media landscape, in the footsteps of the Finnish media council. In short: « If it is not the media councils that take the lead on this, it is going to be someone else. And whoever it is – whether national legislators, the EU or platform companies – they might jeopardise the freedom of the press. This means that external control and guidance might force journalistic media to make decisions about content and publishing on non-journalistic grounds » (2020, p.18).

As of late 2021, no media council has (yet) amended its Code of Ethics to take responsibility for data journalism, the use of algorithms, AI or robot journalism into account (2021). Furthermore, no other council than the Finnish one has published a guideline or a statement on the use of algorithms in journalism. But it should be noted that the UK regulator IMPRESS has launched a review of its Code (with a new Code expected for Spring 2022) with seven issues to take into account, notably « journalism online », to determine « whether the [current] Code reflects the realities of news gathering and publication online, with particular focus on Artificial Intelligence (AI), data and open source journalism; the use of social media accounts, groups and pages and whether the Code is applicable to different kinds of news providers, including non-professional and citizen journalists » (2020).

It can also be mentioned that the Flemish *Raad* has started a working group on news automation and personalisation in early 2021. Secretary general Pieter Knapen is expecting « a very general guideline which would include the word

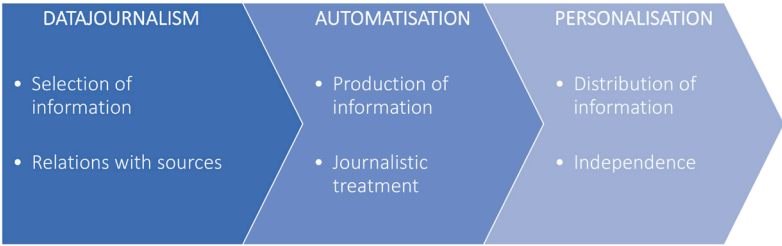
“transparency” for instance » sometime in 2022. Furthermore, he thinks it is important to make a clear distinction between full news automation (i.e., articles selected, produced and distributed by AI) and the different stages of a journalist’s work where IA could be used. Moreover, « the first phases of gathering information and then producing information are more the responsibility of the journalist and the newsroom, while the last stage of distribution is more the responsibility of the medium: there is a shift of responsibility ». The question Pieter Knapen asks is thus: if such a statement is published, will the *Raad* need to define the responsibility of the medium in its Code? Finally, the secretary general also believes the council would never get a complaint on this issue, but that it is still important to give guidelines to journalists, « including to safeguard their rights against publishers, IT workers and engineers producing algorithms » (May 27th, 2021).

In summary, the use of algorithms applies to all stages of the journalistic work and therefore raises questions on several ethical issues (as presented below). But does the use of AI change the definition of journalism? For Sakari Ilkka, « the use of algorithms is only a tool to create journalistic content, whereas journalism is an input for content to be published ». Indeed, journalists have used Google or Excel for decades and « whether or not they pay attention to it, they are using algorithms ». Furthermore, the Finnish council doesn’t define journalism or information in any of its guidelines, but it does offer a definition of “editorial content”, i.e., « material that is editorially prepared, ordered, processed and selected for publication on journalistic principle or with journalistic emphasis » (see above). This definition is used to make a distinction between journalism and advertising or reader’s comments for example – which are not considered as journalism but can still be the subject of a complaint – and content towards which complaints cannot be accepted.

In short, the Finnish approach is the following: « If a content published in a journalistic medium is not paid advertising, then it is considered as journalistic content ». The council

also takes into account the genre of the content (April 30th, 2021).

For Pieter Knapen, the use of AI doesn't change the definition of journalism either, as « it is just another way to work ». Indeed, « journalists had pencils, then writing machines, later on computers and now [IA], but the basic principles of journalistic ethics will remain the same ». In the end, « [media councils] just have to make the possible risks clear and give guidelines to journalists » (May 27th, 2021).



C. What role for media councils?

From the various examples detailed above, it would seem that although media and press councils do not agree on a single definition of journalism (or of the journalist), they are relatively on the same page regarding where journalism begins and where it ends.

Sakari Ilkka thinks that for the time being, it's better not to define journalism too strictly, as media councils might miss out on things they didn't see coming, and thus limit their future operations. Indeed, « there are new ways of doing journalism all the time » according to him. And on the other hand, media councils shouldn't be the ones to define information, as this issue is « very tricky, because you have to go into discussions on what is true, what is false and everything in-between » (April 30th, 2021).

As stated above, the Flemish *Raad* had long discussions on the matter some years ago, when it decided to update its Code of Ethics. It initially intended to define journalism, but it ended up with a very broad definition (something in the spirit of « journalism is the activity of collecting, producing, editing and distributing information to a public, via media »), which could also apply to academic papers for instance. Many questions arose during these talks, for instance: is journalism only about current affairs and/or facts? In the end, the council decided it was « theoretically almost impossible » to define journalism and that a strict definition would make its work more complicated anyway.

The *Raad* thus works on a case-by-case basis (or a « I know it when I see it » approach) and if it receives a complaint against a media or a programme it doesn't know, the question to decide whether or not it is journalistic content is the following: « if this report had been published in a newspaper, would it look like journalism to us? And if the answer is yes, then we accept it ». The logic behind this is that people who complain about less traditional ways of doing journalism are also entitled to know the moral decision of a press council (May 27th, 2021).

According to Pieter Knapen, an interesting question for media councils today is to decide whether or not they should accept complaints against anonymous websites (May 27th, 2021). The council has been confronted with such a case against a satirical website and it decided to accept the complaint and then to consider it founded, notably for this reason: « By maintaining anonymity, [the satirical website] is deliberately creating confusion in order to evade or escape normal professional ethical responsibility. This is a blatant violation of the principle that a journalist or editorial staff works with an open mind and makes the necessary identification information available, as stipulated in the Principles of the Code, and in article 8 from the chapter on independent reporting, which states that the journalist exercises the freedom to inform, comment and criticise responsibly » (2021).

D. Webinar key-points (by Florence Le Cam)

Journalism is a plural activity. It is made up of a variety of specialised sub-fields¹¹ (international news, economics, politics, culture or sport), of heterogeneous status¹² (reporters, editors, columnists, bloggers, etc.) or productions on a wide variety of media (press, broadcast media or social networks, etc.).

The notion of “information”, which is at the heart of journalistic activity, is also subject to numerous interpretations as to its quality, the way it is circulated, and its scope of definition. Daniel Cornu, a Swiss journalist and academic, shows that journalistic information involves « facts and events, which constitute its specific material, meaning and style. It includes facts, comments and narratives. These materials correspond to three distinct acts, observation, interpretation and narration, which appear as the three constitutive elements of journalistic identity. It is in relation to these acts, which take place within the process of journalistic information, that the question of objectivity and, in general, that of truth are situated »¹³. These issues have been multiplied since the emergence of online news production in the mid-1990s. The dispersion of journalistic practices and identities continues to question and complicate the problem¹⁴.

¹¹ Marchetti, D. (2002). Les sous-champs spécialisés du journalisme. *Réseaux*, (1), 22-55.

¹² Van Leuven, S., Raeymaeckers, K., Libert, M., Le Cam, F., Stroobant, J., Malcorps, S., Jacquet, A., D'Heer, J., Heinderyckx, F., De Vuyst, S., et Vanhaelewyn, B. (2019). *Le profil des journalistes belges en 2018*. Gand : Academia Press.

¹³ « « des réalités et des événements, qui constituent son matériau spécifique, du sens et du style. Elle inclut des faits, des commentaires et des récits. Ces matières correspondent à trois actes distincts, l'observation, l'interprétation et la narration, qui apparaissent comme les trois éléments constitutifs de l'identité journalistique. C'est en relation à ces actes, qui prennent place à l'intérieur du procès de l'information journalistique, que se situent la question de l'objectivité et, de manière générale, celle de la vérité » » Cornu, D. (1998). *Journalisme et la vérité. Autres temps*, 58(1), p.14.

¹⁴ Ringoot, R. et Utard, J-M. (2015). *Le journalisme en invention: Nouvelles pratiques, nouveaux acteurs*. Rennes. Presses universitaires de Rennes.

The definition proposed by Cornu concentrates the heart of the debate with which press councils are confronted: the entanglement of the notions of information and journalism and the diversity of the status of news producers raise questions about their work, their place in society and the media world, and their role towards the public.

1. Implications of definitional choices

European press councils have been constituted in a singular way, according to the history of the national media system, the configuration of the journalistic world, and the relationship that media professionals and the public have had with the notions of regulation and self-regulation¹⁵. In doing so, the definitions on which they are based are more or less inclusive, more or less restrictive. Two central characteristics condition these definitions: on the one hand, the actors to whom the speeches and opinions of press councils are addressed and concerned, and on the other hand, the very nature of the information recognised as journalistic.

The first characteristic therefore concerns the actors that press councils address. Some councils deal only with complaints that concern their members, while others accept all complaints from the public and concerning a wide range of media (members or not). These choices imply a treatment of complaints that concern a greater or lesser number of actors, and thus a variety of media likely to be more or less sensitive to ethical issues. This characteristic also covers the definition of journalistic identities, since some councils only deal with complaints from so-called professional journalists, while others have a very broad conception of the image of the news producer and deal with complaints concerning bloggers or even people who do not claim to be journalists, but who work to produce journalistic-type information. Certain statutes such

¹⁵ Mauri i de los Ríos, M., Rodríguez-Martínez, R., Maz, M. F., & Fedele, M. (2018). Press councils as a traditional instrument of media self-regulation: The perceptions of European journalists. *Journal of Applied Journalism & Media Studies*, 7(2), 221-243.

as that of influencers thus raise very pragmatic questions of territory. The second characteristic concerns the definition of journalistic information by inclusion or exclusion of criteria: news must concern public affairs, meet the public interest, be produced for the benefit of the audience, in an independent manner, etc. But it sometimes deviates from these criteria. This work of precision and therefore of definition then tends to cover more or less disparate practices. In this context, several specific cases may be particularly open to discussion.

Media produced by sources¹⁶, in particular by political parties, may be subject to the opinions and complaints of some press councils, while others consider that the media discourses of these entities do not fall under the jurisdiction of self-regulatory instances. This **political propaganda** can be associated with practices that are more in the sphere of political communication¹⁷, and therefore far from the strict journalistic information, whose normative representation keeps away the communicative and persuasive visions of some actors of the society. However, this vision is not shared by all press councils.

This persuasive function is also at the centre of debates about hybrid practices between journalism, advertising and marketing. **Native advertising**, by its very nature, tends to blend in with journalistic and media content, especially on online sites. These native advertisements are also a source of concern because they are difficult to identify for audiences, but they can also be a source of strong questioning, or even misunderstanding, of the editorial choices made by media companies for their audiences¹⁸.

¹⁶ Sant'Anna, F. (2005). *Mídia das fontes: o difusor do jornalismo corporativo*. Brasília: Casa das Musas.

¹⁷ Delporte, C. (2006). De la propagande à la communication politique. *Le débat*, (1), 30-45.

¹⁸ Schauster, E. E., Ferrucci, P., & Neill, M. S. (2016). Native advertising is the new journalism: How deception affects social responsibility. *American behavioral scientist*, 60(12), 1408-1424.

Opinion is another difficult issue to grasp in terms of ethics. Are opinion pieces the exercise of full freedom and committed only to their authors? Or should these opinion pieces also be subject to ethical standards and values? The answers obviously vary according to the contexts in which these texts are disseminated or published, but also according to the conceptions of editorial responsibility for journalistic genres involving opinion. Thus, if this opinion disseminates factual elements that are false or not based on proven facts, then ethical instances can remind the media of their responsibility to verify information, and the need to check what is said, and to allow the public to have all the elements at their disposal to be able to judge the arguments.

Satire is, in the same vein, an issue of definition. Satire as such was often recognisable at first sight. The development of satirical and parodic sites that mimic online news sites is disturbing the communication contract with audiences. In doing so, they pose a new challenge not only for audiences, but also for press councils, because of the sometimes out-of-context circulation of satirical content or the confusion over the recognition of parodies. Judging this content means taking a position on media productions that question both freedom of expression and social accountability.

Finally, the place of **artificial intelligence** and automated content production for news media¹⁹ represents a major challenge that affects both the role of journalists in the news production process and the responsibility of the media towards the public. The ethical stakes of these practices concern the knowledge and verification that journalists can develop on the data processed by computer, the expertise they develop to master the tools used, and the clarity of the use of these practices in the media themselves and for the public.

¹⁹ Ivancsics, B., & Hansen, M. (2019). Actually, It's about Ethics, AI, and Journalism: Reporting on and with Computation and Data. *New York, NY: Tow Center for Digital Journalism*.

In this context of questioning the foundations of journalistic ethics, of transformations of digital public spaces, press councils agree on a central point of media responsibility: transparency. Press councils expect media to guarantee transparency in the production processes, in the mention of the enunciators of the information (journalists or robots, for example), or in the construction of specific relationships with the public.

2. Representations and jurisprudence, the pillars

In the face of the expression of very different conceptions and practices among press councils on these issues of definitions and territories of self-regulation, two elements in particular emerged in the debate and allowed for a reflection on the ways of considering information and journalism, particularly in the digital world: the representations of press councils and the importance of jurisprudence.

The issue of definitions is partly based on the representations that self-regulatory instances make of themselves and on the social roles that each national society makes them bear. Thus, between an identity constructed by the regulatory instance itself and an identity prescribed by external actors (State, media companies, public, etc.), the nature and function of press councils are themselves questioned by the issues of defining the notions of information and journalism. Since the 1970s, press councils have been facing definitional problems that make them oscillate between very divergent representations and do not fit in with these qualifiers of the time – which are still sometimes relevant in the criticisms that are addressed to them – « not a governmental board of censorship, an internal agency for self-censorship, a lobbying bureau for media-owners, a union of media-workers... »²⁰.

In this sense, the issues of definition also directly affect the identity of press councils and the ways in which they justify

²⁰ Bertrand, C. J. (1978). Press Councils around the World: unraveling a definitional dilemma. *Journalism Quarterly*, 55(2), 241-250.

their existence and importance in their national territory and *vis-à-vis* the media worlds. The more or less broad conceptions of their territory of expertise have everything to do with the role they wish to play. Thus, addressing only members or judging all news media production places them in very different positions. And these representations are currently crossed by extremely critical public discourses concerning media and journalists, which may, depending on the country, also have an impact on the image of press councils²¹. The debates clearly show that despite certain common conceptions (of roles or of certain values), the representations that press councils have of information and journalism vary culturally.

This variation is not only expressed in national differences. The diversity of conceptions of information and journalism also stems from the attachment that press councils have to jurisprudence, and the strategy of leaving definitions relatively vague in order to be able to adjust decisions, choices and opinions.

E. Conclusion

Leaving the definitions relatively broad, with little framework, allows press councils considerable flexibility. This flexibility is a central strategy because it gives council members space to maneuver, not only to refer to past decisions, but also to change them, to adjust and to be able, on a case-by-case basis, to decide, according to specific elements, on such or such a position. Jurisprudence and flexibility then allow for detailed reflection on questions of social accountability of the media, on pragmatic definitions of the notions of public interest and general interest, and on the case-by-case implementation of expected norms and values. Thus, leaving the notion of journalism loosely framed makes it possible to include or exclude certain practices or certain news producers, just

²¹ Mira, J., & Camponez, C. (2019). European models of journalism regulation: A comparative classification. In *Media Accountability In The Era Of Posttruth Politics* (pp. 18-35). Routledge.

as the fluidity of the definition of information offers the opportunity to seize or not seize certain communication practices, productions of opinions, and thus all sorts of messages at the borders of journalistic information. The borders are left flexible and can be more or less open or closed at will.

In this respect, press councils are at the heart of historical and contemporary debates on press freedom and freedom of expression, and must constantly adjust to transformations in contemporary representations and practices²². Formalising definitions too much, framing them and stabilising them does not correspond to the way many press councils think about their role and their actions: informality allows to follow some general rules, but above all to adjust them on a case-by-case basis. In this way, indefiniteness becomes a central element of the work and is the social responsibility of press councils themselves. ■

The fourth webinar, « The scope of information and journalism in the online sphere », took place on September 21st, 2021. The invited speakers were Eero Hyvönen, chair of the Council for Mass Media in Finland, and secretary general of the Flemish *Raad voor de journalistiek* Pieter Knapen. Florence Le Cam, CDJ civil society representative and ULB researcher, acted as moderator and rapporteur.

²² Cohen-Almagor, R. (2001). Speech, Media and Ethics—The Limits of Free Expression: Critical Studies on Freedom of Expression, Freedom of the Press and the Public's Right to Know. *Science and Engineering Ethics*, 7(3), 447.

Comparative analysis of online ethical standards

What is there to learn from exchanges on the jurisprudence of press and media councils' decisions in the field of online and social media?

The digital revolution is largely impacting the way journalists and media are producing and sharing news content. In this changing media landscape, self-regulatory bodies, which were created before the digital revolution for most of them, must adapt to the involving environment (EFJ, 2020). First of all, are European Codes of Ethics adapted to respond to new ethical challenges arising from digitalisation? According to the survey directed by researchers from the Blanquerna School of Communication and International Relations in late 2020, a majority of media councils' members and journalists call for an adjustment of the norms to the digital age, instead of the formulation of new ethical principles (Masip, Suau and Ruiz, 2021). It is probably because – as the CDJ reminds it in a ruling requested by the audiovisual media regulator (CSA) about the compliance of a TV programme with electoral rules – journalistic ethics apply indiscriminately regardless of the media, unlike the regulatory framework, which applies only for the audiovisual media (19-14).

Furthermore, both Blanquerna surveyed groups believe journalists must ensure the accuracy and the quality of linked, embedded and user-generated content used in their news stories and that public content available on social networks can be used after requesting authorisation. The use of social networks by journalists generates very diverse opinions, particularly regarding their professional vs private use¹. Most

¹ While complaints about the content that media outlets post on their own social media pages is almost universally accepted by media councils, the same does not go for what individual journalists write or produce. Some media councils decline to deal with that content as a rule, and for the media councils that would consider this type of content, they mentioned that they

respondents in both groups consider that content moderation is not under the responsibility of journalists, but rather of media outlets. Finally, most of them agree that clickbait practices dilute some journalistic principles (Masip, Suau and Ruiz, 2021).

Aside from Codes of Ethics, can elements of jurisprudence give more insight on the challenges faced by media councils in the digital age? For this more practical chapter, our methodology has consisted in selecting six European press councils² and presenting some recurrent issues as well as specific cases to “online” journalism, which echo main EU challenges such as disinformation and hate speech. The following tackles the main common axes observed through press councils' decisions, which correspond to the different stages of the journalist's work.

A. The search and gathering of information

The Internet and more specifically social networks are continuously changing journalistic practices, first and foremost in the search for information. It would seem that most media councils consider user-generated content

will only deal with these posts if they were produced in their function of journalist. Complaints about posts that were written in journalists' role as private citizens are usually rejected [...] (Harder, 2020, pp.12-13).

² The Belgian CDJ and *Raad voor de Journalistiek*, the German *Presserat*, the Swiss Press Council, the Dutch *Raad voor de Journalistiek* and more sporadically, the French CDJM (which has no Code of its own), i.e., geographically and linguistically close councils. This comparative analysis was conducted until May 2021.

(UGC)³, i.e., non-professional material gathered on social networks and elsewhere, as a valid – albeit easy – source of information for journalists, as long as the latter respect their ethical duties. In the same way, 67.2% of journalists surveyed believe that public content available on social networks can be used directly in a piece of information, after requesting authorisation from the people involved (Masip, Suau and Ruiz, 2021). Moreover, UGC-related complaints are apparently linked to “usual” breaches, such as the non-respect for privacy, the rights of individuals (including to their image), the protection of people in fragile situations, etc.

Several media councils, including in Germany, have amended their Code of Ethics to take UGC (pictures, videos, reactions, testimonials, etc.) into account. The *Presserat* indeed states in its guidelines that « The Press bears responsibility for all its publications, including user-generated content. User-generated content must be clearly marked as such. Editors shall ensure compliance with journalistic principles if they detect violations through user-generated content or if such violations are pointed out to them by third parties. In the event that editors select or edit individual user-generated content, compliance with journalistic principles must be ensured from the outset » (2.7, 2021).

This first section on online sources will deal with the use of third-party opinions and pictures (sometimes referred to as UGC), hyperlinks and embedded content, as well as amateur videos to illustrate news items.

1. Third-party content (opinions and pictures)

The Flemish *Raad* has adopted a guideline on the use of information and images from social media and personal websites, which complements art. 22 of the Code (« The

journalist must take into account the rights of any and all persons mentioned in the reporting. He must weigh those rights up against the public interest⁴ in the information »). In summary, when the person involved has limited the access to information or images on social media or a personal website, this information may not be used in principle. The journalist must demonstrate a considerable public interest to justify its use and if there is no such overriding public interest, then he or she asks the person involved for permission. Even on publicly accessible pages, personal information or messages may not be simply used in journalistic reporting, as there is a difference in context, extent and impact (2019).

The journalist there takes a number of considerations into account before he or she uses this information by upholding the principles of respect for people's private lives; by using personal information or recognisable images only if it is justified by the public interest in reporting it (in particular to people in vulnerable situations); by taking into account that publishing information or images in a different context may hurt or offend people. This discretion does not apply to the use of personal messages of public persons on publicly accessible platforms or media. In any case, the journalist checks the provenance and the veracity of the information or the images he or she uses (2019).

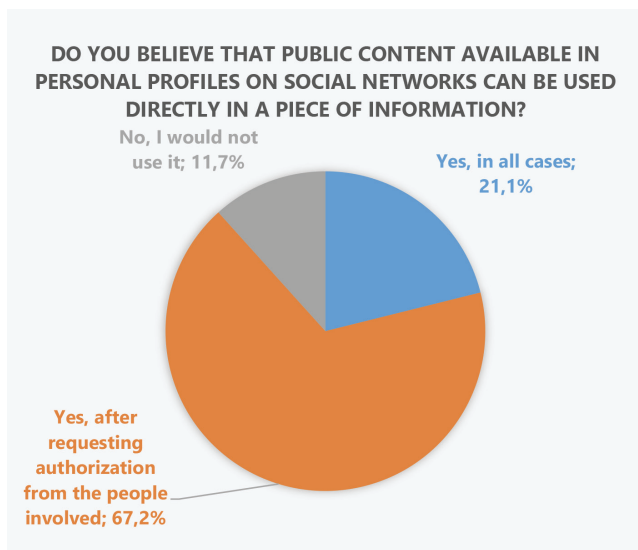
Regarding the use of pictures found on social networks, both the CDJ and the German *Presserat* explicitly state that the posting of a person's photo on its profile does not automatically imply tacit authorisation for reproduction. In other words, although such information can be freely accessible to anyone, it is not a sufficient reason to justify its publication (0599/13/2; 16-23). More specifically, for the Flemish *Raad*, it does not justify its publication in a different

³ We should note that we do not take into account here the UGC which are themselves – or which claim to be themselves – information contents (for example, citizen information blogs), which fall under “classical” self-regulation.

⁴ From the point of view of journalistic ethics, information is of general interest if it raises one or more issues for society as a whole or for one of its components. Some Codes use the expressions “public interest” or “societal interest”. These terms all mark the difference with particular interest. In any case, general interest is not the same as simple curiosity on the part of the public (2017).

context and to a wider audience (2014-07). The Swiss Press Council also points out that an image of personal nature does not acquire information value simply because it has been placed on the Internet. To put in simply, privacy is protected, even when it is spread online (43/2010, 34/2015). Frequent ethical breaches on the matter are for example to reuse a picture and to divert it from its initial context (2019-39) and/or to extrapolate it (47/2015).

An opinion of the Flemish *Raad* makes an essential distinction between photos taken from a Facebook profile (which is accessible to everyone) and photos taken from the private pages of the Facebook account (which are therefore not accessible). It seems clear that the latter type of photo is subject to prior authorisation. In contrast, regarding the profile photo that was made public, the *Raad* agreed that it could be published in a local newspaper given the equally local celebrity of the person concerned. The *Raad* is therefore making use of a presumption of authorisation to allow the photo to be published, as a public figure is concerned (2010-09, 2017-11, 2015-15, 2014-07).



Source : Masip, Suau and Ruiz, 2021

The general trend in the studied jurisprudence is that reusing a picture of a person either requires explicit authorisation from the author or a general interest justifying its use. Indeed, journalists should normally ask for permission to the person involved to use his or her picture, or to his or her relatives if it concerns a deceased person, a minor or any other vulnerable person (0568/20/1). Many councils have known cases where the combination of a blurred picture and other personal information (such as a first name, initials, the place of residence and/or the profession) had led to the identification of a person outside of its relatives (18-62). Moreover, it appears that each council has its own sensibility in balancing personal rights and public interest, but this is rather an usual ethical matter than a specificity of online journalism. Useful criteria for this balance can include the added value of information (vs the curiosity of the public) (2/2010), the public or private nature of the person depicted, the protection of vulnerable people (0817/14/2) or the (lack of) technical means implemented to prevent identification (18-64).

The jurisprudence of the Flemish *Raad* has also shown that regarding opinions, editors are free to include, publish and comment the viewpoints of third parties (for instance Facebook posts) which can hurt, shock and disturb through exaggeration and provocation. If the journalist introduces the post and argues why he or she published it, it forms a journalistic whole (2018-25). On the issue of asking for permission, the CDJ has emphasised in the past that a journalist could not be accused of having obtained a Facebook post unfairly (nor of having reported on it) after the verification of relevant information to the subject, as the post had already been widely publicised before (18-36). Can journalists extrapolate and deduce information from a social media profile? The Swiss Press Council has considered that reusing the elements of a Facebook profile and paraphrasing the user's behaviour in a correct way to ask legitimate questions (in this case, on the apparent admiration of a police officer for a Nazi general) was not an unethical journalistic practice (18/2020).

Can journalists publish hateful comments without asking for permission of the “authors”? The German *Presserat* has already stated that the complete identification (i.e., publishing both the name and the profile picture) of people who leave racist and xenophobic comments on the social media pages of news media is acceptable because the public interest outweighs these people’s rights. In this case, these posts are not private, but recognisably political statements made by users in publicly accessible forums in the context of a national debate on refugees (0779/15/2, 0977/15/2).

For its part, the CDJ found that the public broadcaster had not respected the image rights and privacy of individuals whose Facebook photo it had broadcast alongside a post illustrating a segment on the rise of Islamophobic comments on social networks. The Council considered that the convergence of several elements made it possible to identify these people who had not given their permission to broadcast their image. It also stated that while the dissemination of the post originally published in a public Facebook group was of general interest in the context of the purpose of the sequence, the same could not be said of the dissemination of the photo, which did not add any value to the information (16-50).

In a similar way, can journalists publish anonymous or pseudonymous reactions? In Germany, the question arose whether publishing comments signed by a pseudonym violated the principles of duty of care because someone could not defend itself against anonymous false statements. For the *Presserat*, the media didn’t commit an ethical breach because readers were sufficiently informed that the comments were taken from the Internet (0553/11/2, 0034/13/1). In other words, should media investigate the true identity of participants in their online forums? While the Swiss Press Council advocates for the identification of forum participants for reasons of credibility and respect for the public, it admits that it would be disproportionate to require the media to verify the information provided by Internet users (16/2012).

2. Embedded content and hyperlinks

Both the Flemish and the Dutch *Raad* mention hyperlinks and/or embedded content in their Codes and additional guidelines. In short, when a journalist places a hyperlink, he or she gives the necessary context and weighs up the importance against the interests that may be affected by the placing of this link. When he or she embeds the content of another website into his own reporting, he or she is responsible for the whole (2019). In other words, journalists who in their publications link to information of third parties need to consider whether the interest served by including a (hyper)link in the publication is in reasonable proportion to the interests that are potentially damaged as a result thereof (2019).

For the Dutch *Raad*, « with respect to hyperlinks in reactions of third parties, the editorial staff has a less far-reaching responsibility than when placing a hyperlink in an editorial piece, whereby a weighing up of interests must take place » (2012/48). For the Flemish *Raad*, « when a journalist or a website refers via a hyperlink to information from third parties, he or she is not automatically responsible for the content of the underlying information ». Indeed, « when placing such a link, he or she must weigh up the importance of the publication and the public’s right to information on the one hand against the interests that may be damaged by placing the hyperlink on the other hand » (2017-16). For example, the German *Presserat* has stated that publishing the link to the Spotify account of a deceased person lacked public interest and made readers virtually interfering into the private life of this person (1094/18/1), while the Flemish *Raad* has condemned incorrect and misleading hyperlinks to photos (2018-25).

On the contrary, linking the Facebook profile of a missing person in a media report was not considered as an ethical breach by the *Presserat* (2018/0009/18/2) and according to the Flemish *Raad*, quoting websites where music can be downloaded does not necessarily mean promoting them and

does not compromise fundamental values such as respect for human rights (in comparison with child pornography websites, for instance) (2004-06).

Finally, regarding embedded content as such, the CDJ has known an interesting case and considered that when a media reproduced an accusatory message in its entirety, it could not have been unaware of the nature of the remarks against the complainant, whose name was quoted in the dispatch. The CDJ noted that it was more likely to damage the honour or reputation of the person involved, since the media had chosen to publish a Facebook link (i.e., an embedded content) in the article that led to the entire accusatory message. The media should therefore have either integrated the complainant's point of view or solicited his point of view before publication. However, considering the polemical context in which the accusation was made, its secondary nature in the information and the goodwill of the media (which published a rectification in due time), the Council considered that the breach observed did not justify a finding of ethical misconduct (18-56).

3. Amateur videos (violent and sensitive content)

Journalism allows the public to know and understand facts, that sometimes reflect a violent reality which images (particularly filmed images) can convey even more vividly than other media. Nevertheless, the significant informational value of such images may outweigh their potentially offensive nature (18-40, 16-76). The general trend in this jurisprudence is indeed to differentiate the added value to information from click-baiting or voyeurism. The German *Presserat* dedicates section 11 of its Code to sensationalist reporting, including on acts of violence. In short, journalists should refrain from inappropriately sensational portrayal of violence, brutality and suffering and should respect the protection of young people. A report is inappropriately sensational if the person it covers is reduced to an object, to a mere thing (2021). The Swiss Press Council, for its part, mentions videos that can have a lasting disturbing effect on viewers (68/2019).

Most councils deal with this issue through the general obligations of respecting individuals' rights, privacy and human dignity. The CDJ recalls that ethics do not require the use of signage when violent images are broadcast, but that intrusion into the pain of individuals and the broadcasting of information and images offensive to human dignity should be avoided, except where relevant to the public interest. Furthermore, the question posed by the dissemination of harsh and violent images lies less in their sharing (which can be done by any platform, site or blog) than in the way in which a news medium gives them a journalistic added value that makes sense to Internet users. By using violent images without distancing them by inviting caution, or putting them into perspective (i.e., without trying to understand and explain, through journalistic investigation, where they came from, who the victim is, what he or she has done, why he or she has been subjected to violence), a media fails to exercise caution and removes any human dimension from the victim, transforming him or her into a mere object of information, thus undermining his or her dignity (16-13).

On the contrary, when a media uses violent images in a sober manner (without unnecessarily gruesome details) and puts them into perspective with commentary and/or prior warnings, it isn't responsible of an ethical breach (16-76, 16-75). It should be noted that for the CDJ and the German *Presserat*, the publication of a warning about footage that some readers may find distressing is not always sufficient to justify the reproduction of a violent video (0846/16/1). The fact that the images have already been widely shared on social networks is not an adequate justification either (0125/16/2; 16-13, 19-24).

Finally, should the public or private nature of the person involved be taken into account? For the Swiss Press Council, « even a dictator is entitled to his dignity ». Indeed, the Council considered that the publication of a wide range of sensational photos and videos on the violent death of Gaddafi only served the curiosity of the public. In summary, for the Council, « a

historical event does not become more historical as long as it is shown from different angles to bring it closer to the public eye » (2/2012). In 2016, the CDJ considered that broadcasting the footage of the assassination of the Russian ambassador to Turkey (i.e., footage of a politically motivated assassination of a public person in the exercise of his or her public duties) was, by its nature and impact on international politics, of public interest and had a significant informational value (16-75, 16-76).

In summary, the aforementioned jurisprudence identifies as benchmarks the added value of the information that the image conveys, the identifiable character of the persons involved and the fact that the informational value of the image lies in the distancing, in a journalistic perspective that seeks to understand and explain what appears on the screen, in an invitation to caution (CDJ, 2017).

B. The dissemination of information

1. Online specific issues

A first criterium to take into account in the online dissemination of information is speed. Indeed, publishing information (almost) immediately can bear serious ethical implications, notably in regard to respecting people's rights and privacy.

The CDJ recommends in its Directive on the identification of persons in the media that, as far as possible, before broadcasting or publishing the names of victims, it should be verified whether their families have already been informed (2015). If such a check has been carried out and the information is intended to be disseminated online and on social networks within a short period of time after the event, the CDJ calls on journalists to pay even more attention to the balance between the general interest of immediate identification and the particular interest of family members who, given the context, could not yet have learned the news (20-04).

Another interesting case is live reporting, which has become common for news media on social networks, from daily reporting to covering emergency situations. When a media reported about the terrorist attack on the Berlin Christmas market in 2016 on Facebook Live, the German *Presserat* found that due to the dimension of the event, there was a high public interest in the event and its consequences. If the media showed in words, video and pictures the destruction caused by the attacker, the protection of the personality of those affected was not violated because the focus of the video recordings was not on inappropriately sensational elements (1108/16/2).

For its part, the French CDJM has already dealt with a complaint regarding a live tweet, i.e., « a journalistic exercise that has become common on [Twitter], consisting of a journalist reporting an event minute by minute using texts, photos and short videos (usually unedited), which he or she publishes from his or her smartphone without waiting to return to the newsroom ». When a local media reported in real time on the rescue operation of an obese person, it was accused of attracting their audience by planning to show the person involved in a difficult or even degrading situation. Even though the promotional turn of phrase of one tweet was seen as clumsy by the Council, it considered that this news item was reported in a way that respected the person's privacy and dignity, who was never visible in the images published (20-286).

Furthermore, news media are increasingly using new formats to attract younger audiences on social networks. When a YouTube video published by a broadcast media on the debate related to abortion in the Netherlands was pointed out as suggestive, the Dutch *Raad* reminded that journalists are free in their selection of what they publish, which also implies that it is up to the editorial staff to determine from which angle(s) a subject is discussed and in which context the report is placed. In other words, no journalistic norm forces editors to give the floor to (all) supporters and opponents of a social issue.

Furthermore, in view of the set-up of the video, the intention and the nature thereof are sufficiently clear to the viewer: in a short period of time, an explanation about abortion is given to a broad target group and in particular to young people, as demonstrated by the language, tone and design of the message (2020/36).

2. Mis- and disinformation?

As summarised by the European Regulators Group for Audiovisual Media Services (ERGA), «disinformation concerns (a) false information, (b) disseminated with a specific intention (malicious or bad faith) (c) and causes certain harms » (2020, p.16). Disinformation and related concepts are not specifically mentioned in ethical Codes, since these documents have a strong focus on defining values and standards that journalists should respect. Indeed, « typically, these codes or guidelines are more concerned about the truthful presentation of events and facts (according to news-making criteria and newsroom routines) than on veracity *per se* [...] » (*ibid.*, p.48).

Most media councils deal with complaints related to respecting the truth and verifying information on a daily basis. In the field of online media and social networks, complaints relate on one hand to a lack of verification, due to time pressure or simply negligence – which could be associated with misinformation – and on the other hand to click-baiting practices – which could be a form of disinformation, even though it exaggerates the journalist's intentions. Both illustrate the latter's relations with his or her sources.

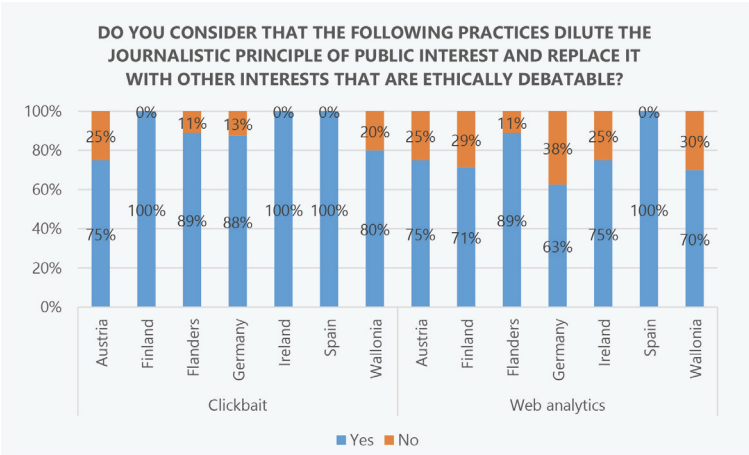
a) The lack of verification

Among the studied media councils, the CDJ has known the most related cases. The Council has already dealt with media releasing a wrong illustration (16-41) or even unverified information that later proved to be hoaxes created by a parodic news website (16-28, 16-29). In such cases, the CDJ reminded that journalists have a duty to respect the truth,

which includes checking information before publication. Urgency, such as the fact that parody sites play on the confusion between reality and fiction, does not excuse this lack of verification. The information produced by such sites does not require journalists to take any steps other than those they normally use in the exercise of their profession. Similarly, while the publication of information by other media may provide a clue to its veracity, it is by no means an absolute reference for cross-checking sources. However, journalists and media are not immune to error. In correcting it, they meet another part of their ethics (see below). Considering that the media acknowledged their error and that the disputed news items did not raise any major issues, the CDJ considered these three complaints unfounded. For its part, the German *Presserat* considered that the unchecked and completely uncritical dissemination of a Facebook post by a media was a gross violation of the due diligence required in research. In that case, the reference to a possible affiliation of the author of the post to the Salafist scene was « obviously a rumour », but it was not questioned by the editorial team and rather passed on without criticism (0014/18/1). The CDJ has also highlighted the importance of cross-checking the credibility of witnesses who contact journalists directly via social networks, especially when serious allegations are made (17-02). Whereas the *Presserat* qualifies this as a violation of the journalistic duty of care, the CDJ considers it both as a violation of the respect for the truth and as a lack of prudence.

b) Click-baiting

Although click-baiting – sensational images, headlines and titles which are often misleading and/or manipulating, in order to encourage users to click and gain more information about the content (ERGA, 2020, p.56) – is not specific to online journalism, it has become an increasingly frequent practice in the online sphere. And if it is undoubtedly linked to the non-respect for the truth, can it however be considered as disinformation *per se*?



Source : Masip, Suau and Ruiz, 2021

For both the German *Presserat* and the CDJ, symbolic pictures should be clearly indicated, as they can be confusing or worse, cause damage. For example, the CDJ noted that an illustration which mentioned the conviction of an aggressive beggar created confusion between the convicted person and the person depicted. The caption « pretext photo », which was intended to indicate that the situation shown had nothing to do with the one mentioned, was not sufficient to avoid associating the person photographed with the person convicted. Although blurred, the person was recognisable and associated with serious acts to which he was a stranger **(17-34)**. In the German case, the symbolic picture used did not adequately reflect the events described in the article and was thus likely to grossly mislead the readers. For the Council, the picture should not have been used in this context and irrespective of this, the photo should have been marked as a symbolic image **(0374/19)**.

It is worth noting that guideline 2.2 of the German Press Code focuses on symbolic photographs (« If an illustration, especially a photograph, can be taken to be a documentary picture by the casual reader, although it is a symbolic photograph, this must be clarified. For this reason, substitute

or auxiliary illustrations (i.e., a similar subject at a different time, or a different subject at the same time, etc.), symbolic illustrations (reconstructed scenes, artificially visualised events to accompany text, etc.) and photomontages or other changes must be clearly marked as such either in the caption or in the accompanying text ») (2021).

The CDJ considers that even if a headline cannot capture all the nuances of an article by its very nature, it is nonetheless an element of information in its own right and it must, as such, respect the Code of Ethics. A misleading headline could thus be a violation of the respect for the truth, as well as an omission of information or an approximation **(18-32)**. Similarly, the Dutch *Raad* considered that a media had acted negligently because an accusatory headline was not justified in the article **(2020/22)**.

In Germany, the coverage of the Covid-19 sanitary crisis led to several ethical breaches, including on misleading headlines. One case concerned a headline which was no longer covered by the facts presented in the article **(0071/21/1)** and another one suggested a false information on the link between vaccination and infertility, although the content of the article nuanced the said false information **(1302/20/1)**. In addition to not respecting the truth, both articles violated section 14 of the German Press Code, which states that « reports on medical matters should not be of an unnecessarily sensationalist nature since they might lead to unfounded hopes or fears on the part of some readers » and that « research findings that are still at an early stage should not be portrayed as if they were conclusive or almost conclusive » (2021). Regarding the second case, the *Presserat* also stated that given the usual click behaviour of users, the editorial team could not only rely on the fact that the public could read further the content of the article. In this respect, the Facebook post was decisive for its deontological assessment.

Archive material can also be misleading when taken out of its initial context. For example, the Flemish *Raad* considered that

suggesting that photos taken from a movie were actually a photoshoot for Playboy was in contradiction with its guideline on the use of archive material, as the editor didn't correctly reflect the context and the origin of the images (2018-25). This guideline states that archive material must always be labelled as such if the use of said material could be misleading for the audience (2019).

Similarly, reusing or making photo- or video montages (i.e., manipulating, enhancing or cropping a photo or a video) could lead to a misrepresentation of reality. The Dutch and the Flemish *Raad* refer to it explicitly in their respective Codes (« Image manipulations may not be misleading. The reader and viewer must be made aware of anything that causes an obvious change to the image »; « Any editing of images that changes the journalistic content of an image or of a document must be clearly identifiable for the viewer/reader, who may not be misled in any fashion [...] »). The constant jurisprudence of the CDJ notes that « it is unethical to allow another photo to be altered to artificially support a story presented by the journalist » (13-34). The fact that a situation is fictitious or caricatured is not always apparent from the context in which the image is published or broadcast, which is why a media should always inform the public when it decides to modify a picture. Otherwise, it violates the duty of honesty, results in the elimination of essential information to the understanding of the facts and can potentially harm the honour and reputation of the depicted person (18-03).

For its part, the French CDJM recently dealt with a complaint regarding a video capsule (i.e., an edited video through a selection and arrangement of images to constitute a relevant informative object, and above all accompanied by written indications, specifying the sources used, the place and date of the event, and describing and contextualising what is seen). The complainant considered that the video induced a serious form of misinformation because the media deliberately omitted several passages that would allow the audience to have a different reading of the scene. The Council declared

the complaint unfounded because the video showed the full course of the event and didn't omit the racial dimension of the event, even though it wasn't presented as the essential information in the video (20-093).

3. Native advertising

The CDJ, as well as the Flemish *Raad*, the German *Presserat* and the Swiss Press Council all refer explicitly to the need of separating editorial content from advertising in their Codes of Ethics. Only the Dutch *Raad* has taken another approach, passing on all complaints regarding a possible confusion between advertising and journalism to its national advertising standards authority. Even though it is competent for it, the *Raad* has not received any complaints regarding native advertising so far. This could be explained by the necessity of a personal stake to lodge a complaint which, in this instance, could be rather difficult to prove (see chapter 4). It can also be noted that among the many cases of inadmissibility observed by the French CDJM, there are frequent confusions from the public between promotion or publicity and information on new initiatives (2020/09/30).

In its recommendation on the distinction between advertising and journalism, the CDJ notes that the quotation of brands, companies, personalities, institutions and others must meet journalistic criteria only, that the juxtaposition of journalism and advertising must be formally differentiated so as to avoid any confusion in the public mind (whatever the medium) and that ethical standards prohibit journalists from collaborating in advertising. The recommendation states that the application of these general rules to native advertising is problematic because it takes a variety of sometimes subtle forms in rapidly changing web pages that editorial managers sometimes find difficult to control, unlike a paper edition. Moreover, by deliberately inserting the promotional message into the journalistic content, it plays on the confusion of the public. However, native advertising is a financial resource for publishers that cannot be neglected (2015).

The CDJ thus provides clarifications: the production of online content called native advertising must be carried out by different teams from those producing journalistic information (journalists may not be involved); a mention such as « advertisement » must indicate the intention to advertise on the first viewing of the content concerned and on the secondary page if the content is developed there (given the variety of native advertising approaches, synonymous statements may be used as long as they clearly indicate the advertising intent of the content and the advertiser, in the broadest sense); the ethical rules regarding the visible or audible differentiation between advertising content and information in order to avoid confusion on the part of the public naturally apply to native advertising (2015).

The CDJ has repeatedly emphasised in its jurisprudence on native advertising that media and journalists, in situations where they are required to take a stand in relation to companies or persons with whom they have functional links (e.g., a shareholder), would benefit from mentioning the latter for the sake of transparency towards the public. Likewise, considering that an accidental juxtaposition between advertising and information is always possible, the CDJ recommends that the formal differentiation between advertising and editorial spaces be further strengthened (with a distinct block of colour or a marked dividing line, for example) so as to avoid the risk of confusion at first sight for the public **(19-18)**. In a more recent case, the Council found that a media had lacked independence by withdrawing an article under pressure from an actor outside of the editorial staff, who was also an advertiser. The Council also noted that the media did not allow its readers to distinguish effortlessly, on its website, between advertising content and editorial content, at the risk of creating confusion between this purchased space and the work of the media's editorial staff **(21-03)**.

For its part, the Swiss Press Council has published a dozen of notices on native advertising in the last few

years. Since 2017, its guideline 10.1 explicitly states that « Advertisements, advertising programmes and content paid for or provided by third parties must be clearly and visibly distinguished from editorial contributions. Insofar as they cannot be unambiguously recognised optically/acoustically as such, they must be explicitly designated as advertising ». The Council considers that mentioning that an article is the result of a collaboration is not enough, as the average reader does not know that such a collaboration is nothing but advertising. As a matter of principle, it recommends that the terms « in collaboration with » or « sponsored content » should be dropped altogether, as they disguise the advertising nature of the article and only undermine readers' trust in journalism. Publishers should therefore always replace them with the designation « advertising », which avoids any misunderstanding [\(4/2019\)](#).

Furthermore, the Council notes that in these forms of advertising, the term « sponsorship » is often used incorrectly, as sponsorship finances editorial articles without influencing their content. Purchased texts, on the other hand, are advertising. This conflation of sponsorship and advertising also damages the credibility of journalism [\(67/2019\)](#). In short, the Council regularly addresses problems of separation of editorial content and (native) advertising and is concerned about the increase in proven cases of concealment of commercial content, which undermines the credibility of the media and therefore also their commercial basis [\(42/2020, 28/2021\)](#).

Infringements of the principle of the division between advertising and information are also very common in Germany, but this problem is most common with magazines rather than with newspapers or online outlets **(see chapter 4)**. The only native advertising case the *Presserat* has known as of now was declared unfounded because the publication was recognisable as an advertisement through a clear reference [\(0826/17/3\)](#).

4. The use of artificial intelligence

The use of algorithms applies to all stages of the journalistic work and therefore raises questions on several ethical issues, but no media council has (yet) amended its Code of Ethics to take responsibility for data journalism, the use of algorithms, AI or robot journalism into account as of late 2021.

Furthermore, no other council than the Finnish one has published an additional guideline or a statement on the use of algorithms in journalism (more specifically, on news automation and personalisation). It would seem that most media councils are « waiting and watching » before doing so, although some of them have already discussed the possible need for guidance (**see chapter 4**). It will thus be interesting to look out for possible guidance and jurisprudence in this field in the upcoming years.

C. After the publication of information

1. Rectification

As explained by Hulin and Stone, « The Internet allows a fast transmission of information and therefore mistakes from journalists are now quickly transferred and duplicated. The good news is, however, that, contrary to print media [...] the Internet allows for an immediate correction. But it is very difficult to estimate how many people have read the mistake and moreover, even with a correction, a mistake can stay in the cyberspace for ever as no information is deleted from the Internet » (2013, p.99). In 2001, the Swiss Press Council already pointed out in its jurisprudence that the correction of an article that appeared in the print edition of a media outlet had to be published online if the main article had also been published online (46/2001).

In complement to article 6 of its Code (« The journalist must always promptly rectify any relevant factual inaccuracies or distortions reported by him [or her] »), the Flemish *Raad* has

adopted a guideline on the corrections of online publications: « If serious mistakes have been made in online reporting, it is not enough to remove the article or to update it, but the journalist needs to acknowledge the mistake and publish a rectification » (2019). Section 3 of the German Press Code on corrections (« published news or assertions, in particular those of a personal nature, which subsequently turn out to be incorrect must be promptly rectified in an appropriate manner by the publication concerned ») is also complemented by a guideline on requirements (« The reader must be able to recognise that the previous article was wholly or partly incorrect. For this reason, a correction publishing the true facts must also refer to the incorrect article. The true facts are to be published even if the error has already been publicly admitted in another way »; « In the case of online publications, the rectification is to be linked to the original content. If the rectification is made within the publication itself, it must be marked as such ») (2021).

For its part, the CDJ states in article 6 of its Code that editors shall explicitly and promptly rectify any erroneous facts they have disseminated. In a recommendation published in 2017, the Council explains that the rationale for this ethical standard is twofold. On the one hand, it is part of a perspective of research and respect for the truth. Mistakes can be made and not every mistake is a deontological error, which is why the necessary correction of previously published erroneous facts has been instituted. On the other hand, rectification helps to ensure the credibility of the news media and strengthens the relationship of trust with the public. It distinguishes the journalistic media from other information flows in an increasingly competitive environment. Indeed, it is to the credit of journalists to acknowledge their mistakes and to correct them spontaneously. However, the emergence of digital media, including online information, raises new questions (see below). The speed of information dissemination and the current technical possibilities are challenges that journalistic ethics are confronted with every day (2017).

Among the general principles, the CDJ notes that all media are concerned by rectification, that it requires the existence of an erroneous fact, that it takes place spontaneously, that it must be prompt and explicit, that it must be visible and that it is neither an update of the information nor a right of reply. The recommendation also provides three clarifications for online information and other digital media, namely that the withdrawal or simple correction of the erroneous fact is not an explicit correction, that the correction should be located, at the media's choice, in the same publication or on another web page with a hyperlink, and that it should, if possible, relate to the URL address when it also contains errors (2017).

The jurisprudence of several councils offers precisions regarding rectification. The German *Presserat* has already issued a warning to a media because even though it had corrected and supplemented an online article, it failed to do it as well for the related Facebook post (0157/20/02). The Dutch press Council considered that amending an article two months after publication was too late, as it should always take place as soon as possible (2021/18). In short, the studied media councils all agree that it is insufficient to only correct the false content. In accordance with its recommendation, the CDJ has noted several times that if a media has quickly corrected its error but did not allow those who had already consulted the article online to become aware of the problem with the information, the rectification was then not made in an explicit manner (17-17).

Indeed, deleting the erroneous content without notifying the public, which is facilitated by web publishing, does not allow people who have already consulted the article to clearly see the mistake, unlike a correction by the editorial staff, which explicitly acknowledges the error and transparently informs the reader of the changes made to the news item (16-41). Similarly, for the Swiss Press Council, editors should correct misinformation in current media reports without delay (regardless of the distribution channel used to disseminate them). They should preferably include online corrections

to relevant misinformation as an additional note, making it recognisable to the audience, rather than merely overwriting the previous version (29/2011).

As seen above, the CDJ has already considered several complaints regarding honest (nevertheless embarrassing) mistakes unfounded in part because the media had acknowledged their error and rectified it immediately, but mostly because the disputed news items did not raise any major issues (16-41, 16-28, 16-29). In a constant jurisprudence, the Swiss Press Council has underlined that no correction was required in the case of a simple lack of precision which did not appear to be decisive for the reader's understanding (9/2021).

2. Content moderation

News media now contain spaces open to various forms of dialogue with or between Internet users. These forums include spaces for reaction to articles open to Internet users on media sites (and, insofar as they claim to be news, on sites other than those of the media); spaces for discussion open on the same sites on themes decided by an editorial staff; chat rooms for dialogue with guests or journalists; chat rooms for dialogue during a live coverage of events (sports, press conferences, trials). These forums constitute new spaces open to freedom of expression that are constantly evolving with the evolution of technologies and which contain two types of expressions: on one hand, those that involve a journalistic approach (where journalists are active and deontology is concerned) and on the other hand, those that give voice to the public while being disseminated on media sites, which are not the work of journalists or editorial offices (where deontology is concerned but under the responsibility of the media and not of individual journalists) (CDJ, 2011).

Content moderation encompasses the ways in which the media and their newsrooms manage the expression of Internet users in order to respond to the risks of abuse in the context

of the debates they authorise to be organised, i.e., filters and other types of immediate intervention aimed at eliminating messages that are racist, discriminatory, negationist, insulting, inciting to hatred or violence, or offensive to the dignity of persons, etc. (CDJ, 2011).

There are two types of moderation: « *A priori* moderation is carried out when the message has not yet been made public on the blog or forum: this requires a systematic examination of all the contributions and can therefore quickly prove to be long and tedious. *A posteriori* moderation allows all messages to be disseminated, with control being carried out spontaneously and sporadically. However, it may result in a message with illegal content remaining accessible on the forum or blog before it is deleted » (Degand and Grevisse, 2012, p.236). The CDJ recommendation on open forums states that « *A priori* moderation of exchanges is the norm for discussion forums, dialogues with a journalist or guest, and live events coverage. Where it is not possible to moderate *a priori*, reaction areas to articles should be moderated *a posteriori* with the possibility of immediate intervention » (2011). In Switzerland, most media outlets interviewed by the press council practice *a posteriori* moderation by deleting illegal or problematic comments after the fact, whether they have been spotted by the host, users or an external content verification company (52/2011).

As researcher Raymond Harder explains it, most media councils tend to take a cautious approach regarding user comments. Indeed, « media councils have set even higher standards for these to be eligible to be complained about, as this is not considered editorial content. Six organisations (North Macedonia, Albania, Georgia, Estonia, Ireland and Slovenia) do not deal with user comments at all – neither on social media nor on the media outlet's website. In four cases (Croatia, Finland, Kosovo, and UK's Impress), we see that media councils would not take complaints about user comments on social media pages of news outlets, whereas they will deal with complaints about user comments that are

displayed on the media outlet's own website. The reason is that media outlets have more control over which comments are displayed here than on social media. Especially when media outlets state that user comments are pre-moderated (when they are manually screened before they become visible), the contributions from the public are regarded as 'letters to the editor', hence, editorial content (or at least editorially approved content) » (2020, pp.12-13).

Furthermore, « When user comments on media outlet's social media (on a newspaper's Facebook page, for example) can be complained about, this usually relates to the moderation thereof. A user comment as such would not be considered, but when a complainant has asked the media outlet to remove a comment (perhaps because they were being harassed or falsely accused of something) and the media outlet refuses to do so, that decision can be complained about. After all, not removing it would be a sign of approval and therefore an editorial decision. We have to note that the question of whether or not to accept complaints about user comments in any form is mainly a hypothetical matter. Receiving a complaint about user comments is rather exceptional for media councils » (Harder, 2020, pp.12-13).

Nevertheless, all studied press councils mention the need for content moderation in their Code of Ethics or additional guidelines. For example, the CDJ states that « The decision on whether or not to publish, in whole or in part, reactions from the public, as well as the management and moderation, preferably *a priori*, of online forums and dialogue spaces, shall be the sole independent responsibility of the editorial staff. The editorial staff shall respect the meaning and spirit of the comments reported » (2017).

According to guideline 2.7 of the German Press Code on UGC, « The editorial staff is also responsible for content contributed by users. This also applies to factual assertions made by a reader in an online forum which subsequently turn out to be false. The permanent holding up of false factual

assertions is not permissible from the point of view of press ethics. It violates the personal rights of the person concerned according to paragraph 8 of the Press Code » (0728/15/3). Similarly, the Swiss Press Council states in its milestones that « The same ethical standards apply to all readers' comments, whether they are made online or in print. It is the content that matters, not the form of dissemination. As a rule, therefore, online comments must be signed just like traditional readers' letters » (52/2011).

The jurisprudence of the studied media councils recognises that without being journalists, Internet users express themselves on media sites, which entails ethical requirements for these media. Whereas the CDJ, the Swiss Press Council and the German *Presserat* seem to have only dealt with complaints related to a lack of moderation (or under-moderation), the Dutch and the Flemish *Raad* have mostly dealt with claims for an over-moderation.

a) Under-moderation

In the case of a lack of moderation, complaints are mostly filed by individuals whose interests have been harmed by other users' comments. As summarised by the Dutch *Raad*, editors cannot be expected to check all reactions beforehand, but they may decide to remove comments once they have been posted. In this respect, user comments are not comparable with printed letters to the editor, where an editorial selection is always made. Furthermore, the German *Presserat* states that readers are expressly encouraged to provide information if reader comments or reports violate the terms of use (BK2-16/09).

How and when should media moderate to prevent this from happening? The CDJ, which has an extensive jurisprudence on the subject, specifies that as far as social media are concerned, « only a post-moderation is possible » (13-46). Furthermore, the Council has suggested several times that post-moderation of comments should be nevertheless

pro-active: the editor may for example close the comments area in order to stop exchanges that cross legal or ethical boundaries (16-39) or to prevent any predictable abuse (16-44). The Swiss Press Council, which has also a dense jurisprudence on the matter, has stated several times that media had not violated their deontology by deleting (or not publishing) readers' comments and by blocking their access to the comment columns for a limited period of time (51/2019, 79/2020).

Who should moderate? The CDJ has already considered that when a moderation tool proves to be insufficient (e.g., by not properly filtering several racist, discriminatory or abusive messages) and the media outlet that has become aware of it (because, in this case, other users have signaled it) does not take measures to solve it quickly, the moderation obligation has not been met by the media, which is responsible of a deontological breach (17-17). This decision emphasised the need of human moderation to supplement algorithms.

What is there to moderate? News media have to moderate illegal and/or harmful content (such as hate speech, anti-semitism, incitement to hatred or violence, discriminating content) (see chapter 6). As the CDJ recalls, « In the case of opinions, the principle is that of freedom of expression. Limitations to this principle must remain exceptional. Some expressions are prohibited by law and their legality must be assessed on a case-by-case basis. Opinions that incite hatred and violence or the dissemination of ideas based on racial superiority or hatred are illegal, taking into account both the intention of the speaker and the context » (14-18). Similarly, the Swiss Press Council considers that « freedom of expression should be given the widest possible scope ». Therefore, editors of online comments should only intervene if they are of a seriously discriminatory nature (8/2016). The German *Presserat* has for example considered that « mentioning the religious orientation of Hamas does not generally discriminate against all followers of [Islam] » (BK2-16/09).

Furthermore, « As a general rule, when a moderator may legitimately doubt the nature of a message, his or her responsibility is not automatically implicated by the necessarily personal assessment he or she makes. Even if, exceptionally, a message that should have been deleted slips through the net, this does not constitute a breach of ethics in relation to the general obligation of moderation. This would not be the case in the event of negligence or systematic omission » (14-18, 13-46, 15-23). In summary, for the CDJ, the deontological obligation to moderate comments remains « a best effort obligation » or an obligation of means. Indeed, the Council accepts the fact that a problematic comment may have escaped the attention of the media, but it condemns negligence or systematic omission (for example, when the editor failed to address in a reasonable timeframe several comments that clearly and openly incited to racial hatred and discrimination) (16-32, 15-09).

The CDJ, the German *Presserat* and the Swiss Press Council thus provide a clear jurisprudence in which they take the context of the messages into account. The councils make a distinction between usual and typical insults (although serious) that can usually be found in the comment's section of online media and what constitutes a genuine incitement to hatred or a violent or defamatory content (14-18, 19-09, BK2-16/09). Furthermore, the German and Dutch councils emphasise that serious accusations or defamatory content against a recognisable person via a reaction in a discussion space could lead to ethical breaches regarding respect for the truth and personal rights (0728/15/3).

Finally, could news media be blamed for allowing (or not deleting) anonymous comments? The Swiss Press Council considered the issue at length in 2011 and in summary, it decided that « As a rule, online comments, whether in editorial forums or in reactions to articles, must be signed »; « In rare cases where the author of a comment has legitimate reasons to fear for his or her privacy, integrity and that of his or her sources, a pseudonym is permissible as long as the

editorial staff knows his or her real identity »; « In accordance with the principle of proportionality, it would be excessive to require identification in discussion forums, since their very functioning (immediacy, search for public spontaneity) makes such a requirement unrealistic. But in this case, a *priori* moderation must ensure that anonymity is not abused to make defamatory or discriminatory comments » (52/2011). In its jurisprudence, the Council has also stated that « the verification of the identity of participants in a discussion forum is certainly desirable, but it would be disproportionate to require it » from the media (16/12).

b) Over-moderation

The other tendency is, a contrario, an over-moderation of content. In this case, the public is restricted in its use of a discussion forum. In short, according to both councils, as far as the general terms and conditions of a medium are deemed reasonable (for example, the Flemish VRT excludes swearing and personal attacks towards journalists), editors can freely remove harmful or insulting comments without motivating it, as users have accepted these terms and conditions to be able to participate in the said forum (2008-09; 2008/38, 2013/06).

Furthermore, the Dutch Council has already stated that a medium should motivate its decision when blocking an IP address (for example towards “sock-puppets” users). If the user has been given a sufficiently detailed explanation regarding the IP ban, the medium has not committed a deontological breach, as it has motivated its decision (2016/30, 2017/29). It is worth noting that the Swiss Press Council also considers that « If [an editorial office] imposes a publication ban on individual persons, groups of persons or institutions in a medium, this can violate the principles of the free formation of opinion, plurality of opinion and fairness. There must be very good reasons for a publication ban » (11-2012).

In summary, all studied councils have an explicit provision on content moderation (except for the German *Presserat*, which deals with UGC in its whole) and consider that moderation is an obligation of means and that post-moderation is the norm on social media. They all seem to distinguish insulting language, protected under freedom of expression, from violent and hateful comments, which engage the liability of the media.

D. Are Codes of Ethics outdated?

It should be reminded that most Codes (i.e., basic ethical principles) don't specifically reflect online practices. And while most of the councils we have focused on in this chapter have adopted recommendations or guidelines on online journalism to complement their "generic" Code, it is nevertheless not a majority trend among media and press councils. Researcher Raymond Harder (UAntwerpen), who has been working for the Flemish *Raad* as part of the *Media Councils in the Digital Age* project, believes that the lack of integration of online media and social media-related issues in Codes of Ethics is due to several reasons (June 21st, 2021).

First of all, « most press councils think the Codes are enough because "online" situations would not be so different after all ». Secondly, reviewing a Code of Ethics usually takes way more time (see below) than publishing a statement or a complementary guideline on a specific topic, which a number of councils have already done. Finally, many councils have highlighted online-related issues in their jurisprudence, which is also complementary to other binding texts (see above). In short, according to Raymond Harder: « If we compare ethics and the Law, a Code would be similar to the Constitution and the guidelines to laws, while jurisprudence plays its own role in parallel » (June 21st, 2021).

For example, the only Code revision introduced by the Irish press council in the last five years has been the inclusion of reference to the reporting of suicide. As ombudsman Peter Feeney is conscious that the Code needs revision to reflect

that the majority of incoming complaints refers to online publication, he is hoping to start a Code review process in 2022 (October 19th, 2021).

For its part, UK regulator IMPRESS launched a review of its Code with a public call for evidence in late 2020, followed by a series of workshops with civil society organisations and a public consultation in late 2021, which will result in a new or revised code expected for the Spring of 2022. The call for evidence took several issues into account, notably « journalism online », to determine « whether the [current] Code reflects the realities of news gathering and publication online, with particular focus on Artificial Intelligence (AI), data and open-source journalism; the use of social media accounts, groups and pages and whether the Code is applicable to different kinds of news providers, including non-professional and citizen journalists » (2020).

What prompted this first review? As explained by Lexie Kirkconnell-Kawana (Head of Regulation), the IMPRESS Code Committee began to think of revising the Code⁵ around 2018, in response to the type of complaints and requests from the public the self-regulator received: « There was this sense that some aspects of the Code maybe didn't match experiences or that there were continued breaches and thus learnings that needed to take place [...] and rather than to do it bit by bit, we decided to take a wholesale review of the Code and to re-engage with the public, civil society groups⁶, academics,

⁵ When IMPRESS was founded, its first task, before having any members to regulate, was to develop a Code. At the time, there were already several ethical Codes « floating around », from the Press Complaints Commission (the predecessor to both IMPRESS and IPSO), the National Union of Journalists and many newspapers. IMPRESS wanted to « start from scratch » and thus engaged in a year-long project that included comparative research, talks with civil society stakeholders, academics, journalists and publishers, as well as a range of public surveying « to understand the public's priorities for what a modern press Code should address » (July 2nd, 2021).

⁶ According to Lexie Kirkconnell-Kawana, « There is a need to have different points of contact with the public and stakeholders. And to get meaningful participation, you need to provide a range of forums for people to participate. For example, civil society organisations represent a significant proportion of the public, as they capture their views quite well. IMPRESS represents various interests as a press regulator and not just the interests of its members (i.e.,

publishers to understand how journalism had changed in the last few years » (July 2nd, 2021).

The initial Code was indeed developed with print media in mind and the vast majority of IMPRESS members are digital natives, with only some of them having print titles. Moreover, there has been a change in conversation in the UK about issues of discrimination and privacy, as well as a series of various social changes in the last few years (see below). The goal of this revised Code is thus, on one hand, to better reflect digital journalism practices as well as to ensure the needs of publishers and to respect the freedom of the press, and on the other hand, to meet the needs of the public and the rights of individuals (July 2nd, 2021).

But is there a need for a distinctive deontology for online journalism? For Lexie Kirkconnell-Kawana, « there are lots of ways in which journalism has changed in the last few years, mostly in terms of interacting with the audience, which needs to be accounted for in ethical Codes ». Specific issues such as the use of algorithms (which implies an understanding of the practices, editorial responsibility and transparency) or online corrections could thus be addressed in this revised Code (July 2nd, 2021).

In a transversal approach, we've addressed various issues related to online journalism throughout this report and identified common trends and differences in the application of journalistic ethics by self-regulatory bodies. It is worth mentioning that other issues, some of them specific to the online sphere, include – among others – the use of social networks by journalists and the « right to be forgotten ». Without going into detail about it, we can note that on this last point, the Flemish and Dutch press councils have both amended their Code of Ethics to take this issue into account.

publishers), but also the public, whose needs also need to be balanced against the needs of journalists ». On this matter, she notes that « a lot of ethical Codes often reflect the best interests of the industry and were designed to protect its interests » (July 2nd, 2021).

For the latter, « If journalists are requested to anonymise archived articles or to remove these, then in exceptional cases only will they allow for the public interest of archives of the highest level of completeness and reliability to be outweighed by the private interests of those who make the request » (2019).

E. Webinar key-points (by Pauline Steghers)

How have been press and media councils reacting to the transition of journalism into the online world? Do all councils need to adjust their Codes of Ethics? Should a shift of the ethical standards be at least examined? Or can their jurisprudence answer all of the new questions brought by journalism in an online environment? As a reminder, IMPRESS developed a 10 principles-Code which took effect in 2017. Even if the regulator was already conscious of the online element at the time, it did not see it as the principal issue at stake. This led to a first reassessment of the Code in order to ensure that the angle by which IMPRESS tackled the digital issue was adequate and responding to the specificities of the online world and to a digital-driven press market. It resulted that the issues outlined in 2016 were still relevant, however the question was raised as to how the practices may have changed in the meantime.

While revising the Code, it appeared that one area required further inquiry, namely **the accuracy provision**. There was indeed no disposition stating that the publishers had to contribute to true facts, but it was rather indicated that all reasonable steps had to be taken in order to ensure accuracy. This raises the question of the definition of « reasonable steps » in a vast pace digital press world. This need to reassess the accuracy provision took place in the context of a fragmented UK press market, where the previously known hierarchy had fundamentally shifted.

Another key issue at stake is **privacy**. It is noticeable that the public relationship with privacy has shifted, as people now

have their own expectations on matters such as the right to be forgotten, archives or digital forums. This raises the question as to what a reasonable expectation of privacy might look like when sourcing the news in a digital environment. The growing importance of the privacy issue is considered by IMPRESS as an opportunity for public education in that area, in order to make people know more about their privacy rights. The question has been asked as to whether regulation should protect privacy more or should be more accommodate around this principle. According to Lexie Kirkconnell-Kawana, the principles regarding privacy do not need to change. However, the contextual factors on what the reasonable expectation of privacy is has changed a lot online. Regulators need to ensure that the regulatory guidance stays up to date, while being aware of technological developments and of how privacy settings work.

In the UK, a recent decision has been rendered by the Court of Appeal on **the right to be forgotten**, which will potentially be brought to the Supreme Court. A famous privacy case opposed the singer Cliff Richards to the BBC, where it was ruled that « as a matter of general principle, a suspect has a reasonable expectation of privacy in relation to a police investigation ». Furthermore, under the children's section of the IMPRESS Code, the need of due consideration for anonymity is pointed out. IMPRESS is looking to extend this disposition to adults, which will not amount to a requirement of taking down a publication but rather examining if the publisher has taken sufficient consideration to the demand related to those privacy rights. In examining this question, IMPRESS will need to assess if the accountability and the public interest exercise have been taken into account.

Another question related to the digital age is the principle of **transparency**, more specifically on how news gathering is taking place. Nowadays, readers expect publishers to show more transparency regarding sources and how clarifications and corrections are made. This area is paramount for the publishers in order to build trust with the readers. But where

does that need for transparency lead to, in practical terms? IMPRESS is currently thinking about drafting best practice guidance regarding this area.

The last area identified by Lexie Kirkconnell-Kawana is **the publication of UGC**. The UK Government ambitions to develop a platform regulation scheme where users will be protected from abuse and harm through user interactivity, as this issue is of growing importance. This leads to the question of finding a balance between the editorial freedom of publishers and the functionality of websites which could potentially cause harm to readers. This question is linked to the fragmentation of the UK regulatory market. Indeed, as IMPRESS is responsible for digital publications of the press and Ofcom for video-sharing platforms, which will be the appropriate body to cover this issue? The collaboration between both regulatory bodies is key in order to avoid overlaps, in the interest of the readers.

More generally, what are the main ethical concerns raised by journalism online? EFJ President Mogens Blicher Bjerregård believes the Covid-19 crisis has been an eye-opener in many countries and even a window of opportunities, as it has shown the need for **credible, reliable and professional journalism**. If print and broadcast journalism have a long history linked up to professionalism, the evolution from print to online has revealed a competition on platforms, where disinformation is flourishing more than ever. In that regard, ethics, self-regulation, fact-checking and media literacy are some crucial toolbox elements, but most are currently underestimated.

A question that has already been asked is the potential need for **labelling professional media and journalism**. For Mogens Blicher Bjerregård, media councils should stay away from labelling, which would mostly benefit authoritarian regimes. According to him, there is rather a need to improve professionalism (by investing in education, mid-career training, life-long learning) and signing up to self-regulation would be a better tool, as media can choose to publicly highlight their membership.

Regarding **digitisation requirements**, it was reminded that the 2020 Blanquerna study showed that while 70% of media councils' members surveyed believe their Codes of Ethics are adapted to respond to new ethical challenges arising from digitalisation, only 33% of journalists surveyed agree (Masip, Suau and Ruiz, 2021). According to the EFJ President, this gap between media councils and journalists enhances the need for discussion, as well as the need for a revision of ethical standards. Online platforms should not change ethical standards in principle, but if more people working in journalism in the online sphere became members of media councils, it would maybe lead to more qualified decisions related to the online sector. Current issues include the facts that children are increasingly exposed to news (which are running faster than ever), fact-checking reaches new dimensions, disinformation needs to be fought, social media are not covered by all Codes of Ethics and artificial intelligence brings new challenges.

While journalists believe that digitisation needs to be better reflected in Codes of Ethics, media councils' members feel that it is already adopted and reflected in the general ethical standards. On one hand, journalists, students and teachers consider that the online sphere is not targeted by the existing standards and on the other hand, media councils' members refrain from making too many changes, in order to avoid any risk of diluting core ethical values.

Regarding **future media councils**, states must understand to distinguish between the role of media regulators and independent press and media councils. The EFJ President believes future media councils should extend their scope to include print, broadcast and online media. This implies that journalists and media must follow all decisions voluntarily, otherwise the credibility of media councils will be in decline. Media councils also need tools to be recognised, such as a transparent and fast-working decision-making process and a growing role in public debates.

F. Conclusion

In summary, the main challenges for journalism in the online world include the use of hyperlinks and UGC, the fact-checking of embedded content, the distinction between journalists and other individual contributors on social networks, the issue of whistleblowers, the right to be forgotten, the integration of robot journalism in Codes of Ethics, etc. Now more than ever, there is a need for dialogue between all stakeholders – media councils' members, journalists, editors and employers, civil society and the public – on the importance of self-regulation.

In the end, is there a need for a specific deontology (and thus for a dedicated or a complementary Code of Ethics) for online journalism? On the contrary, should councils consider that ethics depend less on the medium than on the content and that online and social media don't revolutionise Codes of Ethics, but rather question it differently? It appears that the online press environment requires an adaptation of ethical standards but that a complete shift would not be advisable. Indeed, the principles of transparency, accuracy and privacy, among others, may need to be analysed in the online context, but their core needs to remain the same, as it constitutes the backbone of media regulation. ■

The fifth session (« Comparative analysis of online ethical standards ») happened on October 22nd, 2021 and was moderated by Yves Thiran, editors-in-chief representative for the CDJ. It welcomed as experts Mogens Blicher Bjerregård, president of the European Federation of Journalists, and Lexie Kirkconnell-Kawana, head of regulation at IMPRESS UK. Pauline Steghers, editors' representative for the CDJ, acted as rapporteur.

Can journalistic self-regulation serve the purpose of online content regulation?

How can press and media councils articulate journalistic self-regulation with other regulatory frameworks dealing with online content and social media?

As summarised by Adeline Hulin, « Freedom of speech is the cornerstone of any democratic society. Constitutional or legal guarantees are necessary to make press freedom a reality, to prohibit censorship and guarantee the free flow of information. However, international human rights standards do permit some limitations on the right to freedom of expression. The European Court of Human Rights (ECHR) requires limitations on speech to be defined by law, legitimate and necessary in a democratic society¹. As opposed to media laws and regulations, media self-regulation is a set of voluntary limitations and guidelines for media professionals regarding their editorial and professional standards. With the advance of digital media, the question of what is the best regulatory framework for journalistic work has gained importance, with the challenge being to establish functioning systems which do not impede media freedom either online or offline. There are restrictive tendencies at the national level and more rights-based approaches at the international level. Many governments are endeavouring to protect their citizens from content deemed harmful by refining existing and

adopting new media legislations » (2014, pp.1-2).

Among the challenges faced by media councils today are indeed « the efforts by political actors to regulate media, especially content published online and on social media in particular ». On the basis of interviews with several media councils' representatives, researcher Raymond Harder states the following: « Under the pretext of rooting out 'fake news', many countries have seen politicians (from different political alignments) seize the momentum created by the current political climate and introduce parliamentary bills or legislation that would hand governments or law enforcement new powers to intervene in what is being published online. However, even as the act of reporting 'fake news' is an immoral one, it is not within the realm of unlawfulness – and it should be left outside of it. It is a slippery slope when speech can be suppressed when it is deemed 'fake news', given that the term would have to be defined by political actors in order to become part of the law [...] Even though today's political actors may have the best of intentions, a future government might not be benevolent, and twist such legislation in a way that allows them to suppress any speech that does not suit them well. Therefore, media councils should oppose any efforts to pass legislation of this nature, even those that seem to stem from genuine concern that citizens might be misinformed. It may be even more important for media councils, though, to be proactive and consider what role they can play in ensuring that this void will not be filled by government regulation » (2020, p.19).

¹ Article 10 of the European Convention on Human Rights states that (1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. (2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

This challenge raises fundamental questions, namely: are EU² and national regulatory frameworks dealing with online and social media compatible with press freedom and journalistic self-regulation? Which systems should media councils defend or cooperate with to protect journalistic work?

A. A few words about harmful contents

We should first distinguish illegal content from harmful content. Some content is indeed protected under international standards but can still be considered harmful (« lawful but harmful »), namely certain forms of hate speech, while EU law makes illegal four types of content: (i) child sexual abuse material; (ii) racist and xenophobic hate speech (“illegal hate speech”); (iii) terrorist content; and (iv) content infringing Intellectual Property Rights (IPR). Beyond those four types, there is no EU harmonisation of the illegal content online. Thus, the same type of content may be considered illegal, legal but harmful or legal and not harmful across the Member States (de Streel et al., 2020, p.16), at least for now. This classification is strongly linked to the context and history of each country. It should also be noted that a series of consumer protection provisions, which can be transposed to the online world, can make a given activity illegal (online disparagement, misleading advertising, etc.) and therefore, depending on the case, be used to regulate online expression.

This report will focus on two major challenges currently faced by society as a whole and especially through the prism of online content and social media, namely disinformation and hate speech (other than racist or xenophobic), which are two examples at the EU level of harmful contents, but not necessarily illegal ones.

² Aware of the societal and digital transformations shaping our times and of the need to fight effectively against the distribution of illegal content online, the EU legislator put on the table, at the end of 2020, the proposal for a regulation on an internal market for digital services, better known as the Digital Services Act (see below).

In 2018, the European Commission pointed out that « legal content, albeit allegedly harmful content, is generally protected by freedom of expression and needs to be addressed differently than illegal content, where removal of the content itself may be justified » (ERGA, 2020, p.46). This means that harmful but legal content should be protected under the freedom of expression while illegal content should not. In other words, the issue of illegal online content (the publication of racist and xenophobic hate speech, incitement to violence, terrorist content, IPR infringement or child pornography) is different from issues such as disinformation (attempts to manipulate information) and requires thus specific measures (Hanot and Michel, 2020, pp.160-161).

1. Disinformation

For de Streel et al., « Online disinformation – a term preferred to fake news – is not *per se* illegal, although it may be harmful to society as it can be detrimental to the formation of informed and pluralistic opinions, which are essential for citizens to freely exercise their democratic choices. It can therefore be damaging to democratic elections, decreasing trust among citizens and creating tensions within society. The European Commission has defined online disinformation³ as “verifiably false or misleading information that is created, presented and disseminated for economic gain or to intentionally deceive the public, and may cause public harm”. Such an approach excludes unintentional journalistic errors. Moreover, the principle of the relationship to the truth (“verifiably false or misleading information”) also excludes content that is part of the opinion’s register. The European Commission also points

³ According to the European Regulators Group for Audiovisual Media Services (ERGA), « disinformation concerns (a) false information, (b) disseminated with a specific intention (malicious or bad faith) (c) and causes certain harms » (2020, p.16). It is thus « information that is false and deliberately created to harm a person, social group, organisation, or country », whereas misinformation is « information that is false, but not created with the intention of causing harm » (*ibid.*, p.30). Furthermore, « any definition of disinformation in legislation or other regulation, such as regulatory guidance, must take into account the serious implications for freedom of expression and media freedom » (*ibid.*, p.17).

out that it does not cover clearly identified partisan news and commentary » (2020, p.18).

Beyond the possible effects of misleading content on the public, disinformation presents a double threat to freedom of information: on the one hand, it undermines the public's legitimate trust in journalistic information content and, on the other hand, it raises new regulatory issues which, focused on the objective of "misinformation", could lead to the curtailment of both freedom of expression and the right to information [...] The challenge of information on the Internet requires taking into account, at the European level, a new regulatory issue – the ethical quality of (journalistic) information – through the collaboration of the actors that make up the classic market/State/consumer trilogy (Hanot and Michel, 2020, pp.156-157). Indeed, is the exercise of press freedom still possible if erroneous journalistic information is equated – voluntarily or not – with disinformation and is controlled, invalidated or even suppressed on this basis? (*ibid.*, pp.164-165).

2. Hate speech

As summarised by researcher Alejandra Michel (CRIDS), hate speech is at the centre of a conflict between competing rights and interests (freedom of expression vs freedom of thought, conscience and religion, right to privacy, principle of non-discrimination). Hate speech has its own specificities when it is disseminated on the web, as it can have an international reach, be sustained and be taken up by other people – sometimes anonymously – and/or by media. And even if various international instruments exist to regulate it, they are difficult to implement. In fact, the difficulty of regulating the issue stems from the complexity of defining the very notion of hate speech (SPF Justice, 2020).

There is indeed no unanimously agreed definition of the term except for illegal (i.e., racist and xenophobic) hate speech, given the differences in cultures and acceptances of the concept of freedom of expression. According to the Recommendation

97(20) of the Committee of Ministers on hate speech, « the term "hate speech" shall be understood as covering all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin » (*ibid.*). A more recent example is the 2008 EU Code of Conduct on countering illegal hate speech online, which defines it as « publicly inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin » (ERGA, 2020, p.39).

According to Michel, a legal definition that is too restrictive would nevertheless be risky. Moreover, the intervention of the ECHR in certain cases has sometimes been controversial because the assessment of hate speech is always delicate⁴ (SPF Justice, 2020).

In short, hate speech has practically always existed, but it is now on an unprecedented scale due to its distribution on online platforms. As summarised by Saba Parsa (CSA), the role played by these platforms and social media is immense, but their responsibility is too limited. On Facebook, users can report content deemed sensitive and, if this content is considered illicit, the platform undertakes to remove it. However, the moderation policy has shown its limits: some illegal publications are not censored, or are censored late, and conversely, some publications are censored even though their content does not fall within the framework of hate speech. The actors themselves, overwhelmed by the scale and impact of

⁴ According to the case law of the ECHR, the concept of hate speech is divided into two categories: on the one hand, « particularly serious » hate speech, which it exempts from the protection of freedom of expression under Article 17, and on the other hand, « less serious » hate speech, which, although protected by freedom of expression, may be subject to a restriction meeting the conditions of legality, legitimacy and necessity. Within this second category, there is hate speech aimed at ridiculing, insulting or slandering specific groups of people, for which the Court takes into account the content of the expression and the manner in which it was disseminated.

the phenomenon, call for regulation by the public authorities (*ibid.*).

But while hate speech is a crucial political and social issue, the risks of legal or political intervention (infringement of freedom of expression, diversion from the original objective, links between legislation and power, intimidation or muzzling of the opposition, etc.) should not be underestimated according to Michel. There are two main regulatory approaches on the matter: a very libertarian approach (where the free flow of expression should remain the norm and where counter-speech is preferable in a democratic society) versus a more moderate approach (where interventions are accepted while ensuring freedom of expression for all, but which is insufficient for an effective fight against both the production, dissemination and impact of hate speech) (*ibid.*).

B. Regulation mechanisms

First and foremost, it should be reminded that while freedom of press and of expression as well as basic duties (such as the prohibition of discrimination and incitement to hatred, the respect for the presumption of innocence and the respect for human dignity) apply to all journalists, the audiovisual media sector is regulated by states – due to its wide distribution – on specific matters, notably the protection of minors and the respect for human dignity. Furthermore, to reinforce the protection of users, especially minors, from certain forms of illegal and harmful audiovisual content online, the scope of the Audiovisual Media Services Directive (formerly known as the Television Without Frontiers Directive) was extended in 2018 to impose certain obligations on video-sharing platforms, including certain social media sites.

In the last decade, « The stance taken by International Organisations such as the Organisation for Security and Cooperation in Europe (OSCE), UNESCO or the Council of Europe (CoE) is that while media laws are necessary to guarantee media freedom, journalists can only perform

their role as watchdog of democracy if there is as little state control as possible of media content [...] For international organisations defending media freedom, media self-regulation is hence promoted as a mean of preventing governments from excessive interference with media content, be it online or offline. International organisations and non-governmental organisations (NGOs) that defend and promote freedom of expression have maintained that the abuse and misuse of media regulations by state authorities is more dangerous than the abuse and misuse of media self-regulation by the media industry or journalists themselves » (Hulin, 2014, p.2).

For instance, the human rights organisation ARTICLE 19, dedicated to defending freedom of expression worldwide, has observed that « many of the recent legislative initiatives related to the Internet and social media companies tend to give disproportionate censorship powers to the State, whether through prison terms, fines or content blocking powers, chilling free expression, or to outsource regulation to private companies with no proper integration of international standards » (ARTICLE 19, 2020, p.7).

Moreover, the OSCE has observed that in several countries, in particular in countries undergoing transformation from authoritarian regimes to democracy, a manipulation of the regulatory framework can easily allow governments to interfere and censor some news outlets [...] Such manipulations range from the misuse of licensing laws to only authorise media outlets in favour of state authorities to the misuse of vaguely defined regulations that allow wide restrictions against independent reporting. Laws banning hate speech or protecting against terrorism are increasingly used for political rather than public safety reasons (Hulin, 2014, p.2).

1. At the EU level

The EU regulatory framework on content moderation [or regulation] is increasingly complex and has been differentiated

over the years according to the category of the online platform and the type of content reflecting a risk-based approach. The baseline regulatory regime applicable to all categories of platforms and all types of content (i.e., the 2000 e-Commerce Directive) has been complemented in 2018 by the revised Audiovisual Media Services Directive, which imposes more obligations to video-sharing platforms. In order to protect the general public from illegal content (terrorist content, child sexual abuse material, racism and xenophobia or other hate speech) and to protect minors from harmful content, such platforms should take appropriate and proportionate measures. Those measures must be appropriate in the light of the nature of the content, the category of persons to be protected and the rights and legitimate interests at stake and be proportionate taking into account the size of the platforms and the nature of the provided service (de Streel et al., 2020, pp.9-10).

Moreover, those rules are then strengthened by stricter rules for four types of content for which illegality has been harmonised at the EU level, namely the Counter-Terrorism Directive⁵, the Child Sexual Abuse and Exploitation Directive, the Copyright in Digital Single Market Directive and the Counter-Racism Framework Decision (which provides that Member States must ensure that racist and xenophobic hate speech is punishable, but does not impose detailed obligations related to online content moderation practices). Those stricter rules imposed by EU hard law are all complemented by initiatives agreed by the main online platforms, often at the initiative of the European Commission. They contain a range of commitments, some of which are directly related to content moderation practices and others which support such practices. However, the evaluation of those initiatives shows difficulties in measuring the commitments taken and in reporting on their effectiveness. With regard online disinformation, which is not always illegal but can be very harmful to EU values, the main platforms have agreed to a

⁵ As well as the new regulation of the European Parliament and of the Council on addressing the dissemination of terrorist content online (April 2021).

Code of Practice in 2018, which is closely monitored by the European Commission (*ibid.*).

Lastly, it should be noted that the Digital Services Act (DSA)⁶ will eventually be the key instrument at the EU level for content moderation for all types of illegal content online and for all online intermediary service providers with a graduated approach. Once the regulation is adopted, the different national approaches (see below) will no longer stand as all Member States will have to comply with the DSA.

2. An overview of national initiatives

A large range of regulatory measures that apply to broadcast and/or online media on objectivity, honesty, veracity, accuracy, fairness or rigour of information assist in the effective tackling of disinformation, notably in Germany, Latvia, Denmark and Sweden (ERGA, 2020, pp.42-43). Indeed, in addition to a multi-layered EU regulatory framework, several Member States have adopted national rules on online content moderation, in particular for hate speech and online disinformation (de Streel et al., 2020, pp.9-10).

National laws impose, for some categories of online platforms, additional obligations to regulate some types of illegal content online. In Germany, the Network Enforcement Act (NetzDG) was adopted in June 2017 to improve the enforcement

⁶ As explained by Michel, « The adoption of this new text at EU level is mainly justified in two respects. Firstly, the existing framework is insufficient to act comprehensively against illegal online content in the whole digital ecosystem: on the one hand, the specific instruments very often target only a specific category of content (copyrighted works, audiovisual content, content of a terrorist or child pornographic nature...) or services (video-sharing platforms, online content-sharing service providers...); on the other hand, the current framework only refers to basic rules on transparency and accountability, does not establish real procedural safeguards surrounding the removal or blocking of content, and contains loopholes in terms of enforcement (limited monitoring and control mechanism). Secondly, with a view to harmonisation, action at EU level is needed to overcome the fragmentation of rules on online content moderation generated by national initiatives. Indeed, within the different Member States, national legislators are increasingly engaged in the regulation of online expression, which unfortunately reinforces disparities and inconsistencies and creates obstacles to the provision of online intermediation services within the Union » (November 8th, 2021).

of existing criminal provisions on the Internet and, more specifically, on social networks. In France, two related laws on information manipulation were adopted in December 2018⁷ and a law on online hate speech, the so-called Avia law, was adopted in May 2020⁸. In the UK, the Online Harms White Paper with proposals to combat online harms was adopted in April 2019 (*ibid.*, pp.36-37).

These laws have in common the definition of the category of online platform, of the type of illegal and/or harmful content online and of the obligations imposed on platforms. For example, the German NetzDG imposes obligations to remove within 24 hours the obviously or manifestly illegal content and other illegal content within seven days. Regarding its enforcement, the German law provides for sanctions (fines, in particular) for non-compliance and the UK White Paper reinforces the role of the regulator (*ibid.*).

According to Hanot and Michel, these laws raise the question of the relationship to truth, although they differ in substance: « We can ask ourselves how judges or economic actors

⁷ Before its promulgation, media historian Patrick Eveno (CDJM) stated the following: « The risk is that this law will be ineffective, since rumours, lies and other intoxications meet a very old social demand. Above all, it places the judge in the position of arbiter of truth and falsehood, at the risk of giving a blank cheque to manipulators due to a lack of competence or hindsight. It would undoubtedly be more interesting to propose to readers of fake news the original source of this pseudo-information: you are free to read this post but know where it comes from. Indeed, in order to combat fake news, society's action is more effective than the law » (2018).

⁸ In June 2020, the French Constitutional Council censured the obligations on social networks to remove hateful content reported to them within 24 hours, as they were deemed incompatible with freedom of expression. In the end, only minor provisions remain in the text: the creation of a public prosecutor's office specialised in online hate messages; the simplification of reporting content; or the creation of an « online hate observatory » within the audiovisual regulator, the CSA (Untersinger and Piquard, 2020). The law initially imposed the reinforcement of the power of the CSA, which was supposed to be responsible for ensuring that online platforms and search engines respected their obligations, by imposing specific measures or penalties on them. It was thus a co-regulatory mechanism that left the online platforms free to choose how to implement the measures to be taken, while forcing them to report to the media regulator (de Streel et al., 2020, p.90). The French legislator eventually re-launched parliamentary work on the issue of illegal online content and some of the provisions of the Avia bill were finally adopted in August 2021 in the law reinforcing the respect of the principles of the French Republic.

could urgently determine whether the contested content is true (journalistic information) or false (disinformation) when the work of the journalist is part of current events, when he or she is neither a judge nor a historian, and when the truth does not have to be “absolute” for him or her [...] Although the German law provides that press websites are exempt from the rule and that an appeal to organised self-regulation is possible in certain cases, there is still a risk that journalistic content will be removed from social networks without any other form of assessment than the mere signature of a third party and the summary assessment of an employee » (2020, pp.193-195).

Moreover, « The German law, which intends to target platforms, thus associates illegal content, hateful comments and disinformation, whereas the European Commission and the high-level expert group exclude illegal content from their definition, as does the French law, at least in its interpretation. In addition to the questions posed to freedom of expression, and despite the exceptions provided for, such an extension presents the risk of reducing the scope of expression of journalists » (*ibid.*, pp.195-196).

This brings up practical questions, namely: « Could a journalist who posts a disputed piece of investigative journalism on a social network have this post – considered as illegal content – deleted, while the information on the original site would not be deleted because the German law excludes press sites from its scope? Would a “neo-journalist” working for a pure player or feeding a blog benefit from the exception? Similarly, delegating to platforms the task of unilaterally applying (recourse being a possibility under German law) the measures for removing content identified as illegal amounts to giving full economic “censorship” powers to a private operator. There is a risk that the platform will decide to remove legal content for fear of a fine or, on the contrary, that it will choose to maintain fake news whose sharing generates substantial advertising revenue » (*ibid.*). According to Michel, it is important to keep in mind that freedom of expression is identical for everyone,

because it is not the person who publishes the information that deserves protection but rather the content (of general interest). Platforms should thus not have the right to delete content without any procedural guarantees (May 18th, 2021).

In summary, delegating the role of a judge to private platforms seems very dangerous for democracy and freedom of expression, but they remain the best placed to do so for now. The question thus lies in the guarantees that need to be put in place and in the involvement of all stakeholders. Indeed, « Given the massive explosion of online content, public authorities may not be sufficiently well-gearred to ensure the enforcement of content moderation rules and may need to be complemented with private bodies. Those could be the platforms themselves, self-regulatory bodies or co-regulatory bodies » (de Streel et al., 2020, p.13).

C. Self-regulatory bodies

As explained by ARTICLE 19, « Self-regulation is a mechanism of voluntary compliance at sector or industry level: legislation plays no role in enforcing the relevant standards. Its *raison d'être* is holding members of self-regulatory bodies accountable to the public, promoting knowledge within its membership and developing and respecting ethical standards. Those who commit to self-regulation generally do so for positive reasons such as the desire to further the development and credibility of their sector, although other motivations may also play a part in encouraging actors to get on board a self-regulatory mechanism – such as the desire to avoid statutory regulation. Self-regulation models rely first and foremost on members' common understanding of the values and ethics that underpin their professional conduct – usually in dedicated "codes of conduct" or ethical codes. Meanwhile, members seek to ensure that these voluntary codes correspond to their own internal practices » (2020, pp.5-6).

More specifically, « media self-regulation is a system developed voluntarily by media professionals to ensure

respect for their professional and ethical guidelines ». As opposed to media laws and regulations, it is a set of voluntary limitations and guidelines for media professionals regarding their editorial and professional standards. The Council of Europe has been particularly active in promoting media self-regulation during the last decades and the system is increasingly being supported by EU institutions (Hulin, 2014, pp.1-3) (see below).

As an important reminder, self-regulation is not meant to fully replace state regulation: « The two systems are supposed to co-exist. Some legal regulations are always needed to ensure that minimum standards regarding freedom of expression are respected. Those are the regulations that guarantee media freedom, protect journalists' sources or ensure access to information » (*ibid.*, p.6).

1. Individual (or simple) media self-regulation

Newsrooms can use various empirical means to avoid deontological mistakes, the most obvious one being systematic proofreading. Some media outlets have also created editorial guidelines and an ethics committee within their editorial offices to deal with journalistic ethics issues. Internal ethical regulation can also be done through audits, internal reports or « quality circles » which monitor editorial content through discussion between journalists and managers. There are also internal seminars or simply debriefing at the editorial conference, where the editorial team critically reviews the previous edition. This internal ethical regulation can be translated into critical evaluations published by the media themselves (Jespers, 2020, pp.52-53).

Several media – notably public service broadcasters such as the Belgian RTBF and VRT, the British BBC and the Swiss RTS – have established an ombudsman position within the editorial staff. The editorial ombudsman is usually a senior journalist, who is neither a user advocate nor an editorial spokesperson but « a kind of sage who, on the basis of

complaints from the public, makes recommendations ». The ombudsman may also keep a column in his or her media outlet reflecting the concerns of the public and the responses of professionals. The ombudsman can only fulfil his or her self-regulatory mission if his or her intervention is based on an unanimously accepted internal ethical code. Some argue that to be truly credible and effective, it should be a person outside the editorial staff, as an employee of the publisher is both judge and party (Jespers, pp.51-52). Likewise, Adeline Hulin states that the ombudsman position internal to a media outlet is « vulnerable to corporate interests » (quoted by Foatelli, 2017).

2. Collective (or organised) media self-regulation

a) Media and press councils

In short, a press council – or media council or journalistic ethics council – can be defined as « a non-governmental institution whose *raison d'être* is to act as an intermediary between the media and the public », which is « most often formed voluntarily by the professional circles and financially supported by them ». In the media field, it is « the main instrument of self-regulation practiced in application of ethical standards » (Cornu quoted by Grevisse, 2016, p.270).

More precisely and as explained by Raymond Harder, « It provides the opportunity for anyone [...] to lodge a complaint against a specific publication in the media when they feel that a journalist or editor has breached a deontological principle in that particular report. That complaint is then considered by a body of stakeholders, who will consider both sides of the argument, and decide whether, according to them, the moral guidelines of doing journalism were respected in the process » (2020, pp.2-3).

The corrective power of such councils rests mostly on two principles, i.e., expert review and self-shaming: « With 'expert review', we refer to the weight it has when well-respected

individuals (peers at other media outlets, academics, lawyers, experts, or representatives of the public) arrive at the conclusion that one's reporting was unethical. By 'self-shaming', we mean that media outlets publish the media council's decision when one of their publications is judged to have violated the commonly accepted ethical standards. It is generally not possible to coerce media to publish this, which makes it all the more powerful when media do dedicate some precious bit of bandwidth (be it in print, in broadcast media, or online) to tell their own audience that they did something wrong ». Indeed, the efficiency of media councils rests on outlets and journalists cooperating with the procedures and respecting their decisions » (*ibid.*).

As secretary general of the French-speaking Belgian CDJ Muriel Hanot recalls, « Decisions [or] opinions are public, they are motivated so that the parties concerned and beyond can learn from them. The aim is not so much to sanction as to contribute to the positive evolution of practices. It is a positive spiral » (May 28th, 2021). Hanot has chosen to call this system "organised self-regulation" in the sense that « it is collective and not individual (it is not a mechanism built by each media separately), it is also independent thanks to the mode of representation that avoids self-interested interventions, it is open, as it is at the interface of the public, the journalists and the media. It treats all stakeholders – complainants, journalists and media – fairly ». In summary, journalistic self-regulation, as a collective and organised mechanism, is a model « in and for itself » (*ibid.*).

According to Adeline Hulin, in addition to preventing unethical journalism, media self-regulation mechanisms have a direct beneficial impact on media freedom. Indeed, the system helps reducing the chilling effect of potential lawsuits against media (which occurs when media hesitate to exercise their right to freedom of expression by fear of legal repercussions), it moderates state interference in the field of media and it strengthens people's fundamental right to receive accurate and pluralistic information, enabling them to have informed

opinions and to engage in the democratic debate (2014, pp.3-4).

Moreover, in the case of the CDJ, « While it is difficult to assess the impact of this tool on trust and confidence among the public as no study has been conducted on it, it can nevertheless be noted that i) the number of complainants using the mechanism is growing, ii) participating media note an evolution in their practices over time, iii) the grievances evolve from year to year according to real changes in practice, iv) the surveys that measure confidence of the public in the news media seem to show a correlation between trust and the presence of a press council in the country. These indicators converge to show the important role of press councils in rebuilding trust with the public. The fact that journalists and media accept to be accountable to their peers and the public helps to establish the dialogue between the parties, it also gives the commitment that everything is done to produce responsible information, complying with the common standards of the profession » (Hanot, May 28th, 2021).

For Hanot and Michel, « From a regulatory point of view, ideal self-regulation – at least as it appears in certain European texts – applies to cases deemed appropriate, must be effective and must ultimately make it possible to achieve the objectives of regulation, which may, in the event of failure, replace it. It should be noted that some legal frameworks already provide for forms of complementarity between self-regulation and regulation in cases where the former would not provide a lasting response to the problem identified » (2020, p.201).

b) Social media councils

Beyond journalism, should social platforms and networks be regulated? As of now, the initiatives proposed by online platforms regarding their content lack transparency, do not offer satisfactory remedies or procedural safeguards to users, and do not sufficiently protect freedom of expression and other fundamental rights. The terms of service or use

and community standards of these platforms generally restrict more the freedom of expression than the international fundamental rights standards, in particular because they are based on the lowest common denominator between the different national legislations applicable to content. To solve some of these issues, ARTICLE 19 proposed the establishment of Social Media Councils (SMC) to provide an open, transparent, participatory, inclusive, independent and accountable forum to address content moderation issues – such as disinformation – on social media platforms, using international human rights law as a reference (de Streel et al., 2020, p.61).

Either by reviewing individual cases or elaborating guidelines, SMC would guide social media companies in applying international human rights law to their content moderation practices (2019). They would have the power to impose non-pecuniary remedies such as a right of reply, the publication of an apology (if, for instance, some content was removed by mistake), the publication of a decision in a relevant visible online space of the social media platform, or the re-upload of suppressed content. The mechanism would not be in itself legally binding, and the participating social media companies would commit to executing the council's decisions in good faith (2019, pp.7-8). For ARTICLE 19, users should first seek a solution to their complaints with the social media platform before escalating the case to a SMC (*ibid.*, p.23).

Regarding geographic scope, ARTICLE 19 envisages a network of councils set up at national level that would be governed by a global code of principles based on international fundamental rights standards, while applying them according to the local context. Other options were also discussed such as a regional or global SMC or a hybrid model combining a global council with a network of national councils (de Streel et al., 2020, p.60).

ARTICLE 19 has proposed its idea to academics, platforms and civil society organisations. As a result, the concept of

the SMC is now integrated into contemporary academic and policy debates on the future of regulating social media platforms. In 2020, the organisation made significant progress towards its goal of launching a pilot SMC in an EU country. Once it had established that Ireland offered a fertile context – at the policy, public, media, and civil society levels – for such an experiment, it engaged in conversations, which were helpful in further understanding the risks, opportunities, and questions the pilot will face (2021, p.50).

Pierre François Docquir, Head of the Media Freedom Programme, highlighted several reasons behind this choice. First of all, « for this first experience, ARTICLE 19 was looking for a democratic country with a successful history of self-regulation in its legal and regulatory culture », which is illustrated by both the advertising standards authority and the press council. Furthermore, the country is in the middle of a debate on platform regulation and online safety with the consideration of the Online Safety and Media Regulation Bill, which will create a new public regulator for broadcasting, advertising and social media⁹. A SMC could thus be complementary to this new Media and Online Safety Commission. A major related factor is that Ireland hosts the headquarters of social media companies in Europe, making it « the ideal place » for this pilot project. Finally, « it is a relatively small and homogenous country, which was helpful to establish contact with the different stakeholders » (June 8th, 2021).

What is the current development status of this first SMC? As Pierre François Docquir recalls: « The creation of a media council often requires several years of work... This is also a long-term process. On the whole, most of the stakeholders surveyed – civil society organisations, the media regulator, the press council, journalists, members of Parliament, online

platforms, academics – want to keep the discussions going ». For the time being, these exchanges have focused on the governance structure that the body could adopt and how it could fit into the country's future legislative and regulatory framework. It should be noted that the platforms involved (Facebook, YouTube and Twitter) are not officially supporting the project yet because « they are waiting to see how the Irish and European legislative framework evolves, to see to what extent it would be more interesting for them to engage in a self-regulatory initiative such as a SMC ». In other words, « platforms will only play the game if they see it as the best regulatory option » (*ibid.*).

Furthermore, after preliminary discussions between ARTICLE 19 and Irish ombudsman Peter Feeney, the latter stated from a personal point of view that « if they could get the major social media companies to participate, the project was likely to be worthwhile ». He thus brought this proposal to the board of the press council, which decided not to formally participate in the scheme because « it was felt that involvement in the ARTICLE 19 project could confuse the perception of the independence of the Press Council and might lead to the print media being regulated alongside of broadcasting, advertising and social media »¹⁰ (June 9th, 2021). According to Pierre François Docquir, it could be proposed to the various (self-)regulatory bodies surveyed in the pilot project to sit as observers in the Irish SMC (*ibid.*).

So far, ARTICLE 19 has had only bilateral conversations with each stakeholder. According to Pierre François Docquir, it would be interesting to set up a working group for the

⁹ According to Pierre François Docquir, « in comparison with other legislations that seek to control the circulation of online harmful content, the Irish approach is not perfect, but it is more cautious: for example, there are no untenable deadlines for removing content, as in Germany » (June 8th, 2021).

¹⁰ Indeed, the Irish press council is « currently entirely independent of the government » and wishes it will remain that way for the future. As a reminder, the remit of the council extends to national and local newspapers (print and online), magazines and online-only news services. It does not regulate social media, other than the social media accounts of its members (not individual journalists). And « with the convergence of platforms, maintaining the distinction is likely to be increasingly more difficult » (June 9th, 2021). It should be noted that « although press councils are one of the sources of inspiration for the SMC model », ARTICLE 19 does in no way suggest that « it should be the only reference » or that « existing press councils should extend their jurisdiction or mandate to social media platforms » (2019, p.6).

continuation of the project, in order to deal with a series of essential but nevertheless difficult questions, such as: how to create a system of individual complaints, how to manage the number of complaints, how to finance the SMC¹¹, etc. The organisation is nevertheless convinced that a national (or regional) scale is the ideal configuration for a SMC, in order for it to reflect the context of a country. Indeed, « the project aims to give power back to the local level because there is a significant disconnect between global online platforms and the impact of their content moderation » (*ibid.*).

In any case, for Pierre François Docquir, « this kind of institution makes sense in the evolution of both the Irish and European legislative and regulatory frameworks: the SMC could fulfil the mission of settling disputes outside the courts for individual complaints on content moderation ». In short, « there is room for this kind of institution, but it is a complex and brand-new system ». The lack of an existing model underlines the need of having a press council representative in the SMC. According to Pierre François Docquir, the SMC model « would be somewhere between self-regulation at the sectoral level – a body independent from the platforms in which representatives of all stakeholders would participate – and co-regulation ». Indeed, « since there is a lot of legislative movement around platform regulation right now, the social media council is more likely to work effectively if it builds on a legislative background ». Furthermore, « the law could also provide that participation in an SMC would grant a regulatory benefit, which is worth the presumption that the platform has fulfilled its obligations in this field » and in the same way, it would be « an incentive for platforms to play the game of self-regulation honestly ». The SMC could serve as « a learning space » for platforms to get used to the idea of being regulated from the outside (*ibid.*).

¹¹ The three main sources of funding initially suggested were platforms, governments and third-party funders. In each case, significant concerns were raised about the legitimacy and independence of the SMCs (Stanford University, 2019, pp.21-22).

Among the criticisms that come up, secretary general of the CDJ Muriel Hanot puts forward the following reasoning: « The journalistic model of organised self-regulation, which remains professionally initiated, is structured to operate independently and is open to the public. It visibly outweighs the effects of a model of individual self-regulation which remains by nature self-focused on its own economic objectives and values. The idea of opening up the platform self-regulation model to users (whoever these users may be) could help to improve the mechanism [...] However, the fact remains that the monopolistic nature of the platforms would probably not make it possible to effectively meet the criterion of responsibility and by ripple effect of efficiency : how [can you] indeed be accountable to peers when you are alone? The platform is in fact the only player of the field involved, and therefore, it cannot take the measure of the evaluations that potential peers and competitors could make of its practice. The solution is therefore interesting but undoubtedly insufficient on a theoretical level » (May 28th, 2021).

On his side, Pierre François Docquir believes that there has been a real evolution in the mentalities of the staff of certain platforms in recent years and that they now understand better « that their company has a real social responsibility ». In conclusion, he is not « naively optimistic » but feels that platforms could engage in self-regulation without it being « necessarily cynical », as a SMC would actually be doing them a favour by answering the difficult questions raised by content moderation (June 8th, 2021).

3. The growing influence of journalistic ethics in legal proceedings

As Hulin explains it, « Theoretically, justice courts should not take into account the decisions of press councils in their rulings, as self-regulation is a separate system of handling media users' complaints based on the journalistic code of practice and not based on the legislation. In practice, however, many courts in Europe have done it ». For instance, the UK

Human Rights Act « requires the court to take into account of the Press Council's Code of Practice in their proceedings in privacy cases and recognises it as a relevant privacy code for the purpose of the Act ». If the primary effect of this is the full recognition of the importance and power of a self-regulation mechanism by justice courts, the side effect can be damaging for the media. It may lead to a situation where press councils risk becoming a pre-judgment mechanism instead of an alternative to a court trial. There is a risk that their decisions will be used in court by plaintiffs, when it favours them. European press councils report that some plaintiffs have already tried to use the decisions of press councils in courts to better attack a media outlet. So far, however, national courts never turned those decisions against a media outlet. Some members of European press councils warned that they would leave the system of media self-regulation, were such a judgment to be made » (2014, p.9).

Furthermore, the European Court of Human Rights (ECHR) has taken into consideration the question of respect for journalistic ethics in its rulings, as it started in the late 1990s to refer to journalistic ethics in evaluating the necessity of interfering in the right to freedom of expression. At the beginning, this trend was not seen as worrying for media freedom given that judges made use of the respect of ethics to comfort the defence of a journalist. However, the Court has increasingly referred to non-compliance with journalistic ethics to justify the legitimate character of interference by the authorities in the right to freedom of expression [...] The case of *Stoll v. Switzerland* (2007) raised concerns in particular. In this case, the ECHR's judgment of a non-violation of Article 10 relied heavily on the findings of the Swiss Press Council. By recognising the role and importance of the press council, the judgment caused serious concern as it could curb the universal nature of the right to freedom of expression defended by the European Convention on Human Rights. The judgment tended to ignore that even if media can cause harm by violating professional ethics, this does not mean that they violate the law. The judgment failed to take into full

consideration that journalists with low professional standards remain part of the free media scene (*ibid.*, p.10).

Today in Europe, it is thus not uncommon for aspects of journalistic ethics to be at the heart of court decisions. When judges have to assess the need to interfere with freedom of expression, compliance with the standards of journalistic ethics is one of the criteria taken into account. The courts rely both on the opinions of the press councils and on their own analysis of whether the journalist's behaviour complies with the rules of journalistic ethics (Michel, 2020, p.160). The ECHR has repeatedly stressed the importance of journalistic ethics in its case law. It considers that because of the duties and responsibilities inherent in the exercise of freedom of expression, the guarantee which Article 10 offers to journalists with regard to reporting on matters of public interest is subject to the condition that they act in good faith so as to provide accurate and creditable information in accordance with journalistic ethics. In order to benefit from the enhanced protection conferred by Article 10 of the Convention, the journalist who disseminates information of general interest must fulfil three cumulative conditions: provide the public with accurate and creditable information; act in good faith and respect the standards of journalistic ethics. It would seem that the ECHR, while protecting journalistic freedom, wants to impose quality standards for information (*ibid.*, pp.163-164).

Furthermore, the Court has already indicated that « the opinion of the Press Council, a specialised and independent body, plays a particularly important role ». It should be noted that journalistic ethics in legal proceedings are not the sole preserve of judges: parties (both plaintiffs and defendants) also invoke the ethical rules governing journalistic activities or the opinions of press councils that are favourable to them in support of their claim or defence (*ibid.*, p.165).

It is also worth mentioning that many media councils¹² will not handle complaints about content that is being treated by a court simultaneously. However, the complainant is usually entitled to take the matter to the courts after the self-regulatory process is complete, if it is within the timeframe specified. Moreover, only 16% of the councils surveyed by Raymond Harder in 2020 (Canada, France, Ireland, Luxembourg and IMPRESS UK) have not seen one of their decisions been used in a legal court case.

To conclude, although the courts are not bound by the opinions issued by the press councils, it is clear that they give them considerable importance in practice. According to Michel, there is no doubt that such a position could give the decisions of press councils a whole new weight (2020, pp.171-172).

D. Solo-regulation of platforms

Although they are sometimes referred to under the all-encompassing umbrella of “self-regulation”, situations where a private company unilaterally controls content on its own platform according to its own internal rules (i.e., terms of service and community standards) can be described, according to ARTICLE 19, as “solo-regulation” or “regulating speech by contract”. Moreover, « There is a strong consensus among international experts on freedom of expression that the mere regulation of speech by contract [...] fails to provide adequate transparency and protection for freedom of expression and other human rights » (ARTICLE 19, 2020, p.5).

In September 2019, Facebook proposed to establish an independent Oversight Board to ensure a fair and independent decision-making on its content moderation practice. It was presented as a board funded by a trust fund that is completely independent of Facebook. The goal of this board is to provide

policy guidance/advisory opinion on its content policies and to review specific content moderation cases that could be submitted by Facebook or its users once its internal recourses have been exhausted. The board is free to decide which cases it reviews but must refrain from reviewing a case if its decision is likely to result in criminal liability or regulatory sanctions (de Streel et al., 2020, p.60).

More precisely, a panel of five members takes the decision where at least one should come from the region concerned by the case. The panel should obtain from Facebook the information necessary to decide the case and may receive written statements from the content author or complainant. It may also gather information (from experts or otherwise) necessary to provide context. The panel should review the cases on the basis of Facebook’s content policies and values while taking into account the human rights standards that protect freedom of expression. Decisions taken by the Oversight Board are binding on Facebook, made public and clearly justified (*ibid.*).

While this is a step in the right direction, some commentators have proposed improvements to the Facebook proposal. ARTICLE 19, for instance, initially feared that the global level at which the board operates would make it difficult to understand local contexts (social, political, cultural, historical, linguistic, etc.) and their complexity. Other stakeholders also noted that the selection of the Oversight Board members by Facebook may undermine their independence and that the decisions will be made based on Facebook’s values and content policies and not merely based on the international human rights standards. More radically, others claimed that existing problems with online content are not related to poor moderation but to the very business model of several online platforms in terms of consumer engagement, constant online advertising offers, massive collection of personal data and the use of various sophisticated algorithms (*ibid.*).

¹² 62% of media councils surveyed by Raymond Harder, i.e., councils from Albania, Austria, Bosnia and Herzegovina, Bulgaria, Canada, Catalonia, Cyprus, Estonia, Finland, France, Germany, Hungary, Iceland, Ireland, Luxembourg, Slovakia, Slovenia, Switzerland and the UK (IMPRESS).

Indeed, for Reporters Without Borders (RSF), this board « is just a very short-term solution and is no substitute for the creation of a regulatory framework imposing democratic obligations on online platforms ». The scope of the board's remit is « extremely limited and does not include Facebook's algorithmic mechanisms, which amplify or reduce the visibility of certain kinds of content and shape the public debate ». To summarise, « while content moderation decisions are important, so are the mechanisms that determine how content [including disinformation and hate speech] is delivered on the platform » (2021).

It should also be noted that in December 2019, Twitter announced the funding of an independent research group (BlueSky) to develop decentralised standards for social networks that can be used by different content moderation providers. Such standards could both reduce criticism of the platforms' content moderation practices and provide opportunities for new competitors, as control of content would no longer be concentrated in the hands of a few dominant companies. It also has the advantage of trying to offset the dominance and influence of the major platforms on online expression (de Streel et al., 2020, p.62). For now, it is still unclear how it will develop, or even if Twitter will use the technology created by the project.

E. Co-regulation

« Regulated self-regulation or coregulation refer to a regulatory regime involving private regulation (be it self-regulation or solo-regulation) that is actively encouraged or even supported by the State. Co-regulation systems can include the recognition of self-regulatory bodies by public authorities, as could for instance be the case under the German law NetzDG. Public authorities generally also have the power to sanction any failure by self-regulatory bodies to perform the functions for which they were established » (ARTICLE 19, 2020, pp.6-7).

For its part, ARTICLE 19 considers that a limited degree of support from public authorities can be useful in supporting the emergence and operation of self-regulatory mechanisms, provided that the public intervention is limited to creating a legal underpinning for self-regulation and does not threaten the independence of the self-regulatory bodies. ARTICLE 19 has analysed the flaws of 'co-regulatory' approaches such as the EU Code of Conduct on Hate Speech, the EU Code of Conduct on Disinformation, or the revision of the EU AVMS Directive. Generally, its concerns are that such mechanisms (a) rely on rules that are not compliant with international standards on freedom of expression and have not been elaborated through a transparent and participatory mechanism, (b) put companies (rather than courts) in the position of making decisions on the legality of content restrictions, and (c) lack transparency and do not offer individual users an effective remedy (*ibid.*).

1. In the UK

In reaction to the News of the World scandal in the United Kingdom, Lord Justice Leveson concluded in November 2012 that the former British press council (the Press Complaints Commission) had failed and that a new system of media self-regulation should be established [...] Oscillating between co-regulation and self-regulation, his report recommended a system of media self-regulation underpinned by a statutory recognition body. This middle-way solution was brought in practice with a Royal Charter in 2013 regardless of the fact that a majority of the British press opposed it due to concerns of undue interference by public authorities in media freedom (Hulin, 2014, p.1). Moreover, « Leveson's report recommended a system of media self-regulation underpinned by a statutory recognition body, which was brought in practice with a Royal Charter and the creation of the Recognition Body in November 2013 » (*ibid.*, p.6).

As Hulin summarises it, « The Royal Charter adopted in 2013 gives the new regulator real powers of sanction, unlike its predecessor. IMPRESS can launch its own investigations

and impose fines of up to 1% of the turnover of the title in question, capped at £1 million (€1.17 million). It can also impose the publication of corrections and apologies, including in the form of a headline. But on the other hand, 90% of the UK's national dailies have decided to go with another regulatory body issued from the Complaints Commission, IPSO¹³, which does not recognise the Royal Charter on self-regulation. While this new body accepts most of the changes made, it rejects the possibility of being monitored by the panel established by the Charter, as well as the exemplary penalty system. Today, these two systems co-exist, with the media being able to choose which body they want to belong to. In IMPRESS, they can be fined for journalistic misconduct, but they can also be exempted from damages for defamation and invasion of privacy and receive a reduction in legal costs. Over time, it remains to be seen whether one of the two systems will prevail » (quoted by Foatelli, 2017).

The British model is one of the various ways to introduce statutory media self-regulation¹⁴. There are indeed different possibilities for public authorities to get involved in the system of media self-regulation [...] In Europe, the state officially recognises the press council in a few countries through legislation. In Denmark, media self-regulation is recognised by law and even is mandatory. In the United Kingdom, the signing of the Royal Charter does not make the system mandatory but formally recognises the system of media self-regulation and endorses its way of functioning. This is also the case in Ireland. [...] Similarly, one can ask what the impact is of incentives that reward or punish ethical and accountable journalism on media freedom. To answer

these questions, it is necessary to draw a distinction between democratic countries and countries in democratic transition where international standards related to media freedom are not yet respected (Hulin, 2014, p.7).

In short, « In countries with more developed democracy, statutory media self-regulation is not a problem *per se* for press freedom. In many countries, the state, for instance, contributes to the funding of the system such as in Finland, Germany, or Belgium; and the systems nevertheless remains totally independent from public authorities [...] It is however important to differentiate between statutory media self-regulation systems using punitive incentives to push media to adhere to the system and those using rewarding incentives » (*ibid.*, p.9).

2. In French-speaking Belgium

The creation process of the CDJ, implemented in 2009 as the self-regulatory body for the French-speaking media of Belgium, is of interest because it is the result of intense discussions and negotiations which implied the representatives of the media and the public bodies concerned, i.e., the Government of the French-speaking Community of Belgium and the audiovisual media regulatory authority of Belgium, the CSA (Furnémont and Smokvina, 2017, pp.39-41).

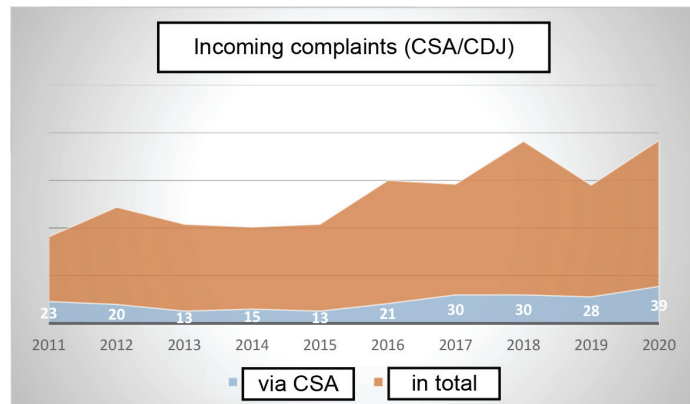
The goals of these discussions were trying to solve the two main unsatisfactory aspects of regulation of journalism ethics, which were that, due to the lack of a self-regulatory body: a) complaints about breaches of journalism ethics by the press had no place to be dealt with, except of course within each individual media if they did so on their own initiative; b) complaints about breaches of journalism ethics by audiovisual media would naturally be driven towards the CSA, which could intervene either on the basis on the traditional content obligations derived from the transposition of the AVMS Directive (protection of minors, protection of consumers, ban of hate speech...) or on the basis of a specific

¹³ IPSO was launched on 8 September 2014 as the independent regulator of the newspaper and magazine industry and is composed of a majority of members, who do not represent the media industry (Hulin, 2014, p.6).

¹⁴ "Statutory media self-regulation" can be defined as « an acknowledgement by law of a media self-regulatory body and its decisions ». In this case, public authorities support the system without getting involved in its functioning, in order to make it more effective. The term "statutory" refers to any regulation that is implemented by law but does not mean government control or state regulation, which requires that the regulatory authority would be directly performed by government bodies (Hulin, 2014, p.1).

provision of the media law which states that audiovisual media service providers « have to adopt internal regulations regarding objectivity in the treatment of information and commit to respect them » (*ibid.*).

Since 2009, a decree thus provides for the collaboration between the audiovisual regulatory body (the CSA) and the press council (the CDJ) with regard to complaints in the field of information covering both legal provisions on media services and principles of ethics (e.g., violation of human dignity) (Hanot and Michel, 2020, p.201). These complaints are dealt with in first instance by the press council and, exceptionally, in three cases, require additional treatment by the regulatory body: recidivism, media pressure on journalistic independence, and the potential damage on the audience. These are three cases in which the action of self-regulation, which may be insufficient, is supplemented by the action of the regulatory body, which has a greater power to sanction (Hanot, May 28th, 2021).



Source : CDJ, Annual report 2020-2021

3. In France

The French CDJM was officially founded in December 2019 in a media landscape where a form of intrusion in journalistic

ethics issues was already present, notably through the audiovisual regulator. According to Secretary Pierre Ganz, this confusion on the part of the CSA stems on the one hand from a legislative legitimacy and on the other hand, from « political interventionism ». Indeed, the public authorities have asked the CSA to be the arbitrator of questions related to journalistic ethics on several occasions in the last decade, « in the heat of the moment and the emotion » of events such as the war in Mali and terrorist attacks in France¹⁵ (May 31st, 2021).

Beyond the CSA's assessments of the media coverage, it is its legitimacy to intervene in matters of journalistic ethics that is being questioned. Regularly suspected of wanting to control journalistic ethics, the CSA has neither the nature nor the powers of such an authority. As an independent public authority invested by law with a regulatory mission, the CSA cannot be considered as a self-regulatory body, which is in essence professional. The law gives it the power to control private and public publishers, but not to « sanction » journalists. Nevertheless, in the absence of professional self-regulation, the CSA has been led, in its regulatory mission, to get involved in the deontology of information and programmes (*ibid.*).

Indeed, at the time, there was no press council (and no common code of ethics for the entire profession) in France. The Observatory of Information Deontology (ODI), an autonomous and tripartite body founded in 2012, only had a mission of observation and reflection, with no power to sanction breaches. It has since been replaced by the CDJM, the French press council, after years of resistance. For its

¹⁵ In January 2015, the media coverage of the terrorist acts in France quickly became controversial. The national broadcasting regulator, the CSA, took up the issue and issued warnings and formal notices to more than 15 broadcasters. These media reacted in a joint letter, arguing that information was threatened by these sanctions. Among the arguments put forward were the double standards between the audiovisual media regulated by the CSA and the others (newspapers, Internet and social networks). The CSA, which says it has only applied the law, cannot intervene in newspapers and their Internet emanations, which are subject to the 1881 law on freedom of the press (Granchet, 2015).

current vice-president Patrick Eveno, « The CSA cannot be judge and jury. That is to say, it cannot manage programmes, be the regulator of the audiovisual market, and at the same time control their ethics, nor can it be an administrative body appointed by the powers that be » (2015).

However, Eveno notes that since the change of the CSA presidency in early 2019, this « interventionist trend » has declined and that discussions about a potential partnership between the CDJM and CSA, which have already taken place, are expected to continue. However, the CSA has not (yet) publicly recognised the CDJM's competence in this field: « They have understood that journalistic ethics should be handled with great care and they are, to a certain extent, open to cooperate with us... But this process will take time » (May 31st, 2021).

Indeed, another obstacle to the development of the French press council has been the refusal of many news media to recognise it or to participate in it from its outset, considering the French media context unfavourable. A year and a half later¹⁶, « even though there is less reticence towards the CDJM », the situation has not really progressed: « The council is trying to get in touch with newsrooms but doing this virtually is very complicated... It would be beneficial to organise, for each editorial office, a meeting with the editorial director, the journalists' society and the media owner because if the first two stakeholders agree, the third one will follow ». Moreover, according to Patrick Eveno, « it is obvious that as long as the CDJM does not have sufficient recognition from the media, it will be in a weak position *vis-à-vis* the CSA ». For Pierre Ganz, « it is a cat and mouse game, and we'll have to see who will change their mind first: if there is a breakthrough on the side of the CSA, the situation may change because the media will then probably prefer to enter into a self-regulation system »¹⁷ (May 31st, 2021).

¹⁶ This interview was conducted in late May 2021. The CDJM celebrated its second anniversary in December 2021.

¹⁷ According to Pierre Ganz, most media actors will be « annoyed » if the CSA

After more or less 18 months of activity, what is the self-assessment of the French press council? As Pierre Ganz explains it, apart from the public directly interested in journalistic ethics, the general public is not (yet) aware of the existence of the CDJM, even if the council is increasingly quoted in press articles. On the other hand, « in this pre-electoral period, marginal but nevertheless harmful actors in public life are attempting to instrumentalise the council by launching multiple referrals ». Making itself known to the general public is therefore one of the self-regulatory body's priorities, but this has been compromised because of the unfavourable sanitary context, which arose barely three months after the creation of the council (May 31st, 2021).

Therefore, what does the future hold for the young CDJM? According to its secretary, three scenarios are possible. Firstly, the least desirable one, where « the council would not find its place and thus disintegrate in the near future ». Secondly, a slight evolution might be possible: « the council could remain an association that survives and is more or less supported by public authorities or foundations, which issues opinions without provoking a significant reflection within the profession and the public ». Finally, the ideal future or « the Belgian way » would be « an association which the media and journalists have invested through their organisations and that the public authorities recognise and respect » (May 31st, 2021).

However, several elements mitigate this optimist vision: on the one hand, the CDJ/CSA model of cooperation in French-speaking Belgium has taken time to be effective and on the other hand, « France is not really comparable to Belgium ». Indeed, in France, the level of scale is different, the notion of consensus is less strong, the CSA has a different approach,

extends the control of programme ethics and the respect of equal speaking time during the electoral period to journalistic ethics in its whole. Since this "fake news" law applies essentially during the (pre-)election period, « this year, we will see its usefulness and its capacity to cause harm, the interest or the danger that it represents » (i.e., as the upcoming presidential election will take place in mid-2022).

there are several journalists' unions to convince and there is no real support from the government. On this last point, vice-president Patrick Eveno notes that if the CDJM were to receive (too) « many public subsidies » in the future, the council would certainly be labelled « pro-government » by its opponents anyway¹⁸ (May 31st, 2021). In short, the French press council is currently following a « wait and see » approach and continues to deal with the complaints it receives on a daily basis.

F. Certification initiatives

1. The Journalism Trust Initiative

To advance the issue of disinformation on the international scene, Reporters Without Borders (RSF) has launched the Journalism Trust Initiative (JTI), which has been presented in the press as « a self-regulatory mechanism to promote reliable sources of information, by modifying algorithms that would highlight the content of media certified for the quality of their journalistic ethics » (Tellier, 2019). RSF believes that « suppression of harmful or illegal content online, and the subsequent sanctioning of malicious actors, is not enough to secure the safe functioning of our common information space » and that « in parallel, trustworthy journalism deserves to be rewarded with a competitive advantage in terms of discoverability, leading to elevated reach and revenues » (2021).

The JTI online platform, which has been launched in May 2021, is « a new web offer designed to identify and reward trustworthy news sources » where « media outlets can use the online app to check, disclose and promote compliance

¹⁸ Adeline Hulin highlighted this dilemma back in 2014, five years before the CDJM was founded: « In countries without a press council, such as France, the question of a statutory recognition of the system of media self-regulation is at the heart of the current discussions [...] On one hand, a recognition of the system by state authorities appears as an essential pre-condition for its creation; on the other hand, state intervention risks giving any new structure an appearance of non-independence, which could be the main reason for its failure » (Hulin, 2014, p.11).

of their editorial processes with best practices » (2021). In other words, « The JTI aims at a healthier information space by developing indicators for the trustworthiness of journalism and thus promoting and rewarding compliance with professional norms and ethics » (ERGA, 2020, p.53).

The main users of the JTI are news media outlets but self-regulatory bodies like press councils can create an account too, as this would allow for media outlets « to indicate their affiliation, be it membership or oversight, which these entities, in return, can then validate for elevated accountability ». But the JTI doesn't want to replace existing editorial guidelines or self-regulatory structures like press councils and is considering itself to be « fully complementary, as it adds a voluntary and independent compliance level to those existing processes » (2021).

If « some have highlighted the added value of JTI in giving stakeholders (investors, regulators, etc.) a white list of publishers » (ERGA, 2020, p.53), the initiative has also received mixed reviews from the self-regulatory world. The French CDJM has not officially taken a stand on the JTI, but according to Secretary Pierre Ganz, « there is a real question behind this initiative », namely « how can the public know whether what they consult as sources of information corresponds to the criteria, in a democracy, of a responsible information properly made with the aim of informing? ». But the problem with the JTI « is that the label is only given to the media that ask for it ». Indeed, media of excellent ethical quality that might not enter the system for ideological or financial reasons would be *de facto* penalised. On the other hand, a form of labelling might be useful to define the place of journalistic content on platforms and it could be interesting to introduce « the fact that a media accepts or not self-regulation by a press council » (May 31st, 2021).

For its part, Pierre François Docquir (Head of the Media Freedom Programme at ARTICLE 19) personally believes that the JTI is « a bold and innovative idea », which could

notably allow « the participation of individual actors such as bloggers and emerging media, who would also benefit from the system ». Moreover, « there is no obligation or external control since it is a self-certification process, where each media can test itself to know the score that the platform would give to it ». In short, « the risk is not in the project itself but rather in the careless use that would be made of it later on » (June 8th, 2021).

2. Rewarding ethical quality?

As Hanot and Michel explain it, « To the issue of pluralism (of the media offer) is now added the issue of quality (of journalism). [...] The question of quality is indeed subjective and tends to establish a hierarchy between different forms or genres of journalism, which would thus be more or less “noble” according to the interest we give them. In the context of the fight against fake news, this quality journalism refers more to the relationship of trust than to the nature or form of the content. In this case, it seems more appropriate to speak of deontological quality journalism, the objective of the latter being, as we have seen, to respect the rules of the profession – including first and foremost the search for truth and verification – which make it possible to offer the public all the guarantees necessary for an information contract based on trust.

In other words, to guarantee the right to correct and verified information. This approach is based on two principles [...] The first one is to help the public to distinguish, in the thread of content available via the platforms, those that are reliable (of journalistic quality) from those that are not, by using a form of label. Here we find initiatives that may relate to media production systems (the Journalism Trust Initiative project initiated by Reporters Without Borders) or more simply to the fact of joining a press council¹⁹ (or journalistic ethics council)

¹⁹ For Pieter Knapen, « It would be beneficial if social media left alone news media which are members of a press council. For example, the Facebook Oversight Board should keep their hands off such media, because they are

(the “Vastuullista” label of the Finnish Media Council) » (2020, pp.205-206).

Furthermore, « The second axis is to build on existing independent and professional self-regulation, to use where effective the same ethics councils to deal with issues related to journalistic practice (dealing with news complaints, identifying whether content is news, informing the public and journalists, at the interface between the public and the media improving practices in order to (re)build trust between news media and citizens). An example from the field provides a positive illustration of how ethics councils can support the recognition of trustworthy content. In Sweden, a Swedish tabloid – Expressen – invites its readers to complain to the Press Ombudsman [...] when they see an ethical problem in an online article. On the media’s website, a button underneath the online content gives the possibility to lodge a complaint directly in case of ethical misconduct. There is also a button to report any errors to the editorial staff. The media has decided on this policy, based on trust, in order to respond to the misleading and diverse contents that are spread on the web » (*ibid*).

G. Webinar key-points (by Alejandra Michel)

The relationship between journalistic self-regulation and content regulation is a sensitive issue. It has long been the subject of much discussion and controversy. These two bodies of rules, which should not be confused because of their intrinsically different nature²⁰, nevertheless have strong interpenetrations. Journalistic activity and the role of press councils can be challenged by legal rules adopted to regulate expression and media. On the other side, journalistic self-

already engaged in respecting journalistic ethics » (May 27th, 2021).

²⁰ About the differences between law and self-regulation, see E. DERIEUX, « Cour européenne des droits de l’Homme et éthique journalistique : rapports entre droit et déontologie », *Revue Lamy Droit de l’immatériel*, mars 2011, n° 69, p.65 ; S. HOEBEKE et B. MOUFFE, *Le droit de la presse : presse écrite, presse audiovisuelle, presse électronique*, 3e éd., Limal, Anthémis, 2012, p.844 ; J.-J. JESPERS, *Déontologie des médias*, syllabus du cours enseigné à l’ULB, Presses universitaires de Bruxelles, 2015-2016, pp.12-14.

regulation in the broad sense (both rules and decisions of press councils) has an influence on the case law of national and European courts.

The digitalisation of society reinforces this observation. Online content, including journalistic activity, is at the heart of tensions between, on the one hand, the multiple initiatives for regulating expression initiated by legislators and politicians to fight illegal and harmful content and, on the other hand, the strong reaffirmation by civil society actors of the need to establish adequate safeguards in order to ensure fundamental rights, notably freedom of expression and media freedom.

Through the main question « can journalistic self-regulation serve the purpose of online content regulation? », the webinar shed light on some relevant issues in this area: the place of international human rights standards in content moderation practices, the role of press councils in the media and regulatory landscapes and the alliance of press councils to preserve press freedom and media independence from regulatory risks.

1. External monitoring of online platforms moderation activities

Online content moderation is an extremely complex issue that is still in its infancy. Online platforms currently hold huge power over the expression of Internet users, and the risks of private censorship are colossal. Journalistic expression on social networks is not immune either and threats for media freedom are real. Although some progress has been made, particularly in terms of transparency, recent whistleblower disclosures²¹ show that there is still some way to go. Furthermore, as Pierre François Docquir points out, even if online platforms are becoming more open to discussion with civil society actors, their practices are still very one-sided,

²¹ See among others, S. PELLEY, “Whistleblower: Facebook is misleading the public on progress against hate speech, violence, misinformation”, 4 October 2021.

and they still have the whole control over content moderation activities. It is therefore urgent to bring international human rights standards back into the equation.

The NGO ARTICLE 19 has engaged in this direction with the Social Media Councils (hereinafter « SMC ») initiative²². Drawing on the experience of press councils²³, the idea is to set a mechanism of external monitoring of gatekeepers’ content moderation activities. The SMC is intended to be an independent, inclusive, transparent, accountable and voluntary forum where all stakeholders²⁴ can have a say. In this scheme, journalists, media, media regulators and press councils obviously have their place.

The respect of international human rights standards and the participation of stakeholders with different expertise and backgrounds (including minorities) are the two cornerstones of the mechanism’s success²⁵. One cannot be achieved without the other. A key aspect of compliance with international human rights standards is indeed understanding and taking into account contextual specificities. And this can only be ensured by making decisions at the local level with a broad representation among stakeholders, so that « local voices » are effectively heard.

At present, the only external monitoring mechanism for content moderation is Facebook’s Oversight Board

²² On this subject, see PF DOCQUIR, “The Social Media Council: Bringing Human Rights Standards to Content Moderation on Social Media”, 28 October 2019.

²³ The parallel with the experience of press councils is reflected in two respects. First, in terms of its functioning, the SMC would have both the competence to take decision on the basis of individual complaints, but also the competence to issue general guidelines. Second, the SMC is intended to be a voluntary mechanism. No legal obligation would be imposed on online platforms, which would however voluntarily and publicly commit to submit to the decisions adopted.

²⁴ The initiative plans to bring together all parties concerned by the issue of content moderation: online platforms, media regulators, press councils, media and journalists, the advertising industry, NGOs and other civil society actors, academics and researchers.

²⁵ See not. ARTICLE 19, “Social Media Councils: One piece in the puzzle of content moderation”, 12 October 2021, p.13.

(hereinafter « OB »). It has only just started its activities in 2021 and therefore there is not yet enough experience to measure its effectiveness²⁶. However, the awareness-raising work on international human rights standards provided by civil society actors seems to have positively impacted the OB. As Pierre François Docquir pointed out, while initially the OB intended to base its decisions on Facebook's terms and conditions, they finally decided to also take into account international human rights standards. This example helps to reflect the influence that initiatives such as the SMC can have on private companies. Although the establishment of the OB is a good first step, its establishment at the global level does not adequately consider the contextual elements necessary for decision making²⁷. The SMC would therefore offer definite added value in this respect.

There is now a growing consensus that international human rights standards are the right language for content moderation practices, mainly because of their universal and legitimate character. It is also strongly supported by the UN Special Rapporteur David Kaye, who invites online platforms to integrate them into their terms and conditions²⁸. Big players seem to want to play the game and are much more sensitive to the issue than before. As they play a key role in public expression and content control at the global level, we must ensure that their statements do not in fact amount to some kind of « human rights washing ». Furthermore, as fully stated by Pierre François Docquir, « do we want to have companies using that language on their own or should there be an actual conversation where, on the basis of that language of human rights, all components of society could

actually have their say on what it means to apply human rights to content moderation? ». However, there is still work needed to translate international human rights standards to the issue of content moderation. We are only at the beginning of a « long journey » to move from theory to practice²⁹. One of the first tasks of the working group established to set up the first SMC pilot in Ireland will be the drafting and adoption of the Code of Human Rights Principles for Content Moderation³⁰. The most challenging aspects will undoubtedly be to ensure compliance with the necessity requirement for interference with freedom of expression. In this respect, we believe that the rich case law of the European Court of Human Rights offering analytical grids with contextual assessment factors could be inspiring.

Finally, to ensure the success of the self-regulatory mechanism proposed by SMC, in addition to the effective participation of all stakeholders, it must offer added value to the regulatory approach. In this respect, Pierre François Docquir believes that, even if the question of whether online platforms will really submit voluntarily to the decisions remains, the regulatory approach presents the risk that they will rebel and go to courts to challenge any decision and block the process. The SMC must also be integrated in the regulatory framework; and can eventually move towards a co-regulatory system. The approach proposed by ARTICLE 19 could provide a forum for discussion to understand harmful content and other complex societal issues. It could also play a role in the fulfilment of new obligations imposed by the European legislator, notably for the determination of appropriate measures to protect users of video-sharing platforms from harmful content or for the establishment of alternative dispute resolution mechanisms between users and online platforms³¹.

²⁶ *Ibid.*, p.5. The first transparency reports on OB activities for the year 2021 are available [here](#) and [here](#).

²⁷ To try to understand and consider the local specificities, the OB mandates an external expert coming from the country concerned by the dispute. However, as Pierre François Docquir points out, this is not enough because it is only « one voice speaking » for the whole society, which does not allow for a « broad representation of society ».

²⁸ UN General Assembly, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 6 April 2018, A/HRC/38/35.

²⁹ ARTICLE 19, "Social Media Councils: One piece in the puzzle of content moderation", *op. cit.*, pp.6 and 22.

³⁰ *Ibid.*, p.27.

³¹ *Ibid.*, pp.24-25.

2. The role of press councils in the media and regulatory landscapes

Press councils play an important role in any democratic society. They ensure the contract of trust with the public as well as the freedom and independence of media. Obviously, they also offer added value to the regulation of expression.

First of all, press councils can reinforce the awareness-raising work already carried out by other civil society actors. They can help the public to identify information, to distinguish it from propaganda and disinformation and to understand how it is constructed. This media literacy work can positively influence content moderation activities.

Secondly, press councils are essential stakeholders in any mechanism that intends to propose solutions to the problem of content moderation. They appear among the useful actors that can help the fight against illegal and harmful content³². Even if some people have expressed doubts or fears in the context of the SMC³³, press councils definitely have a place in this scheme, at least as observers³⁴. There are two reasons why ARTICLE 19 argues for the participation of press councils in the SMC. First, they are part of the media landscape and therefore a major actor in the discussions. Secondly, their

experience and success in content self-regulation (and thus as an alternative to the regulatory approach) is inspiring.

Finally, on the regulatory side, there is currently a movement of strengthening audiovisual regulators' powers in the fight against illegal and harmful online content. On these complex issues, the borderline between monitoring journalistic activity and monitoring legal provisions is very thin. In the current situation in France³⁵, there is a clear risk of intervention by audiovisual regulators in matters of journalistic ethics.

Moreover, Jean-Christophe Boulanger (CDJM) underlines that the establishment of effective and efficient press councils mitigates the risk of state interference in journalistic self-regulation. More collaboration between press councils and audiovisual regulators could be beneficial. Good practices could be found in the model adopted in French-speaking Belgium³⁶. Indeed, the community legislator has introduced a provision that imposes a form of collaboration between the press council and the audiovisual regulator when a complaint straddles a regulatory issue and a journalistic self-regulation issue: the press council intervenes in the first line and the audiovisual regulator takes over if the solution provided by self-regulation is not satisfactory. This model could inspire the role of press councils in the regulatory framework of the fight against illegal and harmful online content.

³² For example, in the fight against online disinformation, the media industry is often highlighted as an important stakeholder. In particular, policy makers call for strong measures to support (ethical) quality journalism and emphasise the role of the media in this respect. See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Tackling online disinformation: a European approach*, 26 April 2018, COM(2018) 236 final, pp.7-16; European Commission (Directorate-General for Communication Networks, Content and Technology), *A multi-dimensional approach to disinformation : Report of the independent High level Group on fake news and online disinformation*, Luxembourg, Publications Office of the European Union, 2018.

³³ For example, some people have doubts and reservations about the participation of press councils in initiatives for self-regulation of content moderation practices of online platforms. The main reasons are, on the one hand, the risks that this could possibly cause to the independence of press councils and, on the other hand, the limited presence of journalistic content on social networks.

³⁴ ARTICLE 19, "Social Media Councils: One piece in the puzzle of content moderation", *op. cit.*, pp.18-19.

³⁵ In France, the legislator is multiplying regulatory initiatives with the aim of giving the audiovisual regulator the jurisdiction to intervene in the issue of online content moderation, with the risk of affecting journalistic activity. Fortunately, however, until now the French audiovisual regulator has tried not to apply such powers.

³⁶ Décret du 30 avril 2009 de la Communauté française réglant les conditions de reconnaissance et de subventionnement d'une instance d'autorégulation de la déontologie journalistique, *M.B.*, 10 septembre 2009, art. 4.

3. The alliance of press councils

Even if press councils share similar ethical standards, they have different ways of operating and each has its own culture and history³⁷. For these reasons, reaching a consensus can be complex.

However, the threat of state interference in journalistic activity seems to have played a determining role in the establishment of press councils. These regulatory risks and threats to press freedom and media independence though do not end with the creation of press councils. For example, the Digital Services Act proposal (hereinafter the DSA) that is currently discussed at the EU level creates a threat of intervention by online platforms on journalistic content. Even if this intervention could be unintentional, the threat is real, in particular because online platforms will not be able on their own to perceive what is at stake. The broad definition of « illegal content » combined with online platforms' own terms and conditions could impact journalistic content posted on social networks to denounce practices or activities harmful to society. Conversely to the recent EU regulation adopted to fight the dissemination of terrorist content online which inserts an exception for journalistic purposes³⁸, no safeguard for press freedom is included in the DSA at the moment.

Despite their differences, press councils have a key role to play in resisting regulatory risks and defending press freedom and media independence. Other sectors agree on it and manage to play a role in discussions that may impact the media sector; so why not press councils? We hope that they

can also join forces and raise a « common voice » to defend their interests, which are also those of a democratic society.

H. Conclusion

More than ever, journalistic self-regulation can serve the purpose of online content regulation. Press councils have a role to ensure in this horizon. First, to resist regulatory threats and insist on the need to take into account journalistic specificities; but also, to contribute to the awareness, understanding and resolution of complex societal issues.

There is currently a strong pressure to regulate so that online platforms no longer have the whole control on online content moderation activities. The outline of future reforms of the EU regulatory framework leaves room for self- and co-regulatory initiatives. Moreover, existing content regulation (hate speech, terrorist content, intellectual property infringements, child pornography content...) is always reinforced by self-regulatory mechanisms.

The assumption that there will be no EU framework for content moderation is an illusion. Instead of being ordinary viewers of regulatory changes, press councils can act and become a key player in solutions that respect fundamental rights, the rule of law and democracy. The approach proposed by the SMC for an external monitoring of online platforms moderation activities seems promising. While these giants currently have control, multiple expertise is needed to comply with international human rights standards. To ensure the success of the SMC, all stakeholders must be brought together. In this respect, press councils could raise awareness of other stakeholders to the particularities of information and journalistic activity; and thus, ensure the freedom, independence and pluralism of the media. We also strongly believe that such a mechanism could mitigate the risks of « overcompliance » created by regulatory framework that imposes heavy penalties on actors for non-compliance. This approach also allows for less interference with the interests at stake, thus meeting the condition of necessity for interference with fundamental rights.

³⁷ The sharing of French and Irish experiences highlighted this point. It became clear that on the French side, the establishment of the CDJM took time, due to different perceptions of political intentions, fears for media independence and reluctance of big publishers. Conversely, the initiatives for the establishment of the Irish press council came from the big actors who warned of the importance of an independent complaints handling system to avoid regulatory intervention.

³⁸ Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online, *O.J.E.U.*, 17 May 2021, L 172/79, art. 1, §3 and rec. n° 12.

To enable press councils to assume such a role, strengthening their recognition by the « market – public – State » triptych is an indispensable prerequisite. In this sense, let us hope that their alliance can ensure them a place at the heart of the political discussions that are currently shaping the future of content regulation. ■

The sixth and last webinar – « Can journalistic self-regulation serve the purpose of online content regulation? » – took place on November 25th, 2021 and welcomed founding member of the French CDJM Jean-Christophe Boulanger and Pierre François Docquir, head of media freedom at ARTICLE 19. CDJ civil society representative Alejandra Michel (UNamur) acted as moderator and rapporteur for the debate.

Conclusion

To be a source of inspiration and a part of the solution in current debates on media

Taken by their daily work, media and press councils rarely have the opportunity to reflect on their role, organisation, and future. These six webinars really offered them an opportunity to look at themselves as well as issues they are currently facing. The series came at a special time to draw new avenues for common work, shared action, and new challenges.

As a result, first of all, press and media councils have built common ground. Whatever the variations in ethical standards and principles they can observe, fundamentals remain the same, by defending the accountability, accuracy, credibility and reliability of information. Whatever their organisational particularities, they rely on criteria that imply a similar identity: press and media councils are independent, representative, transparent, working for the public interest, dealing with complaints of the audience on the basis of a common journalistic Code of Ethics. Journalists and editorial media are bound to adhere to these common journalistic ethical standards and to subject themselves to this system of complaints handling. And regardless of the nature of their membership and their current jurisdiction, chapter 3 illustrates that they all consider openness to digital content with the same pragmatical approach: they do not want to self-regulate all social media content, but they are aware that journalistic content shared on these platforms needs to be protected and self-regulated in the same way as other ones. No matter the media (the way of dissemination), ethical standards and journalistic accountability remain the same. For sure, press and media councils are aware that such an inclusive path will be difficult. But it is as necessary as freedom of speech and the right to information. Some councils are already going that way cautiously, deciding on a case-by-case basis to examine

complaints against social media content.

One may have thought that press and media councils are so different from each other. These webinars proved that they share both common interest and future. These press councils probably already knew this, especially when it comes to ethical principles they have discussed over many years through the Alliance of Independent Press Councils of Europe (AIPCE), a network of independent content self-regulators for both press and broadcast media. Certainly, they now realise how similar their worries, hopes and questions are. As a place of exchange, the webinars have brought this to the fore. Beyond being a source of sharing and inspiration for their colleagues, whether in terms of opening up to students, the public or new media players, press and media councils have helped building the common contours around a community of players acting in the general interest, and highlighting the factors that make up their identity. As the discussions in chapter 4 showed, this identity depends firstly on the means available (dealing with more complaints means greater needs), secondly on the internal representations of their role, and thirdly on the expectations about this role expressed externally. Thus, the difficult choice to open up to digital social networks is based, according to the arguments put forward, on the fear of being overwhelmed (by complaints), on the image that the historical actors of self-regulation have of what they are and what they do, and on the image that the public has of their missions and duties.

Does this mean that if they were given more recognition – funded, mandated – by the legislator, press and media councils would be able to deal with the information issues they

readily identify because of their experience and expertise? Provided that their independence from any governmental influence is guaranteed. Provided that their voice can be heard where decisions are taken today, in the national and European sphere.

And this is one of the key points of this webinar series: to demonstrate the magnitude of the task these councils perform and the expertise they accumulate on issues that are central to our contemporary societies, while they have little or no say in these matters. Whether it is a question of how they define journalistic content or information, opinion, moderation of comments on forums, the fight against disinformation or hate speech, they hold a certain expertise in this area, whose strength lies in the variety of complementary approaches.

They knew that this recognition of expertise had already been acquired among journalists and the media, which they convinced, where they existed, of the usefulness of their action for the benefit of journalistic practices and the regained trust with the public. Chapter 1 sufficiently demonstrates the place that journalistic self-regulation has taken in learning the Codes and practices of the profession.

The Covid-19 crisis, on the other hand, as chapter 2 points out, revealed this expertise to the public, showing them that press and media councils are a part of the solution to the crises that affect information today, as well as its credibility and its reliability, especially at times when reliable information is decisive for public health and social cohesion.

Press and media councils have certainly become more aware of this role than ever: to be an interlocutor informing and educating the public to address online mis- and disinformation, handling complaints about potential breaches to the Code of Ethics. Of course, as chapter 5 points out, it would be ideal if adding to the extension to digital content, they could become recognised, such as a transparent and fast-working decision-making process. This remark once again echoes the gap

between the expectations and the actual situation of these actors.

The Covid-19 pandemic has been revealing regarding the role of press councils for the public. Has it been the same for legislators? Although there are signs of interest in the potential role of self-regulatory bodies in combating misinformation and hate speech, distrust persists on both sides. On the one hand, press councils, conceived to resist attempts at external control of the press, fear any form of regulation that impinges on press freedom. On the other hand, regulation conceives journalistic self-regulation tools as an attempt to escape the application of the legal framework necessary to preserve the common good.

Misunderstandings and misrepresentations are obvious in these approaches, from which no one wins at the end. For press and media councils, letting go means allowing mistrust linked to the circulation of disinformation and giving private actors the possibility to decide, as of tomorrow, the fate of information content on social networks. For legislators, regulating without taking into account the particular nature of news content and its self-regulation means risking upsetting the fragile balance of the press in a democracy, or creating a legal framework that could be misused by less cautious authorities in the future. From this point of view, as quoted by Adeline Hulin in chapter 6, « the abuse and misuse of media regulations by state authorities is more dangerous than the abuse and misuse of media self-regulation by the media industry or journalists themselves » (2014, p.2).

However, like legislators, press and media councils must adapt to digital social platforms and networks. An adaptation that they think cautiously, noting as in chapter 5 that if the online press environment requires an adaptation of ethical standards, a complete shift would nonetheless not be advisable. They have no intention of becoming social media councils. On the other hand, they are concerned about the moderation of news content on social networks and it is in this capacity that some

are already acting, and that they want to be heard. They know that they are not the whole solution, but that they are, because of their experience and expertise, a part of the solution. It is precisely because they have this expertise and know-how in the field of self-regulation and information that ARTICLE 19 is inspired by them and envisages their involvement – as observers – in the Social Media Council model it is trying to set up.

If one expects the need to make the press and media councils' common voice heard to a greater extent by legislators – they are already trying to do so via the AIPCE – progress on this issue can only be made through dialogue, through exchange in order to break down the barriers resulting from those misunderstandings and misrepresentations. Dialogue is in essence a quality of press and media councils, which are established at the interface between the public, the media and journalists, and which regularly assess the balance between the principles that underpin journalism: independence, freedom of expression, general interest, and human rights.

If social media regulation cannot be avoided, this dialogue may conduct to a solution that privileges a legal exception for journalistic content. In the light of necessary independence for journalists and editorial media, journalistic self-regulation – the commitment of journalists and editorial media to the system of independent, representative, transparent self-regulation – could have priority over external regulation. Such frontline action does not exclude state intervention. It can be reinforced by it if it shows inefficiency, when for instance malicious or simply unreliable actors are pretending to be a part of the ethical game without respecting its rules.

Such an articulation between legal and self-regulatory approaches can be inspired by existing models. In (French and German-speaking) Belgium, a decree already provides for collaboration between the audiovisual regulatory body and the press council with regard to complaints in the field of information covering both legal provisions on media services

and principles of ethics (e.g., the violation of human dignity).

These complaints are dealt with in first instance by the press council and, exceptionally, only three cases (recidivism, media pressure on journalistic independence, and the potential damage on the audience) require additional treatment by the regulatory body, which has a greater power to sanction and is able to supplement the action of the self-regulatory body. In Germany, the Interstate Media Treaty defines specific legal provisions for digital media (« telemedia ») that disseminate information contents: these must comply with recognised journalistic principles, which are monitored by an external regulatory body, unless they join the German press council. In this case, journalistic self-regulation is thus deemed sufficient to meet the regulatory objective, and the press council is responsible for recognising and promoting its work and therefore must also ensure its efficiency. These examples prove that journalistic self-regulation can really contribute to the general media debate in the digital age, putting ethics and accountability at the centre of discussion.

Self-regulation is both a source of inspiration and a source of solutions. For press and media councils themselves, for journalists and media, for the public, and for legislators too. This is undoubtedly the essential conclusion to be drawn from the many discussions held during this cycle of webinars, which, although did not succeed in dealing with all the outstanding issues and in answering all the questions, did help to lay strong foundations for future dialogue.

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Edition by Muriel Hanot

Coordination by Anna Vidal

Layout by Christine Pauwels

Printing by Hayez Imprimeurs

