

Articulations between Self-regulation and Regulation in the Field of Information and Journalism

A Comparative Analysis of European Practices

Followed by

Observations & Recommendations



September 2023

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Media Councils in the Digital Age

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Helena Peten de Pina Prata

Edited by Muriel Hanot and Alejandra Michel

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FOREWORD

AADJ/CDJ – the French- and German-speaking Belgian Council for Journalistic Ethics – has taken part since its very beginning to the ‘Media Councils in the Digital Age’ adventure. This European cofunded programme¹ offers a real opportunity for press councils to take time for action and reflection on what they are, the values they share, the way they manage digital issues.

Year after year, AADJ/CDJ has proposed and developed activities that either foster the dialogue between parties or deepen the issues at stake for journalistic self-regulation. These activities also intend to offer a better understanding of journalistic self-regulation from the inside as from the outside.

In 2022, when organising the Media Councils Debates, a series of six webinars focusing on the transition of media councils towards the digital age², AADJ/CDJ launched a debate on the way journalistic self-regulation could serve the purpose of online content regulation. This crucial question inevitably led to understand how press and media councils could articulate journalistic self-regulation with other regulatory frameworks dealing with online content and social media. Talking about “articulation” between self-regulation and regulation seemed odd for a long time for most of our peers. Up until recently, the very peculiar way AADJ/CDJ was handling some complaints with the media regulatory body, the CSA, sounded totally inaudible because it was not understandable to many. Overlaps were thought impossible.

¹ See <https://www.presscouncils.eu/>.

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

And yet... In 2022, some of our colleagues had just experienced new challenges imposed by digital changes. In Germany, for instance, a legal framework was distributing “telemédia” (i.e., digital media) regulation to the *Presserat* or to an external regulatory body depending on whether they are committed to self-regulation or not. In the end, this activity revealed itself to be prosperous, exposing misunderstandings and misrepresentations from each body on its (regulatory) “counterpart”, showing possible overlaps of competences, enhancing dialogue between both bodies, eventually proving 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”.

Starting from this point of view, surveying the existing articulations between self-regulation and regulation at the European level became obvious. Is the relationship between AADJ/CDJ and the CSA really unique in Europe? Does the German case hide or signal changes in other countries? What are the European practices at stake? In the background, is the place granted to press councils within the changing media ecosystem? Etc. The ambition of this research was considerable, as the situation has never been documented in this perspective before.

This report follows two lines of development. The first one compares and analyses the articulations in European countries based on a series of collected data. The second one takes up the final solutions proposed in a survey, discussing them with European press councils and with two representatives of the European Regulators Group for Audiovisual Media Services (ERGA), before making recommendations on how press councils can ultimately contribute to the objectives of

regulation while protecting the independence and the freedom of the press.

May all the contributors to this work – from the smallest to the biggest – be thanked. They all prove once again that – as for the question under analysis – the whole is greater than the sum of the parts! ■

Muriel Hanot
Secretary General AADJ/CDJ

Part 1: Survey and report¹

¹ Author: H. Peten de Pina Prata. Editors: M. Hanot & A. Michel.

INTRODUCTION

1 This research is carried out in the framework of a European co-funded research programme, which is part of the Media Councils in the Digital Age project (hereinafter: MCDA)¹. Under the coordination of the Council for Journalistic Ethics (*Conseil de déontologie journalistique*) for the Belgian French-speaking and German-speaking communities (hereinafter: CDJ)², the research consists in a comparative study of the existing articulations between regulation and self-regulation in the field of information and journalism.

Starting from the Belgian experience, our analysis focuses on the role and activities of press councils. It completes the comparative work on press councils that has already been conducted, particularly within the framework of MCDA³. In Belgium, different approaches coexist when it comes to articulating the regulation and self-regulation of information. One favours interactions between the press council and the regulatory authority overseeing the audiovisual media sector. As a result, the study's primary purpose is to examine other European systems and determine if similar interactions exist elsewhere, and if yes, how do they work.

This analysis is all the more topical as it is conducted at a time when a new regulatory framework is emerging. This brings to the fore possible new interactions between regulation and journalistic self-regulation.

2 The first two chapters of this report will provide (I) the contextual background and (II) the conceptual framework of our research. (III) The third chapter will present the

methodology, and (IV) the fourth chapter will investigate the existing approaches in Europe when it comes to articulating the regulation and self-regulation of information. (V) Finally, the fifth chapter will provide a critical reflection on these different approaches. ■

¹ See <https://www.presscouncils.eu/Media-Councils-in-the-Digital-Age>.

² See <https://www.lecdj.be/fr/>.

³ See AIPCE, "Comparative data on media councils", available at: <https://presscouncils.eu/Comparative-data-on-media-councils>; R. HARDER, "Media Councils in the Digital Age, An Inquiry into the practices of Media Self-Regulatory Bodies", *Vereniging van de Raad voor de Journalistiek*, 2021; M. HANOT (ed.), A. VIDAL (coord.), "The Media Councils Debates: Facing the Challenges of the Digital Age", AADJ/CDJ (CDJ: Recherches et enjeux 2), 2022.

I. CONTEXTUAL BACKGROUND

- 3 The media landscape has undergone significant changes since the emergence of the first media. These developments impacted the way information is regulated around the world, and hence in Europe.

A. Fundamental rights regarding journalistic content

- 4 As consistently held by the European Court of Human Rights (hereinafter: ECtHR), freedom of expression constitutes one of the fundamental pillars of any democratic society and one of the necessary conditions for its development¹. Everyone should have the right to express their opinions, as well as to receive and transmit information and ideas, without interference from public authorities and regardless of borders². This applies not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that may offend, shock, or disturb. These are the demands of pluralism, tolerance, and open-mindedness without which no “democratic society” can exist³.
- 5 In order for citizens to shape and hold opinions based on reliable information⁴, journalists and mass media play an

important role in disseminating information about the state of the world. They help close the information gap between the world and the individuals who do not have the means to chase information on their own⁵. In this context, journalism serves different purposes, such as analysing and disseminating information in the public interest, facilitating meaningful discussion on various critical issues, contributing to the public debate or serving as public “watchdogs”⁶.

In this regard, the ECtHR has emphasised, on several occasions, the important role of the press as a watchdog in a democratic society. According to the Court, journalists’ task of disseminating information and ideas on all matters of public interest is linked to the public’s right to receive them⁷. As a result, journalists and media benefit from an enhanced protection under Article 10 of the European Convention on Human Rights⁸.

- 6 The link between journalism and the public is reinforced by the implicit “contract of trust”. This contract serves as the foundation for the information process. It implies

for the protection of human rights, require its provisions to be interpreted and applied in a way that makes their requirements concrete and effective, and not theoretical and illusory.

¹ B. MARTENS et al., “The digital transformation of news media and the rise of disinformation and fake news”, *JRC Digital Economy Working Paper*, nr. 02, 2018, p. 12.

² G. S. MILLER, “The Press as a Watchdog for Accounting Fraud”, 29 December 2003, available at: <https://ssrn.com/abstract=484423>, p. 9.

³ ECtHR, “Guide on Article 10 of the European Convention on Human Rights: Freedom of Expression”, 2022, p. 53. See ECtHR (plen.), case of *The Sunday Times v. the United Kingdom* (no. 2), 26 November 1991, § 50; ECtHR (GC), case of *Bladet Tromsø and Stensaas v. Norway*, 20 May 1999, §§ 59 and 62; ECtHR, case of *News Verlags GmbH & Co.KG v. Austria*, 11 January 2000, § 56; ECtHR (GC), case of *Pedersen and Baadsgaard v. Denmark*, 17 December 2004, § 71; ECtHR (GC), case of *Dupuis and Others v. France*, 7 June 2007, §§ 35 and 46; ECtHR (GC), case of *Axel Springer AG v. Germany*, 7 February 2012, § 79; ECtHR (GC), case of *Bédat v. Switzerland*, 29 March 2016, § 51; ECtHR (GC), case of *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland*, 27 June 2017, § 126.

⁴ ECtHR, “Guide on Article 10 of the European Convention on Human Rights”, *op. cit.*, pp. 45 and 54. See ECtHR (GC), case of *Stoll v. Switzerland*, 10 December 2007, §§ 101-102.

¹ ECtHR, “Guide on Article 10 of the European Convention on Human Rights: Freedom of Expression”, 2022, p. 11. See the leading case ECtHR (plen.), case of *Handyside v. the United Kingdom*, 7 December 1976, § 49.

² Article 10, § 1, of the European Convention on Human Rights, signed in Rome on 4 November 1950 and Article 11 of the Charter of Fundamental Rights of the European Union, signed in Nice on 7 December 2000.

³ Article 10, § 2, of the European Convention on Human Rights. See ECtHR (plen.), case of *Handyside v. the United Kingdom*, 7 December 1976, § 49; ECtHR (plen.), case of *Observer and Guardian v. the United Kingdom*, 26 November 1991, § 59; ECtHR (GC), case of *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland*, 27 June 2017, § 124.

⁴ ECtHR, case of *Association Burestop 55 and Others v. France*, 1 July 2021, § 108. In this case, which concerns the right of access to environmental information held by public authorities, the Court gives a new landmark teaching on the “quality” of information. In particular, the Court considers that the right to receive information would be meaningless if the information obtained is not sincere, accurate or complete. According to the Court, the object and purpose of the European Convention on Human Rights, as a tool

that information can be trusted because journalists adopt working methods and rules, such as information verification, cross-checking, diversity of sources and fairness, that guarantee their truthfulness⁹. This is part of the “duties and responsibilities”, which are connected with the function of journalist and go hand in hand with the protection afforded to journalists¹⁰.

Such duties include compliance with standards of journalistic ethics. Throughout its case law, the ECtHR has frequently stressed the significance of journalistic ethics¹¹. The Court considers that “the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the provision that they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism”¹².

- 7 More specifically, as part of their informational role, journalists have duties that fall under the umbrella of media’s social responsibility¹³. The public expects the media to be

⁹ M. HANOT and A. MICHEL, “Entre menaces pour la vie en société et risques réglementaires, les fake news : un danger pour la démocratie ?”, in *Vie privée, liberté d’expression et démocratie dans la société numérique*, Y. Poulet (dir.), coll. du CRIDS, Bruxelles, Larcier, 2020, p. 163.

¹⁰ The “rights, duties and responsibilities connected to the function of journalist” are further explained in detail in ECtHR, “Guide on Article 10 of the European Convention on Human Rights”, *op. cit.*, pp. 54-61.

¹¹ A. MICHEL, “L’influence grandissante du respect de la déontologie journalistique dans le cadre des actions judiciaires”, *RDTI*, Nos 78-79, 2020, pp. 162-163.

¹² ECtHR (GC), case of *Bladet Tromsø and Stensaas v. Norway*, 20 May 1999, § 65; ECtHR, case of *Bergens Tidende and Others v. Norway*, 2 May 2000, § 53; ECtHR, case of *Colombani et autres c. France*, 25 June 2002, § 65; ECtHR, case of *Radio France and Others v. France*, 30 March 2004, § 37; ECtHR, case of *Monnat v. Switzerland*, 21 September 2006, § 67; ECtHR (GC), case of *Stoll c. Switzerland*, 10 December 2007, § 103; ECtHR, case of *Haldimann and Others v. Switzerland*, 24 February 2015, § 61. Quoted in A. MICHEL, “L’influence grandissante du respect de la déontologie journalistique dans le cadre des actions judiciaires”, *op. cit.*, p. 163.

¹³ A. HULIN, “Statutory media self-regulation: beneficial or detrimental for media freedom?”, *RSCAS*, nr. 127, 2014, p. 4: “This concept of social responsibility of the media was first called for in a report of the Commission on the Freedom of the Press known as the “Hutchins Commission” (1947). The Commission took the stance that the press is supposed to be free for serving democracy. One of the most significant implications of this purpose is that media should stick to ethical standards and develop self-regulation mechanisms”. See also B. GREVISSE, “Introduction. Autorégulation ou déontologie ? Les conditions d’un débat sur les pratiques journalistiques”,

socially responsible. In a Declaration from 1983, the UNESCO stated that in the field of journalism, information is not just a product. Information is considered as a social good. This implies that journalists share responsibility for the information transmitted. The social responsibility requires them to act in accordance with their own ethical conscience¹⁴.

Self-regulation mechanisms can serve as tools to improve the quality of information and raise media’s social responsibility¹⁵.

B. The establishment of press councils as guardians of public trust

- 8 Over the last century, press councils have been and continue to be established across Europe. The first European press councils were founded at the turn of the 20th century¹⁶. The creation of self-regulatory bodies was typically motivated by a desire to fight governments’ efforts to interfere with press freedom. When a state planned on intervening with a law in the field of information, the media sector responded by building an “autonomous structure for complaints that would be handled before independent bodies, constituted by them”¹⁷.

Press councils raise and maintain professional standards among journalists. They monitor compliance with ethical rules and guidelines, which have been codified. Such monitoring of journalistic conduct ensures, among other things, public trust in journalism, while maintaining the independence and freedom of the press¹⁸. By committing to respect ethical rules,

Recherches en communication, vol. 9, 1998, pp. 7-24.

¹⁴ D. CORNU, *Journalisme et vérité : L’éthique de l’information au défi du changement médiatique*, Geneva, Labor et Fides, 2009, pp. 461-462. See also B. GREVISSE, “Légitimité, éthique et déontologie”, *Hermès*, La Revue, vol. 35, No. 1, 2003, p. 228.

¹⁵ A. HULIN, “Statutory media self-regulation: beneficial or detrimental for media freedom?”, *op. cit.*, p. 4.

¹⁶ Sweden (1916) and Germany (1956) were among the first EU Member States to establish a press council. See <https://presscouncils.eu/Comparative-data-on-media-councils>.

¹⁷ H. J. KLEINSTEUBER, “The Internet between Regulation and Governance”, in *The Media Freedom Internet Cookbook*, C. Möller and A. Amouroux (eds), OSCE, 2004, p. 64.

¹⁸ R. HARDER, *op. cit.*, p. 2.

journalists and media consent to be held accountable to their peers and the public. Such commitment helps to establish a dialogue between the parties. It also illustrates that everything is made to produce responsible information, which complies with the common standards of the profession¹⁹. Since public trust in the reliability and accuracy of information is essential for journalists to perform their functions properly, press councils play an important role in the media landscape²⁰.

- 9 The need for journalists to gain public trust is not a new concern. Elements which contribute to public distrust of the media exist independently of digital development. Some of these elements are the disconnection of “journalistic elites” from everyday life, the growing importance of entertainment and concerns about the independence of the news media from the state²¹. Nevertheless, recent evolution of information sources had a significant impact on public trust²².

C. The creation of audiovisual media regulators

- 10 Press councils are not the only bodies concerned with media content in Europe. Indeed, regulatory authorities for audiovisual media services have been established in each of the EU Member States. The first national media regulators were created during the 1980s and 1990s²³. They are in charge of interpreting and implementing the rules governing the audiovisual media sector²⁴, which are currently enshrined

¹⁹ M. HANOT (ed.), A. VIDAL (coord.), *op. cit.*, p. 93.

²⁰ D. TAMBINI, “Media Freedom, Regulation and Trust: A Systemic Approach to Information Disorder” [Background Paper], in *Artificial Intelligence – Intelligent Politics: Challenges and opportunities for media and democracy* [Ministerial Conference], Nicosia, Council of Europe, 2020, p. 7.

²¹ M. HANOT and A. MICHEL, *op. cit.*, p. 163.

²² K. OGNJANOVA et al., “Misinformation in action: Fake news exposure is linked to lower trust in media, higher trust in government when your side is in power”, *The Harvard Kennedy School Misinformation Review*, vol. 1, issue 4, 2020, p. 2; N. NEWMAN et al., “Reuters Institute Digital News Report”, ISBN, 978-1-907384-48-6, 2018.

²³ J.-F. FURNEMONT, “Régulation des médias : Comment encore réguler dans un contexte de concurrence et d’abondance ?”, *Clara*, 2021, p. 8.

²⁴ The European Council adopted, in 1989, the Television without Frontiers Directive, which was the main legal source for audiovisual matters at European level. In 2007, the Parliament and the Council amended this directive, which

is now entitled “Audiovisual Media Services Directive”. See C. DUMONT, “Le Conseil supérieur de l’audiovisuel, une autorité de régulation indépendante”, *Courrier hebdomadaire du CRISP*, vol. 2054-2055, Nos 9-10, 2010, pp. 11-12. For a more in-depth explanation on the EU legal framework regarding national media regulators, see also M. CAPPELLO (ed.), “The independence of media regulatory authorities in Europe”, *IRIS Special*, 2019.

The AVMSD governs the EU-wide coordination of national laws on all audiovisual media, from traditional television broadcasts to on-demand services and, since its revision in 2018²⁶, video-sharing platforms²⁷. In its original version of 2010, Article 30 of the AVMSD asserts that Member States must take “appropriate measures to provide each other and the Commission with the information necessary for the application of this Directive, [...] in particular through their competent independent regulatory bodies”²⁸.

At first glance, it may appear that press councils and media regulators coexist in the media environment but do not communicate because their jurisdictions do not overlap, and their respective legal frameworks differ.

is now entitled “Audiovisual Media Services Directive”. See C. DUMONT, “Le Conseil supérieur de l’audiovisuel, une autorité de régulation indépendante”, *Courrier hebdomadaire du CRISP*, vol. 2054-2055, Nos 9-10, 2010, pp. 11-12. For a more in-depth explanation on the EU legal framework regarding national media regulators, see also M. CAPPELLO (ed.), “The independence of media regulatory authorities in Europe”, *IRIS Special*, 2019.

²⁵ Directive 2010/13/EU of the European Parliament and of the Council of 10 March on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), *O.J.E.U.*, L 95, 15 April 2010.

²⁶ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, *O.J.E.U.*, L 303, 14 November 2018. It should be noted that when the present report mentions the AVMSD, it refers to its version as amended in 2018.

²⁷ EUROPEAN COMMISSION, “Audiovisual and Media Services”, available at: <https://digital-strategy.ec.europa.eu/en/policies/audiovisual-and-media-services>. It should be noted that recitals state that “for the purposes of this Directive, the term ‘audiovisual’ should refer to moving images with or without sound, thus including silent films but not covering audio transmission or radio services”.

²⁸ F. J. CABRERA BLÁZQUEZ, G. DENIS, E. MACHET and B. MCNULTY, “Media regulatory authorities and the challenges of cooperation”, *IRIS Plus*, No. 2, 2021, pp. 9-10.

On the one hand, press councils are concerned with journalistic content (originally print) and media's compliance with ethical standards laid out in Codes of ethics. These ethical standards include respect for the truth, journalistic independence, fairness, privacy...

On the other hand, media regulators ensure that audiovisual media services abide by the legal provisions falling under their regulatory powers. These powers are rooted in principles such as freedom of movement, transparency, economic pluralism or advertising responsibility²⁹. They concern the monitoring of compliance with quotas of European works, rules on advertising and the protection of minors by controlling the broadcasting of content likely to "seriously impair the physical, mental or moral development of minors, in particular programmes containing scenes of pornography or gratuitous violence"³⁰. They address issues related to journalistic content at the margins, and do not enter into editorial policy.

- 11** However, the demarcation between matters subject to regulation and those subject to self-regulation has become less clear. Due to the digital and legal changes which occurred in the information field, both media regulators and press councils may be competent to rule on the same issue. This is particularly the case in matters such as the protection of minors, the protection of human dignity, the obligation to distinguish journalistic content from advertisements or the prohibition of discrimination.

²⁹ M. HANOT, S. PAÏMAN et V. STRAETMANS, "La compétence matérielle à l'épreuve juridique de la réalité des modèles audiovisuels et des pratiques réglementaires – Panel 1", *A&M*, No. 6, 2007, p. 538.

³⁰ C. DUMONT, *op. cit.*, p. 13.

D. The changes in the digital environment

- 12** Due to the use of the Internet and social media, many citizens can quickly and easily access content, including information on current events and issues of public interest. Furthermore, since online content is easily accessible, sharing and distributing such content is equally simple. Anyone who decides to can produce and distribute content online. Digital technologies thus not only provide new means of accessing content, but they also increase the amount of available content and the number of potential content producers, who are not always identifiable³¹.

The digital environment's growth has resulted in a broadening and splintering of the public sphere, with new content sources such as social media and influencers emerging³². Content of various natures and origins is offered in undifferentiated "consumption" spheres, while modes of circulation and transmission are amplified and unconcerned about national borders³³. This has a variety of repercussions, such as information overload, misinformation, confusion on the meaning and nature of information, and, ultimately, loss of trust in the media³⁴.

- 13** In addition, the nature of these new media, whose ease of use generates an abundance of content and quick dissemination, facilitates the dissemination of harmful or illegal content at multiple levels: disinformation³⁵ and hateful, racist, discriminatory, child pornography content³⁶. This type of content is not new. The novelty lies in the rate at which they

³¹ C. IRETON (ed.) and J. POSETTI (ed.), "Journalism, 'Fake News' & Disinformation: Handbook for Journalism Education and Training", UNESCO, 2018, p. 15.

³² B. GREVISSE and L. ROTILI, "Enjeux contemporains des conseils de presse : Introduction", *Recherches en Communication*, vol. 54, 2022, p. 5.

³³ M. HANOT and A. MICHEL, *op. cit.*, p. 166.

³⁴ *Ibid.*

³⁵ D. O. KLEIN and J. R. WUELLER, "Fake News: a Legal Perspective", *Journal of Internet Law*, vol. 20, nr. 10, 2017, pp. 6-13; ERGA, "Notions of Disinformation and Related Concepts", 2020; K. OGNANOVA et al., *op. cit.*

³⁶ A. DE STREEL et al., "Online Platforms' Moderation of Illegal Content Online", Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, 2020, p. 9.

are disseminated. To face these challenges, both national and European legislators increasingly seek to regulate such content, especially when it is shared online and on social media.

E. The evolution of the legal framework regulating the media

- 14 At the European level, the regulatory framework governing online content and digital actors has been strengthened³⁷, and is still going strong, with another series of proposals on the table. This can notably be illustrated by three texts that are particularly relevant to this research: (1) the AVMSD, (2) the proposal for a European Media Freedom Act (hereinafter: EMFA), and (3) the Digital Services Act (hereinafter: DSA).

1. The Audiovisual Media Services Directive

- 15 In November 2018, the previously mentioned AVMSD was amended (see para. 10). Once implemented, the amendments provided EU Member States with the opportunity to grant new powers to national regulators of audiovisual media services, notably by including rules on video-sharing platforms³⁸ and certain social media services³⁹. These rules were enacted in order to protect the general public from illegal content (terrorist content, child sexual abuse material, racist and xenophobic content or other hate speech)⁴⁰ and to protect

³⁷ For a more detailed examination of legislative initiatives aimed at regulating online content, see A. DE STREEL et al., *op. cit.*; A. MICHEL, “La régulation de la modération des contenus en ligne, une affaire de droits humains?”, *Rev. trim. dr. h.*, No. 133, 2023, pp. 35-65.

³⁸ Under article 1 (1) (a) of the AVMSD, video-sharing platforms are services “devoted to the provision of programmes and user-generated videos for which its provider does not have editorial responsibility, but which the provider is organising – automatically or otherwise”. See L. KUKLIS, “Media regulation at a distance: video-sharing platforms in Audiovisual Media Services Directive and the future of content regulation”, *Media Laws*, No. 2, 2020, p. 98.

³⁹ Recital 5 of the AVMSD (2018) states that: “a social media service should be covered if the provision of programmes and user-generated videos constitutes an essential functionality of that service. The provision of programmes and user-generated videos could be considered to constitute an essential functionality of the social media service if the audiovisual content is not merely ancillary to, or does not constitute a minor part of, the activities of that social media service”.

⁴⁰ Illegal content should be distinguished from harmful content. Harmful

minors from harmful content⁴¹.

The AVMSD does not explicitly exclude journalistic content from reverts of media regulators. Therefore, regulators’ competence extends to the online world where they may oversee multiplatform journalistic content when they deal with the above-mentioned issues⁴², even in the presence of a press council. Depending on the national legislation, the control over information can go further than the framework defined at the European Union level.

- 16 The question arises as to whether such content monitoring by national regulators is compatible with freedom of expression and freedom of the press⁴³. These fundamental freedoms are inextricably linked to democracy. They are guaranteed by a number of international, European, national and regional instruments, which “make press freedom a reality, prohibit censorship, and ensure the free flow of information”⁴⁴.

Nonetheless, when it comes to regulating journalistic content as such, caution should be exercised. As stated by R. Harder, “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”⁴⁵. In other words, there is a risk that by wishing to prohibit certain excesses, governments make it possible to restrict the sharing of disturbing, but not illegal, opinions and information. This would amount to an excessive and unjustified limitation of freedoms of expression and of the press⁴⁶.

content complies with the law but may cause other issues, especially for the most vulnerable, whereas illegal content violates a legal provision and is, therefore, prohibited by law.

⁴¹ A. DE STREEL et al., *op. cit.*, p. 16.

⁴² The lack of explicit exclusion creates a grey area, which in practice leads some regulators to fill the gap and monitor journalistic content.

⁴³ M. HANOT (ed.), A. VIDAL (coord.), *op. cit.*, p. 86.

⁴⁴ A. HULIN, “Statutory media self-regulation: beneficial or detrimental for media freedom?”, *op. cit.*, pp. 1-2.

⁴⁵ R. HARDER, *op. cit.*, p. 19

⁴⁶ J. ENGLEBERT, “Propos introductifs”, in *La Régulation des Contenus Haineux sur les Réseaux Sociaux*, J. ENGLEBERT (coord.), Limal, Anthemis, 2022, pp. 12-13.

2. The European Media Freedom Act

- 17** In September 2022, the European Commission unveiled its new regulation proposal for media services, the EMFA⁴⁷. This set of rules is designed to protect media pluralism and independence in the EU. The final version of the Act has not been adopted yet, but the Commission's proposal has already set the contours of what it is meant to provide.

Building on the AVMSD, the proposal includes, among others, safeguards against political interference in editorial decisions and surveillance, new rules on state advertising, audience measurement, and the protection of journalistic sources and communications, as well as safeguards for public service media and for journalistic content moderation by online platforms⁴⁸. The Act will also create a new independent European Board for Media Services, which will be comprised of national media authorities⁴⁹. Several questions arise in connection with this new initiative, including how the independence of this European regulatory body can be ensured.

- 18** Once more, this raises the issue of potential interferences with freedom of expression and press freedom⁵⁰. This is especially true given that, for the first time, a European regulation includes the possibility of integrating press media to it. As a matter of fact, the current version of the EMFA defines media services as services whose primary purpose, or a dissociable section thereof, consist “in providing programmes or press publications to the general public, by any means, in order to inform, entertain or educate, under the editorial responsibility

⁴⁷ Proposal for a Regulation of the European Parliament and of the Council establishing a common framework for media services in the internal market (European Media Freedom Act) and amending Directive 2010/13/EU, 16 September 2022 (hereinafter: “Proposal EMFA”).

⁴⁸ L. BECANA BALL, “The European Media Freedom Act: what’s at stake?”, Global Forum for Media Development, 6 December 2022, available at <https://gfmf.info/emfa-whats-at-stake/>.

⁴⁹ EUROPEAN COMMISSION, European Media Freedom Act: Commission proposes rules to protect media pluralism and independence in the EU [Press release], Brussels, 2022.

⁵⁰ L. BECANA BALL, *op. cit.*

of a media service provider”⁵¹.

3. The Digital Services Act

- 19** In October 2022, the DSA was adopted⁵². It provides for the designation of digital services coordinators, which will be responsible for the application and enforcement of the regulation⁵³. It aims notably to regulate online platforms, including social media, video-sharing platforms, search engines and e-commerce platforms. The main objective of this initiative is to fight the online spread of illegal content, which is broadly defined⁵⁴.

As a matter of fact, the definition of illegal content under the DSA could be interpreted to include a wide range of speech that is protected under freedom of expression laws. The DSA also seeks to address content that is harmful but not necessarily prohibited under EU law⁵⁵. Such a broad definition of illegal content could lead to the over-removal of content, with platforms erring on the side of caution and removing content that is not actually illegal in order to avoid liability⁵⁶. The DSA imposes new obligations on online platforms, such as the establishment of notice and takedown mechanisms

⁵¹ Article 2.1 of the Proposal EMFA.

⁵² Regulation (EU) 2022/2065 of the European Parliament and the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Service Act), *O.J.E.U.*, L 277, 27 October 2022.

⁵³ Articles 38 to 46 of the DSA.

⁵⁴ Article 2 (g) of the DSA defines illegal content as follows: “any information, which, in itself or by its reference to an activity, including the sale of products or provision of services is not in compliance with Union law or the law of a Member State, irrespective of the precise subject matter or nature of that law”. This definition is much broader than the notion of illegal content under EU law since it also includes illegal content under national law.

⁵⁵ Under EU legislation, four types of content are qualified as illegal: child sexual abuse material, racist and xenophobic hate speech, terrorist content, and content infringing intellectual property rights. Aside from those four categories, European laws do not harmonise what should be included in illegal online content. As a result, the same type of content may be considered illegal, legal but harmful, or legal but not harmful across the EU, at least for the time being. See A. DE STREEL et al., *op. cit.*, p. 16; A. MICHEL, “Le discours de haine: à propos d’une notion aux contours insaisissables”, in *La Régulation des Contenus Haineux sur les Réseaux Sociaux*, J. Englebert (coord.), Limal, Anthemis, 2022, pp. 20-23.

⁵⁶ A. MICHEL, “La régulation de la modération des contenus en ligne, une affaire de droits humains ?”, *op. cit.*, p. 52.

and other content moderation measures as well as the need to ensure transparency in how they operate. It therefore encourages them to take proactive measures to comply with these new requirements⁵⁷.

- 20** Consequently, in addition to state and political interventions, private digital actors are being called upon to play a part in regulating online content. The risk is that these private actors may feel compelled to excessively remove or block content that has been published online. To avoid liability and severe financial penalties for non-compliance, platforms may find it more prudent “to remove more, rather than less”⁵⁸. This report does not aim to provide a detailed picture of the DSA and online content moderation by private digital actors. However, it is important to remember that both states and private actors increasingly seek to control online content.

F. The respective roles of press councils and media regulators in the current media landscape

- 21** As the media environment is evolving, the question of how – as it is considered necessary – to regulate information, while establishing a functioning system that does not obstruct media freedom, has become increasingly important⁵⁹.
- 22** For journalists to fulfil their role as public watchdogs of democracy, there should be as little external control over information and journalistic activities as possible, either from governments or private entities⁶⁰. Although state intervention in freedom of expression and press freedom is usually limited

⁵⁷ ARTICLE 19, “Article 19’s Recommendations for the EU Digital Services Act”, 25 February 2022, available at <https://www.article19.org/resources/eu-article-19s-recommendations-for-the-digital-services-act-trilogue/>.

⁵⁸ A. KUCZERAWY, “The Good Samaritan that wasn’t: voluntary monitoring under the (draft) Digital Services Act”, 14 January 2021, disponible sur www.law.kuleuven.be/citip/blog/the-good-samaritan-that-wasnt/.

⁵⁹ A. HULIN, “Statutory media self-regulation: beneficial or detrimental for media freedom?”, *op. cit.*, p. 2.

⁶⁰ We will see that in certain cases, legal intervention may be useful to give the necessary protection and recognition to the self-regulatory system (see para. 63).

in democratic systems, media professionals have organised themselves to further reduce the possibilities of external intervention. In fact, each of these possibilities is likely to restrict the ability of journalists to exercise their watchdog mission⁶¹.

Therefore, journalistic self-regulation is often promoted by international organisations defending media freedom as an answer to the question and as a way of preventing governments from over-interfering⁶². Self-regulatory rules are drafted by press councils, independently of any state intervention. They constitute a set of voluntary limitations and guidelines for journalists and media on ethical standards. The different press councils established in Europe generally ensure, via a complaint-handling process, that fundamental rules of journalistic ethics are respected, based on the principles of respect for the truth, loyalty, independence, and the rights of individuals⁶³.

Some of these self-regulatory bodies exercise their competences regardless of the medium while others are originally attached to the written press and may extend their remit to its online versions⁶⁴. For the latest – and for the regulators –, the division of traditional media into written press (which is overseen by press councils) and radio and television (which are overseen by media regulators) is now being questioned. Indeed, prior to the widespread use of the Internet and social media, the audiovisual and written press sectors were easy to distinguish, but this is no longer the case. Most media companies, including news media, have their own websites and social media accounts on which they share content, including videos, photos and articles. This merge of previously distinct media through digitisation and computer networking is referred to as media convergence

⁶¹ R. HARDER, *op. cit.*, p. 19

⁶² A. HULIN, “Statutory media self-regulation: beneficial or detrimental for media freedom?”, *op. cit.*, p. 2.

⁶³ A. PUDDEPHATT, “The importance of self-regulation of the media in upholding freedom of expression”, *UNESCO, CI Debates*, No. 9, 2011, p. 13.

⁶⁴ R. HARDER, *op. cit.*, p. 11.

and is not without consequences⁶⁵.

- 23** In this context, media are no longer specifically dedicated to print or broadcasting. New technologies create several media variations that are different from the more traditional media⁶⁶. The line between the remits of press councils – which are in charge of monitoring compliance with journalistic ethical standards – and media regulatory authorities – with expertise in the audiovisual sector – blurs more and more. This is especially true at a time when the latter appear to be receiving an increasing number of powers in relation to the supervision of online content. As a result, some competences may fall within the scope of both media regulators and press councils.
- 24** Starting with the fact that regulation and self-regulation coexist and sometimes overlap, the question arises as to how the interactions between the two are organised. Since self-regulation arises from a private initiative of sector actors, there are no rules for harmonising self-regulation at the European level. Each Member State presents its own solutions⁶⁷. Sometimes, self-regulation is not even organised uniformly within a single country.

Consequently, the possible articulations between regulation by national media regulators and self-regulation by press councils vary from one Member State to another. In some cases, there is no interaction at all, whereas in others, the law provides for cooperation mechanisms. Other countries show interactions between their regulatory and self-regulatory bodies, but they are informal and responsive to practical needs.

⁶⁵ M. HANOT, “Prendre le tempo et le temps de la mutation” in *Nouveaux écrans, nouvelle régulation ?*, P.-F. Docquir and M. Hanot (dir.), Bruxelles, Larcier, 2013, pp. 9-10; S. MÜLLER, “Convergence of Regulation: Audiovisual” in *Nouveaux écrans, nouvelle régulation ?*, P.-F. Docquir and M. Hanot (dir.), Bruxelles, Larcier, 2013, p. 156.

⁶⁶ M. HANOT, S. PAÏMAN et V. STRAETMANS, *op. cit.*, p. 540.

⁶⁷ A. FOATELLI, “Médias : L’autorégulation complète la loi, elle ne la remplace pas, Entretien avec A. Hulin”, INA, 6 September 2017, available at <https://larevuedesmedias.ina.fr/medias-lautorégulation-complète-la-loi-elle-ne-la-remplace-pas>.

The existing articulations between regulation and self-regulation demonstrate the recognition and place granted to press councils within the media ecosystem. This brings the stakes of this research to a high degree. The purpose of the present report is to examine existing European practices to compare them and propose solutions to the challenges that press councils are facing today. ■

II. SCOPE OF THE RESEARCH AND CONCEPTUAL BACKGROUND

25 First and foremost, it should be reminded that this study's scope is limited to the mechanisms in place in the Member States of the European Union. The first part of the research focuses on an in-depth analysis of six EU countries: Belgium, Bulgaria, Germany, Italy, Spain, and Sweden (see chapter IV). The second part covers all Member States and is based on a series of criteria, which are developed below (see chapter V).

Most of the regulatory and self-regulatory bodies studied in the framework of this research perform similar activities. However, they do not always use the same terms to refer to one single thing. Defining the key concepts that we will use throughout this report is thus essential and will allow us to clearly define the scope of the research.

A. Media

26 Media can be generically defined as a “process enabling the distribution, dissemination or communication of works, documents, or messages”¹. More precisely, the term “media” comes from the expression “mass media”². Both a technique and an institution, this notion encompasses “any medium for the dissemination of information (radio, television, print media, etc.), which is both a means of expression and an intermediary transmitting a message to a group”³.

¹ Free translation from Larousse Dictionary: “procédé permettant la distribution, la diffusion ou la communication d’œuvres, de documents, ou de messages sonores ou audiovisuels”. See also L. CORROY and J. GONNET, *Dictionnaire d’initiation à l’info-com*, 2nd edition, Paris, Vuibert, 2007, pp. 189-198.

² R. RIEFFEL, *Que sont les médias ?*, Paris, Gallimard, coll. Folio actuel, 2005, p. 30.

³ Free translation from R. RIEFFEL, *op. cit.*, p. 30: “À la fois technique et entreprise ou institution [...], les médias englobent tout support de diffusion de l’information (radio, télévision, presse imprimée, libre, ordinateur, vidéogramme, etc.) constituant à la fois un moyen d’expression et un intermédiaire transmettant un message à l’intention d’un groupe”.

The definition of media services under the AVMSD is similar to that of the EMFA (see para. 18). Such services are services “where the principal purpose of the service or a dissociable section thereof is devoted to providing programmes, under the editorial responsibility of a media service provider, to the general public, in order to inform, entertain or educate, by means of electronic communications networks”⁴.

27 For the purposes of this research, the notion of media refers to a person or a service, which serves as an intermediary by producing and/or disseminating (journalistic) information to the public, regardless of the medium used⁵. It is therefore irrelevant whether the information is disseminated via newspapers, magazines, radio, television, social media, platforms, podcasts, etc.

B. Journalism

28 Journalism can be defined either strictly by limiting the concept to professional journalists⁶, or functionally by extending it to anyone disclosing information to the public, regardless of the medium used. European case law on the subject favours a functional approach to the definition of journalism⁷. In its functional sense, journalism refers to “the gathering, editing, production, and/or dissemination of information to and for the benefit of the public via a medium”.

⁴ Article 1.1, a) of the AVMSD.

⁵ See the Belgian CDJ’s Code of Ethics, p. 13

⁶ Following this approach, the notion of journalist only covers professional journalists, journalists with a press card, or journalists who work for a well-established editorial office.

⁷ According to the Court of Justice of the European Union, “In order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary to interpret notions relating to that freedom, such as journalism, broadly. [...] ‘Journalistic activities’ are those which have as their purpose the disclosure to the public of information, opinions or ideas, irrespective of the medium which is used to transmit them”. See CJEU, case of *Sergejs Buivids v. Datu valsts inspekcija*, 14 February 2019, C-345/17, EU:C:2019:122, §§ 51-53.

Anyone who contributes to one or several of these activities is a journalist⁸.

- 29 In this report, we adopt the functional approach. We focus on the regulation and self-regulation of information, regardless of whether it comes from investigative journalists, editors, presenters, debate leaders, press correspondents, art, science or food critics, web journalists or bloggers⁹.

C. Information

- 30 This report focuses on the regulation and self-regulation applicable to the field of information. The notion of information can be broadly defined as facts about a situation, a person or an event¹⁰. However, as we are more specifically interested in the rules governing journalistic information, this definition requires further clarification.

According to Y. de Kerorguen, a journalist's task is to "track down the facts that stand out from the ordinary, the repetitive, the banal: to look for the "information" behind the information, the one that explains things, puts things into perspective or disturbs. Its sole objective: to inform the reader. It is therefore a consumer's logic: to offer clear and readable information, to detect new developments, to explain mechanisms, to propose tools and guidelines for approaching problems, but also to sound the alarm"¹¹.

⁸ Free translation from the Belgian CDJ's Code of Ethics, p. 13: "la collecte, au traitement éditorial, à la production et/ou à la diffusion d'informations, par l'intermédiaire d'un média, à destination d'un public et dans l'intérêt de celui-ci".

⁹ S. HOEBEKE and B. MOUFFE, *Le droit de la presse : presse écrite, presse audiovisuelle, presse électronique*, 3rd edition, Limal, Anthemis, 2012, p. 52.

¹⁰ Definition from the Cambridge Dictionary, available at: <https://dictionary.cambridge.org/>.

¹¹ Free translation from Y. DE KERORGUEN, "Entre cynisme et civisme", in P. KESSLER, J. PAITRA and Y. de KERORGUEN, *Les médias et l'entreprise : information et communication : des logiques contradictoires*, Paris, CFPJ, 1996, p. 93; quoted in S. HOEBEKE and B. MOUFFE, *op. cit.*, p. 52: "Le journaliste doit "traquer les faits qui tranchent avec l'ordinaire, le répétitif, le banal: chercher "l'info" derrière l'information, celle qui explique les choses, qui relativise ou qui dérange. Son seul but : informer le lecteur. Il est donc dans une logique de consommateur : offrir une information claire et lisible, détecter les nouveautés, expliquer des mécanismes, proposer des outils et des guides d'approches des problèmes, mais aussi faire jouer le droit d'alerte".

This approach needs to be nuanced. In our view, the description of a fact can qualify as information even though it seems ordinary. The fact in question needs to be collected, processed and disseminated to the public for purposes of general interest¹². Such interest can be international, national, regional or local¹³. For instance, a fact that is trivial in the eyes of the international community can be of general interest to a certain region and thus constitute a piece of information.

- 31 For the purposes of this research, the concept of information refers to the precise and verified description of an event or fact that has been processed and communicated to the public¹⁴. Such description consists of a series of issues of general interest, including political events, new laws, judgements, sporting, artistic or scientific events, etc.¹⁵ The processing and distribution of the information, in an independent manner and in the general interest, is what makes it journalistic.

D. Regulation

- 32 Regulation refers to the external oversight and control of a sector by governments or other external organisations¹⁶ appointed by governments to do so. According to the European Economic and Social Committee, regulation refers to "the body of rules created by states or governments", which "generally denotes legislation in the wide sense [...]; its provisions are accompanied by coercive means for enforcing them, if necessary by force, and by civil or penal measures to punish failure to comply with them"¹⁷.

¹² In order to address the fundamental questions that information content must answer, journalists can refer to the five reference questions, known as the 'five Ws', namely 'Who', 'What', 'When', 'Where' and 'Why'. See L. BURNS, "Additions to the Five Journalistic 'W's", *The New Yorker*, 31 January 2017, available at: <https://www.newyorker.com/humor/daily-shouts/additions-to-the-five-journalistic-ws>.

¹³ S. HOEBEKE and B. MOUFFE, *op. cit.*, p. 52.

¹⁴ M. BUYDENS, "Droits et obligations du professionnel de l'information à l'égard de ses sources", *Journal des Procès*, No. 247, 1993, p. 10.

¹⁵ S. HOEBEKE and B. MOUFFE, *op. cit.*, p. 52.

¹⁶ J-F. FURNEMONT, "Régulation des médias : Comment encore réguler dans un contexte de concurrence et d'abondance ?", *op. cit.*, p. 10.

¹⁷ EUROPEAN ECONOMIC AND SOCIAL COMMITTEE, "Opinion on Self-regulation and co-regulation in the Community legislative framework", 2015, available at: <https://www.eesc.europa.eu/en/our-work/opinions-information>.

33 In the present report, the concept of regulation refers more specifically to the European and national legal frameworks governing media and information content, as well as the mechanisms implemented to monitor compliance with the law. This includes the rules applicable to audiovisual media services and the national regulatory authorities in charge of enforcing these rules. The regulatory authorities will be referred to as “media regulators” or “media authorities”¹⁸.

Media authorities are not concerned with the issue of journalistic responsibility. They monitor publishers and other audiovisual media providers, but they do not have a direct authority on journalists.

E. Self-regulation

1. Self-regulation in general

34 In an Interinstitutional Agreement, the European Parliament, Council and Commission have agreed that self-regulation constitutes “the possibility for economic operators, the social partners, non-governmental organisations or associations to adopt amongst themselves and for themselves common guidelines at European level (particularly codes of practice or sectoral agreements)”¹⁹.

According to B. Libois, self-regulation encompasses mechanisms that are implemented, on the initiative of or under the control of organised corporate interests, with the goal of adequately illustrating and applying these norms in

[reports/opinions/self-regulation-and-co-regulation](#), p. 4. See also S. MÜLLER, *op. cit.*, p. 156: “regulation aims to control human or societal interaction technical standards, existing circumstances and other fields of societal salience. It is a common legislative procedure in which the lawmaker analyses the subject to be regulated and consults experts’ opinion on the matter in order to come to sound results”.

¹⁸ Article 30 of the AVMSD.

¹⁹ Interinstitutional Agreement of the European Parliament, Council and Commission on better law-making, *O.J.E.U.*, C 321, 31 December 2003, p. 3; See also J-F. FURNEMONT and G. DE BUEGER, “Corégulation et autorégulation des contenus linéaires et non linéaires (dignité humaine, protection des mineurs, protection des consommateurs...) – Panel 3”, *A&M*, No. 6, 2007, p. 562.

concrete contexts that are constantly changing. It is no longer limited to the declaration of ethical rules by professionals²⁰.

35 The definition provided by the NGO Article 19²¹ combines and further details these ideas by stating that self-regulation is “a framework that relies entirely on voluntary compliance: legislation plays no role in enforcing the relevant standards. Its *raison d’être* is holding its members accountable to the public, promoting knowledge within its membership and developing and respecting ethical standards. Those organisations that commit to this type of regulation do so not under threat of legal sanction, but for positive reasons such as the desire to further the development and credibility of their profession and sector. Self-regulation models rely first and foremost on members’ common understanding of the values and ethics that underpin their professional conduct”²².

Article 19’s definition suggests the following cumulative criteria: (i) the self-regulatory system is based on voluntary compliance, (ii) it aims to promote and ensure compliance with ethical standards, (iii) the self-regulatory body does not have sanctioning powers, and (iv) the commitment to comply with ethical standards holds the media and journalists accountable to the public.

2. Collective self-regulation by press councils

36 In the media field, press councils (or media councils) constitute “the main instrument of self-regulation practiced in application of ethical standards”²³.

²⁰ B. LIBOIS, “Autorégulation ou démocratisation ?”, *Recherches en communication*, No. 9, 1998, p. 26.

²¹ Article 19 is an NGO “that propels the freedom of expression movement locally and globally to ensure all people realise the power of their voices”. See <https://www.article19.org>.

²² ARTICLE 19, “Self-regulation and ‘hate speech’ on social media platforms”, 2018, available at https://www.article19.org/wp-content/uploads/2018/03/Self-regulation-and-‘hate-speech’-on-social-media-platforms_March2018.pdf, p. 9.

²³ B. GREVISSE, *Déontologie du journalisme : Enjeux éthiques et identités professionnelles*, 2nd edition, Louvain-la-Neuve, De Boeck Supérieur, 2016, p. 270; quoted in M. HANOT (ed.), A. VIDAL (coord.), *op. cit.*, p. 92.

Firstly, they are non-governmental institutions, which are formed voluntarily by the professional community and financially supported, in whole or in part, by them²⁴. They are composed of representatives of media professionals (i.e. publishers, journalists, editors) and, for some of them, civil society²⁵.

Secondly, they are in charge of Codes of Practice, which establish professional standards for journalists²⁶ as well as a set of rules allowing “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”²⁷. Such principles derive from obligations such as the obligations to disseminate verified information, to collect and disseminate information independently, to act fairly, and to respect the rights of individuals.

Thirdly, these councils have a moral authority but no legal sanctioning power. Unlike media regulators, press councils cannot impose sanctions, such as pecuniary penalties. Nor do they have binding means to force the media to comply with ethical rules.

Fourthly, their main objective is to serve as a bridge between the media and the public. Indeed, by committing themselves to ethical rules, journalists and media outlets accept to be held accountable to their peers and the public. Such a commitment contributes to the establishment of a dialogue between the parties. It also illustrates that every effort is made to produce responsible information that conforms to the common standards of the profession.

²⁴ D. CORNU, *op. cit.*; B. GREVISSE, *Déontologie du journalisme : Enjeux éthiques et identités professionnelles*, 2nd edition, Louvain-la-Neuve, De Boeck Supérieur, 2016, p. 270; quoted in M. HANOT (ed.), A. VIDAL (coord.), *op. cit.*, p. 92.

²⁵ R. HARDER, *op. cit.*, p. 4.

²⁶ AIPCE, “What is a Press Council?”, available at <https://presscouncils.eu/about>.

²⁷ R. HARDER, *op. cit.*, pp. 2-3; quoted in M. HANOT (ed.), A. VIDAL (coord.), *op. cit.*, p. 92.

37 The corrective power of press councils is based primarily on two principles. On the one hand, “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”, the presence of an expert opinion lends weight to the decision²⁸. On the other hand, when it is decided that a publication has violated widely accepted ethical standards, the media outlet concerned is generally asked to publish the decision of the council. It is usually impossible to compel the media to publish the decision. However, the fact that “media do dedicate some precious bit of bandwidth [...] to tell their own audience that they did something wrong” makes it all the more powerful. This can be described as the principle of “self-shaming”. In fact, the effectiveness of press councils is dependent on media outlets and journalists cooperating with procedures and adhering to the decisions²⁹.

The press councils’ decisions (or opinions) are motivated and made public so that the parties involved and others can learn from them. The goal is to contribute to the positive evolution of practises rather than to sanction. M. Hanot calls this system “organised self-regulation”, which means that “it is collective and not individual [...], 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”³⁰.

38 The Alliance of Independent Press Councils of Europe (hereinafter: AIPCE) takes three main characteristics into account when determining whether an organisation is a press council:

- “One, the organisation provides a service to the public to submit complaints about the content of media publications.

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ M. HANOT (ed.), A. VIDAL (coord.), *op. cit.*, p. 92.

- Two, the organisation's complaint-handling work must deal with matters of ethics, not with laws and their application.
- Three, the organisation has to be self-regulatory in nature, meaning that their activities are organised and run by actors from the field of journalism itself³¹.

In short, autonomous self-regulatory bodies that meet the above criteria are press councils. However, not all EU Member States have a press council. In these cases, an ethics commission embedded within a journalists' or media association may be found. Such a commission usually has a similar mandate to that of a press council but is not autonomous in the sense that it is not a separate organisation. It is established within another organisation.

- 39** In the framework of our study, we will take both press councils and ethics commissions into account. In order to facilitate the reading of this report, the term "press council" will refer to both types of self-regulatory bodies, unless we explicitly state otherwise.

3. Distinction with individual self-regulation

- 40** Self-regulation, as defined in this report, must be distinguished from "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)". Such situations can be described as "solo-regulation", "individual regulation" or "regulating speech by contract"³².
- 41** Moreover, self-regulatory mechanisms investigated in this report are not aimed at internal Codes of ethics and individual mechanisms established by each media outlet separately. Mechanisms used by media outlets to avoid deontological mistakes include among others systematic proofreading, editorial guidelines, ethics committees established within

editorial offices to deal with journalistic ethical issues, internal seminars or debriefing at editorial conferences, where the editorial team critically reviews the previous edition³³.

F. Articulations between regulation and self-regulation

- 42** This report seeks to provide an overview of the ways in which regulation and self-regulation are articulated in the European Union.

The articulations between regulatory and self-regulatory bodies cover all the possible interactions that exist between these institutions. They can be arranged either legally or informally. They include, but are not limited to, handling complaints that may fall within the remit of both types of organisations or that are submitted to the wrong body, discussing common issues on the media sector, drafting recommendations, or promoting the independence of the media.

Another form of articulation worth investigating is the absence of interaction. As a matter of fact, in some countries, there is no interaction at all. The regulatory and self-regulatory bodies are either unaware of one another or believe they operate in completely unrelated fields and do not feel the need to interact. ■

³¹ R. HARDER, *op. cit.*, p. 5.

³² M. HANOT (ed.), A. VIDAL (coord.), *op. cit.*, p. 97.

³³ *Ibid.*, p. 91.

III. METHODOLOGY

- 43** This research started in September 2022 and is divided in two main phases: (i) an in-depth qualitative examination of six selected countries, and (ii) an online survey extending the study's scope to all EU Member States.

Before entering the first phase, we investigated the current state of the art in research on regulation and self-regulation of information. Based on this preliminary analysis, we discovered that comparative research on information regulation already exists¹, and so does research on various models of information self-regulation². Nevertheless, these studies rarely examine the possible interactions between both.

- 44** The first phase focuses on six EU Member States, namely: Belgium, Bulgaria, Germany, Italy, Spain, and Sweden. These countries have been preselected for their different approaches on the matter. Overall, these differences notably include the existence of a press council, the legal recognition of the press council, particular forms of self-regulatory bodies, and limitations of the press council's remit.

This research is based on the assumption that the analysis of these different systems would make it possible to identify trends which are representative of the phenomenon observed. The various legislations and mechanisms related to information applicable in these six countries were gathered and examined in depth. The aim of this analysis was to identify the elements likely to influence the functioning of the systems studied, and hence their anchorage to the existing legal framework. These elements constitute specific observation

¹ See for example K. IRION et al., "The independence of media regulatory authorities in Europe", *IRIS Special*, No. 1, 2019; F. J. CABRERA BLÁZQUEZ et al., *op. cit.*

² See for example M. HARASZTI et al., "The Media Self-Regulation Guidebook: all questions and answers", OSCE, 2008; A. ARENA et al., "Self- and Co-regulation in the new AVMSD", *Iris Special*, No. 2, 2019; L. JUNTUNEN, "Digital Challenges to Ethical Standards of Journalism: Responses and Needs of European Media Councils", *Council for Mass Media in Finland*, 2022.

points from which a catalogue of all the existing systems can be drawn up.

This part of the study was carried out on the basis of the relevant European legislations and national laws and by drawing on comparative studies that had already been performed. Some examples of studies that inspired us are those of R. Harder on the "practices of media self-regulatory bodies in the media landscape of today"³, as well as the comparative data collected in the framework of the MCDA project⁴. When necessary, we also had the opportunity to arrange interviews or to exchange emails with the press councils studied. This allowed us to verify and/or clarify the information collected.

- 45** The various elements identified were then used to create a survey to be sent to each European press council, as well as to each European media regulator⁵. The survey was created and tested⁶ in the week of December 5, 2022, and distributed in the week of December 12, 2022. By March 10, 2023, we had received answers from:

- The media authorities from the following countries: Belgium (French-speaking, Dutch-speaking and German-speaking), Croatia, Czech Republic, Denmark, Finland, Germany, Greece, Ireland, Lithuania, Luxembourg, the Netherlands, Portugal, Slovakia, Slovenia and Spain.
- The press councils (or other self-regulatory bodies) from: Belgium (French- and German-speaking, Dutch-speaking),

³ R. HARDER, *op. cit.*

⁴ AIPCE, "Comparative data on media councils", available at: <https://presscouncils.eu/Comparative-data-on-media-councils>.

⁵ See Annex I, "Regulatory and self-regulatory bodies studied and/or surveyed".

⁶ In order to test the survey and to ensure the clarity of the various questions, we organised online interviews with the French and Luxembourg press councils. These interviews took place on December 9, 2022.

Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Luxembourg, the Netherlands, Slovakia, Spain (Catalonia), and Sweden.

- 46 Once analysed, the survey results served as the foundation for the second phase of the research. The aim of this part was to analyse the responses of the relevant actors to the survey to critically reflect on the existing articulation mechanisms between regulation and self-regulation. ■

IV. FINDINGS: SIX EU COUNTRIES IN THE SPOTLIGHT

47 This report is based on an in-depth analysis of six European countries, as well as on an online survey distributed to European press councils and media regulators. This section will cover the analysis for Belgium, Bulgaria, Germany, Italy, Spain and Sweden.

It will (A) start with the trends we have been able to identify when it comes to articulating regulation and self-regulation in the field of information, and (B) continue with the potential causes for these different approaches.

A. The different ways of articulating regulation and self-regulation

48 There is no single approach on how to articulate information regulation and self-regulation. Since the characteristics and prerogatives of each press council vary from one council to another, the approaches also vary when it comes to articulating their competences and tasks with those of media regulators. Articulations can either (1) be legally established, (2) consist of informal arrangements, or (3) be completely inexistent.

1. The legal articulations

49 Only one of the six countries studied provides legal arrangements for the cooperation between the press council and the media regulator: Belgium, and more specifically the French- and German-speaking communities. Indeed, the CDJ has been legally recognised by two decrees, one for each of the communities covered by its jurisdiction¹.

¹ Decree of the Belgian French-speaking community of 30 April 2009 regulating the conditions for the recognition and subsidisation of a self-regulatory body for journalistic ethics (hereinafter “Decree of 30 April 2009”); Decree of the Belgian German-speaking community of 25 March 2013 recognising and subsidising a body for the self-regulation of journalists’ professional ethics (hereinafter “Decree of 25 March 2013”).

In addition to explicitly recognising the press council², these decrees include mechanisms for cooperation between the CDJ and the media regulators of these communities, i.e., the CSA and the Medienrat³. The media regulators shall refer to the CDJ any complaint in the field of information that is not related to their legal powers⁴. Conversely, the CDJ shall forward to the CSA or the Medienrat any complaint relating to audiovisual matters that does not fall under its own remit (i.e. journalistic information)⁵.

The decrees also address how to handle complaints that fall under both jurisdictions⁶, such as complaints involving

² More precisely, these decrees recognise the AADJ, which is the body responsible for setting up and coordinating the press council, namely the CDJ. See Article 1, § 2 of the Decree of 30 April 2009 and Article 2 of the Decree of 25 March 2013.

³ Article 4, § 2 of the Decree of 30 April 2009; Article 7, § 2 of the Decree of 25 March 2013.

⁴ Article 4, § 2.1 of the Decree of 30 April 2009; Article 7, § 2.1 of the Decree of 25 March 2013. The AADJ drafted a note on the interpretation of Article 4 of the Decree of 30 April 2009. Regarding the second paragraph of this provision, the note states that when a “complaint in the field of information relates only to journalistic ethics and is not related to a legislative provision that falls under the decree powers of the CSA (coordinated decree on audiovisual media services): only the CDJ is competent. The role of the CSA is only to refer the complaint (if it has been addressed to it) to the CDJ since the CSA has no competence” (Free translation). See AADJ, “Note d’interprétation de l’article 4 du décret du 30 avril 2009”, 26 September 2019, available at: <https://www.lecdj.be/wp-content/uploads/19-09-26-AADJ-CA-note-interpretation-art.-4-decret-30-avril-2009.pdf>, p. 1.

⁵ Article 4, § 2.2 of the Decree of 30 April 2009; Article 7, § 2.2 of the Decree of 25 March 2013. According to the AADJ, when a “complaint in the field of information relates only to a legislative provision within the decree powers of the CSA and not to journalistic ethics: only the CSA is competent. The role of the CDJ is only to refer the complaint (if it has been addressed to it) to the CSA since the CDJ has no jurisdiction” (Free translation). See AADJ, “Note d’interprétation de l’article 4 du décret du 30 avril 2009”, *op. cit.*, p. 1.

⁶ Article 4, § 2.3 of the Decree of 30 April 2009; Article 7, § 2.3 of the Decree of 25 March 2013. The note of the AADJ on Article 4 of the Decree of 30 April 2009 states specifies that when a “complaint relating to information concerns both a legislative provision of the French Community in the field of broadcasting (now the coordinated decree on audiovisual media services) and an ethical provision in the field of information: only the CDJ is competent in principle. The role of the CSA (if the complaint has reached it) is to immediately approach the CDJ with the complaint, and then to communicate the CDJ’s opinion to the complainant. If the CDJ, to whom the complaint has been forwarded by the CSA, considers itself incompetent, the CSA obviously has the possibility to decide in its turn on the admissibility of the complaint

the protection of human dignity⁷ or the distinction between information and advertising⁸. The CDJ handles these complaints in first instance. The regulator (the CSA or the Medienrat) is allowed to intervene, after the opinion of the CDJ, in three cases only⁹: recidivism, media pressure on journalistic independence, and potential audience harm¹⁰.

Furthermore, the decrees provide for interactions between the CDJ and the media authorities outside the complaint-handling process. Firstly, the CDJ and the regulators shall draft a joint annual report on the complaints received during the previous year¹¹. Secondly, they shall meet twice a year to evaluate the proper functioning of the mechanisms in place¹².

2. The informal articulations

a) The pragmatic solutions to address overlapping competences

- 50 Other countries tend to opt for a more informal approach. A first scenario occurs where pragmatic solutions are shaped to solve practical difficulties. The German case is particularly interesting to illustrate this.

and on its merits” (Free translation). See AADJ, “Note d’interprétation de l’article 4 du décret du 30 avril 2009”, *op. cit.*, p. 1.

⁷ Article 26 of the Belgian CDJ’s Code of Ethics; Article 2.3-1 of the Decree of the Belgian French-speaking community of 4 February 2021 on audiovisual media services and video sharing services (hereinafter “Decree of 4 February 2021”); Articles 7 and 12 of the Decree of the Belgian German-speaking community of 1 March 2021 on media services and cinematographic representations (hereinafter: Decree of 1 March 2021).

⁸ Article 13 of the Belgian CDJ’s Code of Ethics; Article 5.2-4 of the Decree of 4 February 2021; Articles 13 of the Decree of 1 March 2021.

⁹ These three cases illustrate that self-regulation can be insufficient at times, and that the action of a regulatory body with greater sanctioning powers can supplement it. See M. HANOT (ed.), A. VIDAL (coord.), *op. cit.*, p. 100.

¹⁰ For further details on these exceptions, see AADJ, “Note d’interprétation de l’article 4 du décret du 30 avril 2009”, *op. cit.*, p. 2.

¹¹ Article 4, § 6 of the Decree of 30 April 2009; Article 7, § 6 of the Decree of 25 March 2013.

¹² Article 4, § 7 of the Decree of 30 April 2009; Article 7, § 7 of the Decree of 25 March 2013.

- 51 The German press council, the *Presserat*, was established in 1956 and is legally recognised¹³. It is explicitly mentioned in Article 19 of the reworked Interstate Media Treaty¹⁴, which contains no provision for interactions between the press council and the 14 German media authorities¹⁵. At first glance, the respective remits of the press council and the media regulators appear to be generally distinct. The *Presserat* is responsible for print and online press regarding ethical guidelines, while the media authorities are in charge of overseeing private broadcasters in regard of media law. However, there are three exceptions where responsibilities are unclear and may overlap¹⁶.

Firstly, when the Interstate Media Treaty was reworked in November 2020, Article 19 gave media authorities the competence to monitor compliance with journalistic due diligence obligations in “telemedia”¹⁷. According to the umbrella body for the 14 German media authorities, Die Medienanstalten (hereinafter: DLM), “anyone publishing content on the Internet must comply with journalistic standards under certain conditions. This has been stipulated by law for TV, radio, and the Internet content of publishers for a long time already, and is checked by the Media Authorities and the German Press Council. A new development since November 2020 is that other online media must also observe journalistic due diligence. This particularly applies to Internet content that is journalistic and editorial, regularly contains news or political information, and that are offered on a commercial basis”¹⁸.

¹³ German Law of 18 August 1976 ensuring the independence of the complaints committee set up by the German Press Council.

¹⁴ German Interstate Media Treaty from 14 / 28 April 2020, in force since 7 November 2020 (hereinafter: German Interstate Media Treaty).

¹⁵ In Germany, there are 14 media regulators, which work under the umbrella of *Die Medienanstalten* (hereinafter: DLM), see <https://www.die-medien-anstalten.de>.

¹⁶ Email exchange with the *Presserat* (Kerstin Lange), from December 2, 2022.

¹⁷ Prior to the Interstate Media Treaty’s revision, German media regulators were already competent to monitor compliance with journalistic due diligence obligations. However, this competence was limited to broadcasting media. See Article 6 of the German Interstate Media Treaty.

¹⁸ DLM, “Information leaflet: Journalistic due diligence in online media”, available at: https://www.die-medienanstalten.de/fileadmin/user_upload/die_medienanstalten/Service/Merkblaetter_Leitfaeden/Journalistic_due_

The first paragraph of Article 19 states that: “telemédia with journalistic-editorial offers [...] must comply with recognised journalistic principles”¹⁹. Prior to their dissemination, news stories should be examined for content, origin, and veracity by the provider with the due diligence required for the circumstances. The *Presserat’s* Press Code constitutes an important reference point for assessing compliance with such obligations²⁰. The German media authorities therefore refer to and apply the Press Code when faced with due diligence questions²¹. The third paragraph of Article 19 specifies that: “providers [...] who are not subject to self-regulation by the Press Code and the Complaints Regulations of the German Press Council, can join a recognised institution of voluntary self-regulation”. Thus, in Germany there are three possible regimes for ensuring compliance with journalistic standards: (i) the self-regulatory regime of the press council for print and affiliated online media, (ii) the self-regulatory regime of another self-regulatory body, which needs to be validated by the media authorities²², and (iii) the regulatory regime of media authorities for broadcast and online media, which do not fall under the scope of the previous two regimes. According to

[diligence_2021-05-25_English_bf.pdf](#), p. 1.

¹⁹ Article 19, § 1 of the German Interstate Media Treaty states that: “Telemédia with journalistic-editorial offers, particularly in which the entire or partial content of periodical print materials are reproduced in text or image, must comply with recognised journalistic principles. The same applies to other commercial, journalistic-editorial telemédia offers, which regularly contain news or political information and which do not fall under sentence 1. Before they are disseminated, news stories are to be checked by the provider for content, origin, and truth with the due diligence required for the circumstances”.

²⁰ DLM, “Information leaflet: Journalistic due diligence in online media”, *op. cit.*, pp. 1 and 3.

²¹ According to the *Presserat*, when answering questions in a certain field, it is preferable to refer to the rules applicable to that field. As a result, compliance with journalistic due diligence should be assessed on the basis of the rules applicable to journalistic content, i.e., the Press Code. Moreover, the *Presserat* was founded before the development of the broadcast media, as we know them today, and hence before the media authorities. The first rules applicable to journalistic content in Germany are therefore those laid down in the Press Code (Personal Interview with the *Presserat* (Roman Portack), on March 9, 2023).

²² Article 19, § 5 of the German Interstate Media Treaty states that: “The competent state media authority takes the decision on the recognition of the institution”. The *Presserat* is exempted from the regulators’ recognition requirement. This would go against the very nature of the press council, which aims to establish a system of voluntary self-regulation that exists independently of the goodwill of government authorities.

the *Presserat*, Article 19 must be interpreted as meaning that the press council alone is competent when the media against which the complaint is made is subject to the press council’s rules²³. Presumably, this provision encourages the media authorities and the press council to communicate. Indeed, for the sake of Article 19’s implementation, the regulators need to be aware of the media which have joined the self-regulatory system. Moreover, since media authorities refer to the Press Code, communication between regulatory and self-regulatory bodies is important to ensure consistent interpretation and application of the Code’s provisions.

Secondly, regarding the protection of minors and human dignity, there are overlapping competences when it comes to journalistic content published online. The German Press Code ensures the preservation of human dignity as well as the protection of young readers²⁴. In addition, the Interstate Treaty on the protection of human dignity and the protection of minors²⁵ provides that the media authorities monitor the protection of minors and human dignity in broadcasting and telemédia services, which include all online content. This implies that, in theory, an online publisher can face two proceedings: one in front of the *Presserat* and another one with the media authorities²⁶. It appears that this situation rarely occurs in practice. However, given the changing legal framework in the field of media as well as the evolution of the digital environment, similar issues are likely to arise in the future.

Thirdly, the historical division of the German media landscape between print media on the one hand and broadcasting media on the other hand is challenged by the media convergence.

²³ Email exchange with the *Presserat* (Kerstin Lange), from December 2, 2022.

²⁴ Section 11 of the German Press Code.

²⁵ German Interstate Treaty on the Protection of Human Dignity and the Protection of Minors in Broadcasting and in Telemédia, from 10-27 September 2002 in the version of the 19th Treaty for amending the Interstate Treaties with regard to broadcasting law (19th Interstate Broadcasting Treaty) in force since 1 October 2016.

²⁶ Email exchange with the *Presserat* (Kerstin Lange), from December 2, 2022.

“Traditional” print media and broadcasters turn more and more to media houses that offer written content as well as audiovisual content. The clear line between press and broadcasting content tends to blur and so does the line between the competences of the German press council and media regulators. So far, the issue has been resolved as follows: the media authorities are responsible for the live stream and videos on pure video platforms, such as YouTube and the video library of the media, while the *Presserat* is competent for videos when they are incorporated into an article²⁷.

b) The other informal interactions

- 52** Another situation arises when there is actually no risk of overlapping competences. As a result, media regulators and self-regulatory bodies do not see the need to establish cooperation arrangements to address such issues. In those cases, interactions between regulation and self-regulation typically take the form of a dialogue, annual meetings or the transfer of complaints addressed to the wrong organisation.
- 53** This is notably the case in Bulgaria, Dutch-speaking Belgium and Sweden, where, according to the relevant bodies, the line between competences is always clear. There are interactions between the self-regulatory body and the media authority, but they are informal. If the media regulator receives a complaint that concerns the press council, it refers the complainant to the council and vice versa²⁸.

For instance, in Bulgaria, the Ethics Commission of the National Council for Journalistic Ethics (hereinafter: NCJE), applies the Code, while the media authority (the EMC) applies the law²⁹. Both bodies consider that they work in different spheres. However, the Bulgarian Radio and Television Law recognises the NCJE. It allows the EMC to sanction a media

²⁷ *Ibid.*

²⁸ Interview with the Swedish *Medieombudsman* (Caspar Opitz) on December 2, 2022.

²⁹ Survey answers from the Bulgarian NCJE, of January 17, 2023.

service provider that fails to comply with a decision of the Ethics Commission. Such recognition encourages informal interactions between both bodies. The media regulator transfers complaints to the NCJE when the subject is a violation of the Code of Ethics, and vice versa³⁰.

3. The absence of articulations

- 54** The existence of a self-regulatory body and of a media regulator in the same country does not necessarily imply that interactions between the two exist. This can be illustrated by the Spanish and Italian cases. According to the information gathered, there are no interactions between the various Spanish self-regulatory bodies and the media regulators. These bodies work separately in every aspect and do not communicate with each other. This has been confirmed by the CNMC, the Spanish national media regulator, and the Consell de la Informació de Catalunya (hereinafter: CIC), the regional press council competent for the autonomous community of Catalonia.

In Spain, there is no press council at the national level. The FAPE is the association of journalists and has an arbitration commission which can be considered as the Spanish self-regulatory body³¹. However, the CNMC, the Spanish national media regulator, does not have any interactions or other type of relationship with the FAPE. In fact, “given that the CNMC is a public body, arbitration – in the terms in which the activity carried out by the Association is understood – does not exist within its functions”³².

Furthermore, according to the CIC, it works independently from the Catalan media authority, the CAC. So much so that situations of overlapping competences are not solved by putting in place cooperation mechanisms between the two

³⁰ Article 126d of the Bulgarian Radio and Television Act, from 24 November 1998, as last amended on January 1, 2022 (hereinafter: Bulgarian Radio and Television Act).

³¹ See para. 59.

³² Email exchange with the CNMC, from February 16, 2023.

bodies. Instead, each of them issues its own resolution³³.

55 Finally, the Italian media landscape is unique because it features an order of journalists. We will further detail the particularities of this body, which is frequently referred to as the Italian press council but does not fully fit our definition of self-regulation (see para. 39). Nonetheless, there does not seem to be any legal articulations between the Order and the AGCOM, the Italian media regulator³⁴. This is probably due to the respective mandates of the two bodies. The Order is only concerned by the behaviour of journalists, as individuals, while the AGCOM monitors compliance by media services with the law. On the one hand, the Order seeks to hold journalists accountable in case of violation of the professional Code of ethics. On the other hand, the AGCOM focuses on the liability of the media, which do not comply with their legal obligations.

³³ Survey answers of the CIC, from December 12, 2022, and January 13, 2023.

³⁴ This statement is based on our analysis of Italian legal texts applicable to the field of information. As we did not receive answers from the Italian bodies, we cannot state with certainty how the situation is organised in practice.

B. The criteria explaining the existence or the absence of articulations

56 Based on our in-depth analysis of six national systems, we have been able to identify different factors that may explain the way in which these countries articulate regulation and self-regulation in the information field.

These factors include (1) the existence of a press council or another self-regulatory body, (2) the legal recognition for this body, (3) its date of foundation and seniority in comparison to the media regulator, (4) its remit, (5) its powers and (6) the remit of the media regulator.

1. The existence of a press council or another self-regulatory body

57 Although press councils are the primary focus of our research, there are other types of self-regulatory bodies for journalistic activities. In case no press council exists in a country, it is interesting to study other self-regulatory mechanisms in place.

The type of self-regulatory body established might affect the place of this body in the media landscape, its competences and eventually its potential interactions with the media regulator. It is therefore appropriate to examine press councils, as well as other forms of self-regulation, in order to compare the existing systems and to identify the consequences of their differences. For example, the remit may be more or less extensive depending on the type of self-regulatory body concerned. This indirectly affects this body's relationship with the media regulator since the latter has more or less room to act in relation to information issues.

a) Press councils

58 Five of the six countries studied have set up a press council, namely Belgium, Bulgaria, Germany, Spain and Sweden.

Bulgaria, Germany and Sweden have each a press council at the national level, respectively the NCJE, the *Presserat* and the *Medieombudsman* (hereinafter: MO), competent for the whole country. Belgium, on the other hand, has two regional press councils³⁵. The CDJ is competent for the French-speaking and German-speaking communities, and the *Raad voor the Journalistiek* (hereinafter: Raad) is responsible for the Dutch-speaking community.

In Bulgaria, the Journalism Ethics Commission acts as the self-regulatory body for the Bulgarian media. The Commission is the working body of the NCJE, which was created as a non-profit legal entity to carry out activities in the public interest³⁶. The Foundation's mission is to establish and sustain a self-regulation system for print and electronic media in Bulgaria based on the Bulgarian Media Code of Ethics³⁷.

Regarding Spain, there is no press council at the national level. However, there is a regional press council competent for the autonomous community of Catalonia, namely the Consell de la Informació de Catalunya (CIC).

These press councils are non-governmental institutions with the purpose of acting as a bridge between the media and the public. They have been founded voluntarily by media professionals themselves and are financially supported by them, sometimes with the indirect support of the State (i.e., subsidies)³⁸. These councils are responsible for developing and implementing Codes of ethics, as well as handling complaints in case of infringement of an ethical principle³⁹.

³⁵ In view of the institutional specificities of Belgium, the term "regional" actually refers to the three Belgian communities, namely the Dutch-speaking community, the French-speaking community and the German-speaking community.

³⁶ Y. CHEN, "Media Self-regulation in Bulgaria", *Advances in Social Science, Education and Humanities Research*, vol. 289, 2018, p. 795.

³⁷ AIPCE, "National Council for Journalistic Ethics", available at: <https://presscouncils.eu/members-bulgaria>.

³⁸ R. Harder, *op. cit.*, p. 5: "Although the government might contribute financially to their activities, it cannot have a hand in writing the ethical guidelines that media councils use, nor can they affect the decisions that media councils reach in response to complaints that are filed (including the selection of the people who make these decisions)".

³⁹ AIPCE, "What is a Press Council?", available at: <https://www.presscouncils>.

b) Other self-regulatory bodies

59 Some countries do not have press councils in the sense described above. Nonetheless, they have associations of journalists with an ethical committee, which handle complaints regarding ethical standards. Since they are a part of an association rather than being autonomous bodies, these ethical councils are generally different from press councils in terms of autonomy and composition.

The particularity of the Spanish media landscape is that there is no press council at the national level. There is however a Catalan press council, as well as ethical councils of journalists' associations for the rest of the country. There are two such bodies in Spain: one regional body for the autonomous community of Andalusia and one at the national level.

- First, the *Colegio Profesional de Periodista de Andalucía* (hereinafter: CPPA) has a Commission of Ethics, the *Comisión de Deontología y Garantías*. The Commission is an independent body responsible for ensuring compliance with the profession's ethical and deontological codes, particularly the codes of the Council of Europe⁴⁰ and the *Federación de Asociaciones de Periodistas de España* (hereinafter: FAPE)⁴¹, which the CPPA has adopted as its own. To that end, the Commission hears complaints from people who have a direct interest in informative practices they believe are harmful to their rights, as well as those from professionals who see their independence and commitment to citizenship conditioned in order to perform their public service function⁴².
- Secondly, the FAPE is a non-profit professional organisation of journalists in Spain with 50 federated associations. The FAPE has an arbitration commission, the *Comisión*

[eu/about](#).

⁴⁰ Code of Ethics of Journalism of the Council of Europe.

⁴¹ Spanish FAPE's Code of Ethics of the Journalistic Profession.

⁴² AIPCE, "Commission of Ethics and Guarantees of Journalistic of Andalusia (Spain)", available at: <https://presscouncils.eu/members-spain-andalusia>.

de Arbitraje, Quejas y Deontología del Periodismo, which serves as a mediator between the profession and citizens. It receives moral authority from professional organisations and journalists who are members, and it serves as a supplement to legal regulation⁴³.

- 60** These ethical councils, which were established within journalists' associations, are self-regulatory institutions comparable to press councils by virtue of their mandate. As a result, it is interesting to compare articulations that may exist between media regulators and press councils on the one hand, and between media regulators and these other self-regulatory bodies on the other hand.

This can be illustrated by the Spanish system. The fact that the self-regulatory bodies are not autonomous press councils could explain the lack of interactions with the media authorities. This could also explain the fact that the Spanish law implementing the amendments of the AVMSD granted the media authorities powers to ensure accuracy of information in broadcasting programmes. The law explicitly refers to the "duty of professional due diligence in the verification of facts"⁴⁴.

c) The specific case of an Order of Journalists

- 61** In Italy, self-regulation of journalism is usually attributed to the *Ordine dei Giornalisti* (hereinafter: Order). The Order

⁴³ See <https://www.comisiondequejas.com>.

⁴⁴ Article 9 of the Spanish Law 13/2022 of 7 July on Audiovisual Communication: "News and information content programmes shall be prepared in accordance with the public's right to receive truthful information and the duty of professional diligence in the verification of facts. They shall respect the principles of truthfulness, quality of information, objectivity and impartiality, differentiating clearly and comprehensibly between information and opinion, respecting political, social and cultural pluralism and encouraging the free formation of public opinion" (Free translation: "Los noticiarios y los programas de contenido informativo de actualidad se elaborarán de acuerdo con el derecho de los ciudadanos a recibir información veraz y el deber de diligencia profesional en la comprobación de los hechos. Serán respetuosos con los principios de veracidad, calidad de la información, objetividad e imparcialidad, diferenciando de forma clara y comprensible entre información y opinión, respetando el pluralismo político, social y cultural y fomentando la libre formación de opinión del público").

is a public body that manages the Register of Journalists and whose membership is required for the practice of the profession. It has supervisory and protective functions over the work of its members⁴⁵. Because of its mandate, the Order is often referred to as the Italian press council. It does not, however, correspond to the usual definition of a press council⁴⁶. As a reminder, press councils are generally non-governmental bodies, which "embody the desire to bring together media owners, editors, journalists and the public (civil society) to the exclusion of public authorities"⁴⁷ (see para. 39). This definition does not appear to be compatible with the Order. Indeed, while performing functions similar to those of a press council, the latter is an entity created by law⁴⁸, whose membership is compulsory, and which only gathers journalists (with no representatives from media owners or the public)⁴⁹.

The objective of the Order, through its composition and management, is to represent and regulate the Italian information system and not to control it in the sake of political power. Nonetheless, its foundation is not the result of a desire on the part of journalists to provide themselves with an instrument of self-regulation, as it is usually the case for press councils, but rather of a specific intervention on the part of the Italian legislator⁵⁰.

The Order differs from press councils in that the practice of journalism is subordinated to registration. This registration takes place after passing a state examination, which is organised by the Order, and which can only be passed (i) after having attended one of the journalism schools recognised by the Order, or (ii) after having completed a period of

⁴⁵ L. UGOLINI and G. CIOFALO, "Paradoxes et difficultés de l'Ordine dei Giornalisti", *Recherches en Communication*, vol. 54, 2022, p. 83.

⁴⁶ *Ibid.*, p. 82.

⁴⁷ B. GREVISSE, *Déontologie du journalisme : Enjeux éthiques et identités professionnelles*, *op. cit.*, p. 268.

⁴⁸ The Ordine dei Giornalisti was established in 1963, in accordance with the Italian Law nr. 69/1963 of 3 February on the regulation of the journalist profession (hereinafter "Italian Law nr. 69/1963").

⁴⁹ L. UGOLINI and G. CIOFALO, *op. cit.*, p. 83.

⁵⁰ *Ibid.*

apprenticeship of at least 18 months in an editorial office⁵¹. As a result, the Order appears to have potentially absolute control over the proper conduct of the journalistic profession. Indeed, the profession is totally subordinated to registration with the Order, which constitutes the only body in Italy with the authority to establish and enforce the ethical standards of the profession⁵².

Moreover, and more fundamentally, the Order is a state body. The link between the Order and the State demonstrates the legislator's determination to place journalism at the heart of the country's democratic life, ensuring state oversight in the same way that it is done for doctors and lawyers. However, this strong link reinforces one of the most common criticisms raised against journalism around the world: its proximity to political power⁵³. This is why, in Europe, journalists are generally opposed to the creation of a professional order. Firstly, this evokes totalitarian regimes and the dangers of propaganda and censorship. Secondly, the foundation of a professional order of journalists with mandatory membership is regarded as contrary to press freedom⁵⁴.

2. The legal recognition of the press council

- 62** Another element to be taken into account is the legal recognition of self-regulatory bodies. Indeed, it is generally accepted that media authorities are legally established, in accordance with applicable legislation on audiovisual media services, while self-regulatory bodies are established independently of any legislative intervention.
- 63** However, in some countries, press councils or other self-regulatory bodies are recognised by law. This recognition may occur either directly by acknowledgment in a national law or indirectly through a provision that is attached to the ethical objective that the press council is pursuing, thereby inducing

⁵¹ *Ibid.*

⁵² *Ibid.*, p. 85

⁵³ *Ibid.*, p. 82.

⁵⁴ B. GREVISSE and L. ROTILI, *op. cit.*, p. 3.

its recognition. Among the systems studied, this is true for Andalusia, French- and German-speaking Belgium, Bulgaria, Germany and Italy. There are two key reasons why the legal recognition of a self-regulatory body constitutes an important element in our analysis. On the one hand, it can demonstrate the legislator's recognition of the self-regulatory system's important role and desire to allow it a place in the media landscape. On the other hand, if the self-regulatory body is itself acknowledged in national law, articulation mechanisms could more likely be found there.

The legal recognition of the Belgian⁵⁵ and German press councils⁵⁶, and in a more peculiar way, of the Italian Order of journalists⁵⁷, was previously addressed. Regarding Spain, the only self-regulatory body mentioned in a legal text is the CPPA, which was legally founded in 2012⁵⁸. In Bulgaria, the NCJE is legally recognised in Article 4b of the Bulgarian Radio and Television Act, which encourages "self-regulation and co-regulation through codes of conduct and standards"⁵⁹. Article 4b explicitly specifies that these codes of conduct and standards include, among others, the Code of Ethics of the Bulgarian Media, developed by the NCJE. Article 126d of the Radio and Television Act is also of interest. It allows the media regulator, the CEM, to impose a pecuniary sanction to "any media service provider that fails to comply with a decision of the Ethics Commission with the NCJE"⁶⁰.

3. The seniority of the press council

- 64** The year of foundation of self-regulatory bodies determines their seniority compared to the media regulators. It also

⁵⁵ See para. 49.

⁵⁶ See para. 51

⁵⁷ See para. 61.

⁵⁸ Spanish Law 1/2012 of January 30 creating the Professional College of Journalists of Andalusia.

⁵⁹ Article 4b of the Bulgarian Radio and Television Act.

⁶⁰ Article 126d of the Bulgarian Radio and Television Act states that: "Any media service provider, which fails to comply in due time with any decision of the Ethics Commission with the National Council for Journalism Ethics Foundation and/or the National Council for Self-Regulation Association, shall be liable to a pecuniary penalty of BGN 2,000 or exceeding this amount but not exceeding BGN 5,000".

indicates whether these bodies were established before or after the media convergence and/or the adoption of new sets of rules governing information and journalism.

a) Older press councils

- 65** The Swedish (1916) and German press councils (1956) are two of the oldest press councils in the European Union. Both were created before the modern era of radio and television, as we know them today. They were therefore also created before the establishment of audiovisual media regulators. This explains why their remit was initially limited to written press and why after the emergence and development of broadcast media, jurisdiction over these media was assigned to regulators.

Since then, the Swedish MO has extended its remit to broadcast media, but this is not the case of the German *Presserat*. Currently, the *Presserat* is in charge of the print and online press in regard to ethical standards, while the German media authorities are responsible for monitoring private broadcasters according to media legislation. Prior to the rise of the Internet and new journalistic sources, radio and television could be easily distinguished from written press. There was therefore little risk of overlapping competencies between the press council and the media regulators.

- 66** Nonetheless, as explained previously, the rise of new sources of information, such as websites, social media or podcasts, had an impact on this historical division of traditional media (see para. 23). Consequently, attention should be paid to how these well-established press councils managed to adapt to recent technological and legislative developments⁶¹.

b) Newer press councils

- 67** The other self-regulatory bodies studied are more recent. They were established between the end of the 20th century

and the beginning of the 21st century⁶².

- 68** Most of them emerged after the advent of the Internet and, more importantly, in a media landscape in which a media regulator might in a few cases already be in place. This is the case of the Belgian CDJ, which was created in 2009, whereas the CSA and the Medienrat were established respectively in 1987 and 1999. In such cases, the question arises as to how these self-regulatory bodies have managed to find a place in an environment where a media regulatory authority was already well established.
- 69** Another possibility is where a self-regulatory body, such as the Belgian Raad (2002), was founded quite recently, but still before the media regulator (2005). When delimiting the press council's field of competence, the rise of new technologies could be taken into account. At the same time, the council was able to establish itself without having to compete with a powerful media regulator. From the beginning, the press council and the regulator, the VRM, have been able to work together to clearly delineate their respective responsibilities and avert any issues brought on by media convergence or other changes of the media environment. This may also explain why, according to the Raad and the VRM, there is no risk of overlap in their respective competences. For example, regarding the protection of minors, the VRM is concerned about advertising to minors and age limits for programs involving sex and violence⁶³. This does not fall within the purview of the Raad, which focuses on the behaviour of the press towards minors⁶⁴.

⁶² The Belgian CDJ was founded in 2009, the Belgian Raad in 2002, the Bulgarian NCJE in 2005, the Spanish FAPE in 1992, the Andalusian CPPA in 2012, and the Catalan CIC in 1997.

⁶³ Articles 42 and 72 of the Decree of the Belgian Dutch-speaking community of 27 March 2009 on radio broadcasting and television, as last amended on June 3, 2022.

⁶⁴ Article 15 of the Raad's Code of ethics: "The journalist does not abuse his capacity, especially towards people in a vulnerable situation such as minors, victims of crime, disasters and accidents, and their immediate surroundings" (free translation). For further details on the interpretation of this provision, see the Guidelines to the Code of ethics on "Article 15: Attitude towards minors", p. 18.

⁶¹ M. HANOT (ed.), A. VIDAL (coord.), *op. cit.*, p. 33.

4. The remit of the press council

70 Each press council has its specificities, whether in terms of structure, composition, remit or “sanctions” it can impose. Regarding the remit, several factors can explain why the scope of a press council is more or less extensive: (a) the differences in defining journalism, (b) the necessity of joining the self-regulatory system, (c) the categories of media covered, and (d) the requirement of “personal stake” for lodging a complaint⁶⁵.

a) The differences in defining journalism

71 The notion of journalism is not defined in the same way in every country (see para. 28). The scope of this definition has an important impact on the remit of press councils, which are concerned with journalistic activities. In the context of this research, we decided to adopt a broad and functional definition of the notion: a journalist refers to anyone who engages in the activity of gathering, producing, processing, and/or disseminating information in the public interest. The two Belgian press councils adopted a functional view of journalism and hence, also deal with complaints against non-professional journalists.

72 However, not all self-regulatory bodies delineate their remit based on this broad acceptance of the of the term “journalist”. Some focus on professional journalists by defining journalists as those who are legally recognised and/or have a press card. This may be due to the fact that the self-regulatory body is part of a journalists’ association, as it is the case in Spain and in Italy.

Although the Italian Order of journalists is not a self-regulatory body in our view (see para. 61), it is interesting to take its definition of journalism into consideration. Due to its nature, the Order focuses on journalists who are listed in its registers and who fall into one of the two following categories:

(i) professional journalists who exclusively and continuously exercise the profession of journalist and are regularly hired by a news outlet and passed the professional exam⁶⁶, (ii) freelance journalists (or publicists) who regularly, but not exclusively, work with the media⁶⁷, and (iii) trainees who have a temporary position within a news outlet or are attending journalism school and are yet to take the professional exam⁶⁸.

73 Others only admit complaints against media outlets or media publishers. This is the case in Bulgaria and in Sweden. The Bulgarian Ethics Commission has authority on “media, without definition of the persons working there”⁶⁹. Such a scope may theoretically interfere with the scope of audiovisual media regulators which are dealing with editorial responsibilities on media contents. In other words, they are not empowered to deal with journalists’ responsibility.

The Swedish MO defines itself as “an independent self-regulatory body, which handles complaints about the editorial content of newspapers, magazines, broadcast media, websites, and social media”⁷⁰. Two elements can be deduced from this definition. On the one hand, the press council’s authority depends more on the affiliation to a media outlet, than on the scope of the definition of journalist. On the other hand, the work of the press council focuses on what is actually published in the media. In fact, the MO does not handle complaints for violation of professional ethics, which concern how a journalist behaves and what he or she does to obtain information. The Professional Ethics Committee (hereinafter YEN) is the body responsible for monitoring professional ethics. YEN is part of the Swedish Association of Journalists and has a series of professional ethical rules

⁶⁶ Article 1 of the Italian law nr. 69/1963; See also <https://medialandscapes.org>.

⁶⁷ Article 1 of the Italian law nr. 69/1963; L. UGOLINI and G. CIOFALO, *op. cit.*, p. 84.

⁶⁸ MEDIA LANDSCAPES, “Expert analyses of the state of media”, available at: <https://medialandscapes.org>.

⁶⁹ Answers of the Bulgarian Ethics Commission to our survey, from 17 January 2023.

⁷⁰ See MO, “The system of media ethics in Sweden”, available at: <https://mediombudsmannen.se/english/>.

⁶⁵ R. HARDER, *op. cit.*, pp. 11-13.

that journalists are required to follow⁷¹.

b) The necessity (the incentive) to join the self-regulatory system

- 74** In Belgium, ethical obligations concern anyone who disseminates information of a journalistic nature, regardless of the fact that the journalist or the media concerned decided to join the council⁷². It is also the case for the Ethics Commission of the Bulgarian NCJE⁷³.

However, in some countries, the press council's authority is limited to the media that agreed to abide by the self-regulatory system. In such cases, the press council will only handle complaints against journalists and/or media outlets that submitted themselves to its jurisdiction⁷⁴. It is notably the case of the Swedish press council, which investigates complaints against all printed media that are published at least four times a year and are registered responsible publishers, as well as a number of websites and other media that voluntarily joined the media ethics system⁷⁵. In Germany, the press council is responsible for all print media, as well as online media that decided to join the council. Most German publishers have made a declaration of commitment to respect the Press Code. Online media, which do not belong to these publishers, must also adhere to journalistic principles⁷⁶. One way to achieve this is to join the voluntary self-regulatory system of the *Presserat* by committing to respect the Press Code. Online media, which did not sign a declaration of commitment to

⁷¹ "In some cases, journalism and professional ethics go hand in hand. It could, for example, be about an informant being promised access to their quotes, but then not receiving it. If the quote turns out to be incorrect or otherwise harmful to the person giving the information, this can be weighed in the assessment made by the Media Ombudsman". Free translation from: <https://medieombudsmannen.se/sa-har-gor-du-en-anmalan/den-journalistiska-yrkesetiken/>

⁷² CDJ, "Plaintes", available at: <https://www.lecdj.be/fr/plaintes/procedure/>; Raad voor de Journalistiek, "Hoe een klacht indienen?", available at: <https://www.rvdj.be/pagina/ho-een-klacht-indienen>.

⁷³ See AIPCE, "Comparative data on media councils", *op. cit.*

⁷⁴ R. HARDER, *op. cit.*, p. 12.

⁷⁵ MO, "The system of media ethics in Sweden", available at: <https://medieombudsmannen.se/english/>.

⁷⁶ Article 19 of the German Interstate Media Treaty.

the Press Code and violate journalistic principles, must thus expect sanctions from the state media authorities⁷⁷.

c) The categories of media covered

- 75** Press councils' remit is also defined by the types of media covered by their work. These may include blogs, podcasts, print magazines, print newspapers, radio, social media, television, video-sharing platforms or websites. While the majority of press councils cover written press as well as its online version, the competence for other categories of media may vary from one council to another.

Some press councils, like those in Belgium and Sweden, do not focus on the type of media involved when deciding whether they have jurisdiction to receive and investigate a complaint. In other words, these councils handle complaints regardless of the medium used to disseminate the content being criticised. Instead, the admissibility of the complaint focuses on the exercise of a journalistic activity by the media and/or the person concerned. We will see in the next section that, as far as the Belgian *Raad* and the Swedish MO are concerned, it is also necessary to demonstrate a personal stake in order for the complaint to be admissible (see para. 76).

Other press councils only investigate complaints against certain categories of media. For example, the German press council is responsible for print media (i.e., newspapers and magazines) and online media that have signed up to the council. However, it has no authority on television and radio or their online offers (i.e., websites, media libraries and social media accounts)⁷⁸. This implies that not all media categories are subject to the same rules. Some media will be subject to the press council's ethical rules, while others will be subject to the media regulators' rules.

⁷⁷ *Presserat*, "Selbstverpflichtung beim Presserat", available at: <https://www.presserat.de/selbstverpflichtung-onlinemedien.html>.

⁷⁸ *Presserat*, "Wofür ist der Presserat zuständig?", available at: <https://www.presserat.de/haeufige-fragen.html>.

d) The requirement of “personal stake” for lodging a complaint

- 76 The requirements for filing a complaint also determine the press council’s remit. In most of the analysed systems, anyone can submit a complaint to the press council, whether the complaint concerns a private or a public interest. Nonetheless, in Dutch-speaking Belgium, in Spain (Andalusia) and in Sweden, the complainant must be affected in some way by the reporting being criticised⁷⁹.

The press council for the Belgian Dutch-speaking community only considers complaints filed by “persons or organizations [...] that are the subject of the reporting, insofar as the complaint is motivated by a private interest, or organizations which, through their objectives and/or actual actions, are concerned with a theme that is the subject of the reporting, to the extent that the complaint is motivated by a general interest”⁸⁰.

The Swedish press council accepts complaints of anyone who has been pointed out (identified) and harmed by a publication. If the complainant is not personally affected and has not been identified with offensive or otherwise damaging information, they must contact the media regulator and file a complaint in accordance with the law⁸¹.

In Spain (Andalusia), two categories of persons can file a complaint in front of the CPPA’s Ethics Commission: (i) any natural or legal person as well as any public or private body or entity that justifies a legitimate and direct interest in relation to the question raised, and (ii) journalists and/or media professionals who could see their independence and their commitment to citizenship conditioned⁸².

⁷⁹ R. Harder, *op. cit.*, p. 13.

⁸⁰ Article 18 of the Raad’s Operating Rules.

⁸¹ MO, “How self-regulation works”, available at: <https://mediombudsmannen.se/english/>.

⁸² CPPA, “¿Quién puede presentar una queja o reclamación?”, available at: <https://periodistasandalucia.es/periodismo/comision-deontologia-garantias-periodistas/>.

5. The powers of the press council

- 77 Another element to take into consideration is the level of power of self-regulatory bodies. Apart from their remits, the prerogatives of press councils may vary in terms of (a) tasks performed and (b) “sanctions” imposed.

These prerogatives can impact the effectiveness of the self-regulatory system, and hence its place in the media landscape. Indeed, if self-regulatory bodies achieve effective results, a regulatory approach in the field of information may be considered less necessary.

a) The tasks performed by the press council

- 78 The self-regulatory bodies studied have in common that they promote journalistic ethics and handle complaints relating to alleged violations of ethical standards. However, the way in which they handle these complaints can differ.

For example, when the Belgian CDJ and *Raad* find that a complaint is admissible, a case is opened, and a procedure of mediation starts. The objective of the mediation is to find an amicable solution acceptable to the parties. If the research for such a solution is unsuccessful, the case is referred to the press council for a decision on the merits⁸³.

The same applies to the Bulgarian and Spanish self-regulatory bodies. In Bulgaria, the regulations for the activities of the NCJE’s Ethics Commission provide that “with the consent of the parties, the commission has the possibility at any time, before rendering a decision, to settle the conflicts through mediation”⁸⁴. In Spain, the rules of procedure of the FAPE and

⁸³ CDJ, “Plaintes: procédure”, available at: <https://www.lecdj.be/fr/plaintes/procedure/>; Raad voor de Journalistiek, “Wat gebeurt er nadat u klacht hebt ingediend?”, available at: <https://www.rvdj.be/pagina/hoe-een-klacht-indienen>.

⁸⁴ Article 11 of the Regulation of the NCJE’s Ethics Commission. See also AIPCE, “Comparative data on media councils”, *op. cit.*: “because of a lack of resources and capacity, the council does not mediate by default, but the possibility is always (as stipulated in the bylaws) suggested to the complainant”.

the CPPA stipulate that their respective Ethics Commission may act as a mediator at the request of the parties⁸⁵. Regarding the CIC, it acts as a mediator even if this is not apparent in its procedural rules⁸⁶.

- 79** In Sweden, the complaint-handling process does not include a mediation phase as such. However, when a complaint is submitted to the MO, he or she “ascertains whether it can be dealt with by a factual correction or a reply from the affected person, published in the media concerned”⁸⁷. Therefore, the MO acts as a mediator between the parties by attempting to settle matters and proposing a solution acceptable to both parties⁸⁸. In case the issue cannot be resolved in this way, the MO may undertake an inquiry if he or she suspects that there has been an infringement of journalistic ethical standards⁸⁹. The same applies in Germany where the *Presserat* may “refrain from imposing a sanction in spite of a justified complaint if the publication has put the matter in order e.g. by printing a reader’s letter or an editorial correction”⁹⁰.
- 80** Furthermore, most press councils also perform other tasks, such as media education, drafting ethical guidelines, bringing information to the public and/or the media sector and providing recommendations on any matter relating to journalistic ethics. The CPPA and the German press council are also responsible for managing press cards⁹¹.
- 81** The recognition of the importance of self-regulation notably depends on the tasks carried out by the self-regulatory bodies. As a matter of fact, the more involved a press council is in

⁸⁵ Article 10, § 3 of the Regulation of the FAPE’s Arbitration, Complaints and Ethics Commission and Article 11 of the Regulation of the CPPA’s Ethics Commission.

⁸⁶ See AIPCE, “Comparative data on media councils”, *op. cit.*: “the council will try to arrange an informal mediation”.

⁸⁷ MO, “How self-regulation works”, available at: <https://mediombudsmannen.se/english/>.

⁸⁸ AIPCE, “Comparative data on media councils”, *op. cit.*

⁸⁹ MO, “How self-regulation works”, *op. cit.*

⁹⁰ Presserat, “Sanctions”, available at: <https://www.presserat.de/en.html>.

⁹¹ CPPA, “Carné profesional”, available at: <https://periodistasandalucia.es/cuotas-y-carne/>; Presserat, “Bundeseinheitlicher Presseausweis”, available at: <https://www.presserat.de/presseausweis.html>.

the media landscape, the more the public, the media and the regulator(s) will be aware of it. Moreover, the fact that a press council favours the amicable resolution of complaints may be an incentive for journalists and/or media to join the self-regulatory system. Not only does mediation bring the parties together (figuratively and/or literally) and seek a solution that might suit them, but it also prevents the media from being publicly reprimanded.

b) The “sanctions” imposed by the press council

- 82** Unlike media regulators, press councils cannot impose sanctions, such as financial penalties, to punish journalists and/or media which violate the Code of ethical rules. Nor do they have any coercive means to force the media to comply with ethical standards. However, these councils have a moral authority. Indeed, by committing themselves to the self-regulatory system, journalists and media outlets accept to be held accountable to their peers and the public.

Generally, when a complaint is upheld and a breach of the Code of ethics is found, the medium concerned is asked to publish the press council’s decision (or a summary of it). Even though the publication of the council’s decision cannot be coerced, some press councils have agreements with the media organisations affiliated to them. In these agreements, the media commit to publish the council’s decisions in case a complaint filed against them is upheld. This is the case for the two Belgian press councils⁹², as well as the German press council⁹³.

Besides the publication of the press council’s decision, some press councils can impose other “sanctions”. The *Presserat* can impose four types of sanctions: public reprimand (which implies the publication of the council’s decision), non-public reprimand, notice of censure and advice notice⁹⁴. It also

⁹² Survey answers of the Raad, from December 29, 2022.

⁹³ Personal Interview with the *Presserat* (Roman Portack), on March 9, 2023.

⁹⁴ Presserat, “Welche Maßnahmen kann der Presserat ergreifen?”, available at: <https://www.presserat.de/haeufige-fragen.html>.

happens that the decision's publication is accompanied by another sanction, as in Sweden. When a complaint submitted to the Swedish MO is upheld, the media concerned have to pay a handling fee⁹⁵.

Regarding the Italian Order, the situation is particular because unlike self-regulatory bodies, it can impose sanctions such as warning, censorship, suspension from practicing the profession for a period of no less than two months and no more than one year and disqualification from the Order's register⁹⁶.

- 83** The consequences of a breach of journalistic ethics play an important part in the effectiveness and recognition of the self-regulatory system. Nevertheless, these sanctions should not lead to censorship or "removal" of the journalist whose behaviour and/or work is being criticised. Even if a complaint is well-founded, such a sanction would constitute an excessive infringement of the freedoms of expression and of the press. This is precisely what self-regulation seeks to avoid. A balance must therefore be struck between on the one hand, the freedom of the press that media councils strive for, and on the other hand, the need for the procedures and the opinions of the press council to be respected⁹⁷.

6. The remit of the media regulator

- 84** The legal framework governing the activities of media regulators is harmonised at the European level. The AVMSD provides a set of minimum rules for the regulation of audiovisual media services. Nevertheless, there are variations in how European states implemented the Directive⁹⁸. The competences attributed to media regulators in the EU can vary in two main ways: (i) the types of media that fall within the scope of the regulators and (ii) the themes covered by the

provisions enforced by the regulators.

In terms of media covered, the media regulators' scope of action covers "traditional" broadcasting media (including radio most of the time, even if it is not mentioned in the AVMSD), as well as video-sharing platforms. However, when it comes to media such as websites, blogs, social media or podcasts, the remits vary from one regulator to another. Thus, while some regulators limit themselves strictly to the scope defined by the AVMSD, others also cover these new media, in addition to radio.

Moreover, among the elements that media regulators monitor, some may also fall within the remit of press councils. Again, some are covered by the AVMSD:

- The compliance with prohibitions of discrimination, hate speech, incitement to violence, public provocation to terrorism, racism or xenophobia, or sexism;
- The compliance with obligations of the protection of minors or the protection of human dignity;
- The distinction between advertising and information.

Others may vary according to the national regulator concerned, extending further in journalistic activities:

- The compliance with obligations of impartiality;
- The accuracy of the information disseminated by the media under their jurisdiction;
- The respect of journalistic ethics or due diligence.

- 85** A comparison of the jurisdictions of media regulators and self-regulatory bodies on these issues may reveal overlapping competences, which should encourage the regulatory and self-regulatory bodies to interact. ■

⁹⁵ MO, "How self-regulation works", *op. cit.*

⁹⁶ Article 51 of the Italian Law nr. 69/1963.

⁹⁷ R. HARDER, *op. cit.*, p. 16.

⁹⁸ F. J. CABRERA BLÁZQUEZ, G. DENIS, E. MACHET and B. MCNULTY, *op. cit.*, pp. 1-6.

V. CRITICAL REFLECTION: A GENERAL OVERVIEW

- 86** The identification of the various trends existing in Europe and the analysis of the criteria explained above can be used as a benchmark to critically reflect on these various elements. To support this analysis and the earlier hypotheses, we conducted an online survey that was shared with European press councils (or other journalistic self-regulatory bodies) and media regulators. The following ones answered our questions:

Press councils (or equivalent self-regulatory bodies)	Media regulators
Belgium – Dutch-speaking	Belgium – Dutch-speaking
Belgium – French-speaking and German-speaking	Belgium – French-speaking
Belgium – French-speaking and German-speaking	Belgium – German-speaking
Bulgaria	
	Croatia
Cyprus	
	Czech Republic
Denmark	Denmark
Estonia	
Finland	Finland
France	
Germany	Germany – State
	Greece
	Ireland
	Lithuania
Luxembourg	Luxembourg

Netherlands	Netherlands
	Portugal
Slovakia	Slovakia
	Slovenia
Spain – Andalusia	
Spain – Catalonia	
Spain – State	Spain – State
Sweden	

Other
Italy

In the context of this analysis, we were particularly interested in the following points: (A) the importance of self-regulation, (B) the different forms of self-regulation, (C) the respective remits of press councils and media regulators, (D) the impact of media convergence and evolution of news media, (E) the principle of no legal intervention in the information field, and (F) the possible legal intervention in the information field.

A. The importance of self-regulation

- 87** Initially, self-regulatory systems were established in the field of information in order to prevent external interference with the independence of journalists and media. In their answers to our survey, press councils such as the Cypriot, German and Finnish ones declared that they were established to avoid political and governmental interference. They were most specifically created with the aim of fighting potential efforts by governments to restrict press freedom through state press laws.

- 88** Several press councils also indicated that they were founded in response to a crisis of public trust in the press. This is notably the case for both Belgian councils. Negotiations between journalists' associations and media organisations to establish a press council began in the aftermath of the "Dutroux affair"¹. This notorious case led to a breach of public trust towards the police, politics, justice and journalism. The *Raad* and the CDJ were created to restore that trust and to counteract the idea of establishing an order for journalists².
- 89** This demonstrates the determination of journalists and media to protect information (independence and editorial freedom) from any external interference. Such interference, particularly from the state, often manifests in a direct attempt to control journalistic contents or the profession. As a matter of fact, the creation of a self-regulation tool based on common professional standards prevents these possible interventions. Simultaneously, press councils play an essential role as intermediaries between the public and the media.

B. The different forms of self-regulation

- 90** The analysis of the survey answers confirms that the type of self-regulatory body in place in a country affects its place in the media landscape, its competences and eventually its potential interactions with the media regulator.

Indeed, in European countries without any press council in place, an ethics commission within a journalists' association is often established to handle journalistic ethics issues. It seems that these self-regulatory bodies enjoy less recognition from the media professionals and the media authorities than autonomous press councils. In countries where a

¹ Marc Dutroux was convicted for child and teenage sexual abuse. "When the case came to light in the summer of 1996 it prompted outrage and raised serious questions about both the investigation and how societies should respond to sex offenders". For more information on the case, see L. KELLY, "Confronting An Atrocity: The Dutroux Case", *Trouble and Strife*, nr. 36, 1998, pp. 16-22.

² S. Van Durme, *Dix ans du Conseil de déontologie journalistique : une histoire de la déontologie en Belgique francophone*, UCL, 2018, p. 39. (Mémoire de fin d'études).

press council is established, the regulators are aware of its existence, and most often recognise the importance of self-regulation. In contrast, regulators do not always mention the existence of an ethical council of a journalists' association.

In fact, a total of 17 media authorities from 15 different countries responded to our survey³. Out of these 17 regulators, 10⁴ are based in a country with a press council. The other seven are established in a country where there are journalists' associations, some of which have established an ethics commission⁵. While the first 10 regulators are all aware of the existence of their country's press councils, the situation seems less clear for the other seven. The latter report either (i) that they are not aware of the existence of a self-regulatory body, or (ii) that they are aware of it but the line between their respective remits occasionally blurs.

- 91** In such cases, regulators tend to have powers to monitor the quality and veracity of the information disseminated. We have already had the opportunity to discuss the Spanish system (see para. 60), where the law on Audiovisual Communication gives the media authorities competences to ensure the accuracy of information in broadcasting programmes⁶.

The system in Portugal can also be used as an example. Indeed, the Portuguese media authority, the ERC, has decision-making powers over press content. It has no direct powers over journalists but only over Portuguese media and what they publish. In other words, it monitors all kind of journalistic content, but not the journalists themselves⁷. Issues in relation to the conduct of journalists or their protection are

³ See Annex I, "Regulatory and self-regulatory bodies studied and/or surveyed".

⁴ Belgium (FR), Belgium (NL), Belgium (DE), Denmark, Finland, Germany, Ireland, Luxembourg, Netherlands, Slovakia.

⁵ Croatia, Czech Republic, Lithuania, Portugal, Slovenia. There's no press council in Greece or Spain (at the national level). According to the Lithuanian regulator, there is no press council in Lithuania but there is another body dealing with journalistic issues. Its nature is uncertain according to existing sources. Without any direct information from this body, we have decided to put it in the "self-regulation embedded in a journalists' association" category.

⁶ Article 9 of the Spanish law 13/2022 of 7 July on Audiovisual Communication.

⁷ Survey answers from the Portuguese ERC, from January 5, 2023.

addressed to the Commission for the Professional License of Journalists⁸.

- 92 Furthermore, the regulatory and self-regulatory bodies tend to believe that they work in completely separate spheres and hence do not need to interact. However, as the regulator has the power to sanction media which do not comply with the rules set by law, media only pay attention to these rules and do not commit themselves to the rules of the self-regulatory body. This greatly affects the effectiveness of self-regulation.

C. The respective remits of press councils and media regulators

- 93 The differences in remits between press councils and media regulators allow us to identify two main elements: (1) the existence of overlapping competences between them, and (2) the limits of press councils' remits.

1. The existence of overlapping competences

- 94 The identification of overlapping competences requires comparing the scopes of press councils and regulators mainly on two points: the media covered (personal scope), as well as the questions these bodies are competent to deal with (material scope).

a) The personal scope

- 95 While the majority of press councils deals with complaints across all media, others, such as the German and Slovak press councils, only deal with complaints regarding print media

⁸ It should be noted that the Commission does not correspond to our definition of self-regulatory bodies (see para. 38) because it is a public law body, which ensures compliance with journalists' duties enshrined in the law, not in a Code of Ethics. See <https://www.ccpj.pt/en>: "The Commission for the Professional License of Journalists is an independent public law body, whose responsibility is to grant, renew, suspend or revoke the licenses of media professionals (journalists, equivalent to journalists, correspondents and those who collaborate in the media informative sector), as well as ensuring the fulfilment of the fundamental duties incumbent on them, under the terms of law".

and their online equivalents, excluding television and radio⁹. In the first case, both the press council and the regulator are competent for audiovisual media, and online media. As print media are not within the remit of the media authorities, overlapping competences rather occur on broadcast and – TV- and radio-like – online media. In the second case, competences are divided between regulatory and self-regulatory bodies (with broadcast media on one side and print media on the other). In theory, there is no overlapping competence. Nonetheless, the media convergence and the rise of online media have shown that this division of competences is not as clear as it seems.

b) The material scope

- 96 According to the survey results, the questions that fall within the remit of press councils and media regulators most often involve: (i) the obligation to distinguish between advertising and information, (ii) the prohibition of discrimination, (iii) the prohibition of hate speech and incitement to violence, (iv) the protection of minors and (v) the respect of human dignity¹⁰. The incidence of the AVMSD is quite clear, as it explicitly includes such provisions which relate to all kinds of programmes (even information).

There are also countries where issues of journalistic ethics fall within the remit of the media authorities. Such questions relate directly to ethical or due diligence obligations but also to the accuracy of information. This occurs either because the competences of the regulatory and self-regulatory bodies are divided on the basis of the media concerned (as in Germany), or because there is no autonomous self-regulatory body (as in Greece or Portugal).

c) The impacts of overlapping competences

- 97 The existence of overlapping competences should encourage the regulatory and self-regulatory bodies to interact and

⁹ L. JUNTUNEN, *op. cit.*, p. 4.

¹⁰ See Annex II.

discuss how to solve the issue. If not, there is a risk that the same complaint can be made to the regulator and the press council. If no dialogue is established, the council and the regulator may each take their own decision. These decisions may even be different: one could decide that the medium has violated its obligations, while the other decides that it has fulfilled them. This risk of double checking system is one of the reasons behind some media's reluctance to join the self-regulatory system, as it implies time-consuming procedures: the medium has to defend itself in front of each authority. Moreover, it creates uncertainty on how rules should be interpreted, to the detriment of a common reference base.

Such a situation also presents a risk for the complainant. Conflicting decisions would create a lack of consistency. The same problem would result in different solutions, depending on whether the complaint is addressed to the press council or the media authority. This would then lead to a feeling of injustice for the complainant whose rights are not recognised in the same way by both bodies. It is therefore essential that the press council and the regulator communicate in order (i) to agree on the management of "mixed" complaints (as it is legally provided for in Belgium), and/or (ii) to share competences in a clear manner and taking into account the evolution of the media landscape.

2. The limitations of the press council's remit

- 98 Regarding the remit of press councils, four elements explain why it is more or less extensive: (i) the media and questions covered (see above), (ii) the scope of the definition of journalism, (iii) the condition that media join the self-regulatory system for a complaint to be admissible, and (iv) the personal stake requirement to be able to file a complaint.
- 99 In general, when a press council's scope is limited on one or more of these elements, there is less risk of overlapping competences. Indeed, the narrower the council's remit is, the less likely it is that its competences will conflict with those of the media authority. For instance, press councils which

only handle complaints where the complainant is personally affected rarely seem to encounter problems of competence-sharing with the media authorities. This is reflected in the survey responses from the Belgian (Dutch-speaking), Danish, Dutch and Swedish press councils. When a personal stake is required, issues dealing with societal or media interest (such as human dignity or the confusion between advertising and information) cannot, in theory, be brought before the press council.

On the other hand, when a press council's remit is limited, it means that it can cover fewer cases. This raises the question of who is competent to handle a complaint that falls outside the scope of the council. If it is the media authority, it will have to rule on matters of information. This means that the regulator will decide on questions which fall within the sphere of journalistic ethics.

- 100 It is also possible that neither the press council nor the media authority is competent. In such cases, there is a gap that jeopardises the contract of trust that exists between journalists and the public. Indeed, if some content and/or media are not subject to self-regulation, there is no guarantee that ethical standards are respected.

- 101 This can be summarised as follows: any limitation of press councils' remit may avoid competence-sharing issues, but above all, it prompts media regulators to intervene and ensure that there is no loss of competence and/or a feeling of injustice on the part of a complainant who is unsure as to where he or she should turn.

D. The impact of media convergence and evolution of news media

- 102 Some press councils have limited competences depending on the media concerned by the complaint. These limitations make it possible to differentiate between the remits of self-regulatory and regulatory bodies, based on the media concerned.

As we already pointed out, the German press council is in charge of print media, while the media regulators are in charge of radio and television. Because the *Presserat* is one of the oldest councils in Europe, this division was made prior to the arrival of the Internet. However, with the development of the Internet and new technologies, media convergence occurred. As a result, the distinction between press and broadcasting content is no longer as distinct, and the press council's and the media regulators' remit are no longer clearly defined.

- 103** In addition, arises the question of what will happen to emerging media such as blogs and podcasts, which are not always taken into account whether in information regulation or in self-regulation systems. According to the survey, when the media types are divided between the press council and the media regulator, the division appears to be quite clear for “traditional” media such as television, radio, or written press. However, it is not the case for “new” media. One may wonder how such media will be treated as they grow.

Using podcasts as an example, the press councils of Bulgaria, Cyprus, Germany, and Luxembourg indicated that they were not competent to monitor journalistic activities on this medium. Furthermore, neither the press council nor the media regulator in Luxembourg consider themselves competent for podcasts.

E. The principle of no legal intervention in 105 the field of information

- 104** When asked why they are not legally recognised, the affected press councils respond that it is because self-regulation should exist and function without the intervention of legislators and governments. In that sense, legal recognition would be incompatible with the definition of self-regulation and the independence of press councils.

For instance, the Swedish press council describes itself as a self-disciplinary system of the Swedish media, which

is not based on legislation. It is entirely voluntary and financed by four press organisations and four broadcasting companies¹¹. As a result, the Swedish press council is not legally recognised, and there are no legal mechanisms for interaction between the council and the media regulator. The same applies to self-regulatory bodies from Dutch-speaking Belgium, Cyprus, Finland, France and Slovakia.

According to the Finnish press council, “legal recognition seems also to bring about restrictions for media”. It says that for example, the journalistic exemption offered in the GDPR may be implemented only for the member media of a self-regulatory body, which may restrict investigative journalism for other media. It goes on stating that “in some countries there are substantial direct subsidies for media (not in Finland) and membership in a self-regulatory system is a prerequisite for qualifying for receiving the subsidies. This may have ended up in a huge amount of workload for the self-regulatory system, since many new members have been more interested in getting the subsidies than following the ethical guidelines”¹². In the background of this position, we see that the problem lies less in a legal definition of self-regulation than in the transposition of measures applied elsewhere on a different field. As the Finnish press council is competent only for its members, the legal interventions mentioned above raise direct restrictions on non-members.

From our perspective, pragmatic arrangements are more flexible than the law and can be adapted to the real needs of the field, for example when overlapping competencies occur. However, it is more difficult for newer press councils to find their place, while having to face a media regulator that has been present in the media landscape for much longer. When nothing is foreseen in the law, nothing encourages the media regulator to take the press council into account and to recognise it as an effective actor in dealing with journalistic ethical issues. In France, the press council may therefore have

¹¹ See <https://medieombudsmannen.se>.

¹² Survey answers from the Finnish press council, of December 30, 2022.

great difficulty in finding its place and convincing journalists and media of its usefulness and effectiveness.

F. The possible legal interventions in the field of information

- 106** The fact that press councils are non-governmental bodies does not imply that they must seek to completely replace regulation. Indeed, regulation serves to establish fundamental rights and liberties such as freedom of expression and press freedom. It can also intervene when self-regulatory mechanisms become insufficient.

According to A. Hulin (UNESCO), “a growing number of experts suggest that public authorities should support – without getting involved in the functioning – such systems in order to make them more effective. This does not mean evolving towards a co-regulation system – a system where the state and the media would cooperate in joint institutions. It rather is an acknowledgement by law of a media self-regulatory body and its decisions, which we define as statutory media self-regulation”¹³.

1. The different forms of legal recognition

- 107** In some countries, self-regulatory bodies are recognised by law. Among the countries surveyed, this is the case for French- and German-speaking Belgium, Bulgaria, Denmark, Germany and Spain. This legal recognition can take a number of forms.
- 108** In Bulgaria, the NCJE is explicitly mentioned in the Bulgarian Radio and Television Act. The same act also gives the media regulator the power to sanction failure to comply with a decision of the Ethics Commission with the NCJE. This consideration is important because self-regulatory bodies usually have only moral authority and cannot impose monetary sanctions by themselves. As a result, the Bulgarian legislator decided to delegate this competence to the media regulator.

¹³ A. HULIN, *op. cit.*, p. 1.

On the one hand, this lends weight to the Journalism Ethics Commission’s decisions, but it also raises the issue of regulators and states intervening in the field of information and journalism.

- 109** Legal incentives to join the self-regulatory system constitute another form of press council’s recognition. In French- and German-speaking Belgium¹⁴ and in Denmark¹⁵, being a member of the self-regulatory system and compliance with the rules set out in the Code of ethics gives the right to press subsidies. Using membership in a self-regulatory system as a requirement to receive subsidies aims at encouraging compliance with ethical standards. However, as it was stated in the answers to our survey, it can be feared that this may generate an important amount of workload for the self-regulatory system because media would join the system while being more interested in getting the subsidies than following the ethical guidelines¹⁶. Concerning Denmark, joining the press council allows media to benefit from procedural privileges under the Danish Administration of Justice Act, such as source protection¹⁷.

- 110** Another legal incentive which is sometimes used by press councils is based on Article 85 of the GDPR¹⁸. This provision requires Member States to “reconcile the right to the protection of personal data [...] with the right to freedom of expression and information, including processing for journalistic purposes”¹⁹. This allows Member States to provide for exemptions from the obligations under their data protection law for the processing of personal data solely for journalistic purposes. Some countries, which implemented

¹⁴ Article 7 of the Decree of the Belgian French-speaking community of 31 March 2009 on aid to the French-speaking daily press and the development of initiatives by the French-speaking daily press in schools.

¹⁵ Survey answers from the Danish press council, of January 13, 2023

¹⁶ Survey answers from the Finish press council, of December 30, 2022.

¹⁷ Danish Administration of Justice Act nr. 1284, from 14 November 2018.

¹⁸ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), *O.J.E.U.*, L 119, 4 May 2016 (hereinafter “GDPR”).

¹⁹ Article 85, § 1 and Recital 153 of the GDPR.

this exception, made it conditional on compliance with rules of journalistic ethics. This is notably the case in Belgium²⁰ and in Germany²¹. As mentioned above, this provision can only be fully applicable if the press council jurisdiction also applies to non-members.

2. The advantages and downfalls of legal intervention

- 111** Legal recognition gives press councils weight and significance within the media environment. This is especially true in countries where the press council was formed in a media landscape where a media regulator was already well established. The legal recognition of press councils encourages media regulators to take into account the existence of these self-regulatory bodies.

This is especially true for newer press councils, such as the French CDJM. The press council was founded in 2019 and is not legally recognised. According to the CDJM's answers to the survey, the lack of legal recognition can be explained by the profession's distrust in the self-regulatory system. Therefore, public authorities do not want to interfere by recognising the existence of the press council. Nevertheless, from the press council's perspective, "it would be preferable to recognise the press council legally because it would give a recognised self-regulatory role to the press council and would strengthen its legitimacy, provided that such recognition does not undermine the press council's independence"²².

²⁰ Article 24, § 1 of the Belgian Law of 30 July 2018 on the protection of natural persons with regard to the processing of personal data: "Processing of personal data for journalistic purposes means the preparation, collection, editing, production, dissemination or archiving for the purpose of informing the public, using any medium, and where the controller is bound by the rules of journalistic ethics".

²¹ Article 23 of the German Interstate Media Treaty; Presserat, "Medienprivileg und Datenschutz nach DSGVO", available at: <https://www.presserat.de/selbstverpflichtung-onlinemedien.html>: "The media privilege under data protection law only applies to media that have joined the voluntary self-regulation by the press council. The media privilege releases journalistic activity from regulation by the state data protection authorities and from certain restrictions in the GDPR".

²² Survey answers from the CDJM, of December 30, 2022.

The CDJM has recently entered the French media landscape and needs to find its place while the media regulator has been in place since 1989²³. In addition, the press council also needs to be accepted by the media. Indeed, it appears that media professionals in France are reluctant to join the self-regulatory system because they do not want to be subject to both regulatory and self-regulatory systems²⁴.

The German *Presserat* differs from the CDJM since it is much older (it was founded in 1956). As a result, it did not need the support of the German legislator to find a place in the media landscape. However, the German media authorities have been given competencies to monitor compliance with journalistic due diligence obligations. As a result, the fact that Article 19 of the Interstate Media Treaty explicitly refers to the *Presserat* can be explained by the need to set boundaries to the regulator's remit in this regard.

- 112** As far as articulations between regulation and self-regulation are concerned, they are usually not settled in the law. Belgium is the only country that has established a system of cooperation between the press council and the regulators of the French- and German-speaking communities. Such a system presents the advantage of clarifying matters. The law enacting legal articulations between regulation and self-regulation must be sufficiently clear to prevent issues with interpretation and implementation. Otherwise, they would run the risk of obscuring the press council's and the media regulator's separation of powers. One can observe that this Belgian system provides for regular meetings between both parties to settle any disputes that may arise.

- 113** It should also be noted that in the cases of Bulgaria and Germany, the law, by mentioning the press councils, encourages pragmatic arrangements between the councils and the media regulators. Indeed, for the sake of application of Article 19 of the German Interstate Media Treaty, it is

²³ French Law of 17 January 1989 amending the law of 30 September 1986 on freedom of communication

²⁴ Survey answers from the CDJM, of December 30, 2022.

important that the *Presserat* and the media authorities communicate. When a complaint about “telemidia” is addressed to one of the 14 German regulators, the latter should verify whether the medium concerned has joined the self-regulatory system. Moreover, the verification of compliance with journalistic due diligence obligations is based on the Press Code. Consequently, establishing a dialogue between regulatory and self-regulatory bodies is important to ensure that the provisions of the Code are not subject to different interpretations.

Regarding Bulgaria, it seems that Article 126b of Radio and Television Act also encourages interactions between the NCJE and the media regulator. As a matter of fact, this provision gives the media authorities the power to impose a sanction on media that do not comply with a decision of the NCJE’s Ethics Commission. The Bulgarian media authority must therefore take into account the decisions of the Ethics Commission in order to impose such a sanction. It can also be assumed that these two bodies communicate in certain cases, for example when requesting additional information.

- 114** From these two examples, it can be deduced that even if no legal articulation between regulation and self-regulation exists, the mere fact of mentioning or recognising the self-regulatory body in the law encourages the regulator to take it into account. It can therefore be concluded that this leads to a certain form of dialogue. ■

REPORT CONCLUSION

115 This report aimed to identify the different approaches that exist within the European Union when it comes to the self-regulation and regulation of information. Our analysis therefore consisted in a comparative study of the mechanisms implemented in Europe in the field of information and journalism, and the articulations between regulatory and self-regulatory bodies.

This reflection led us to the question of how, as it is considered as necessary, to monitor journalistic content and establish an effective system, which respects the freedom and independence of the media. In our view, there are three ways of answering this question.

116 A first possibility would be to favour a system solely based on regulation. In such a system, everything is provided by in the law, which gives the media regulators sanctioning powers. This ensures that the regulatory system is effective. The media play by the rules to avoid being punished.

However, journalism has an important role as « public watchdog » of democracy. Media and journalists should therefore act as free as possible from any interference from the State and other external actors. Of course, this doesn't mean that they are not legally accountable for their work. Nonetheless, there should be as little external control over information as possible. It is true that, in democratic countries, State intervention in freedom of expression and press freedom is usually limited. Moreover, the law is an important tool for establishing and ensuring compliance with such fundamental freedoms. The regulation of information itself is a delicate issue and one that needs to be addressed carefully, precisely because it carries the risk of limiting fundamental freedoms. This is reinforced by the fact that, by wishing to prohibit certain excesses, State interventions make it possible to restrict disturbing – but not illegal –

journalistic content. The desire to limit excesses must not lead to an excessive limitation of the information shared in the general interest.

This approach also raises the question of the independence of regulatory bodies. Indeed, although it is provided for by law¹, the independence of media authorities is not guaranteed in all European countries in the same way and to the same extent². Moreover, although the independence of media authorities is enshrined in the law, it is *a priori* not controlled. The regulation of information by such an organisation would therefore not be fully in line with the freedom and independence of journalists and media.

This explains why journalists have organised themselves to create press councils. These councils serve both as a barrier to possible State interference and as a bridge between the public and the media.

117 Consequently, a second solution would consist in a system of monitoring journalistic content based solely on self-regulation, with no intervention from any external actor. This would guarantee the independence of journalism. However, this raises the questions i) of the effectiveness of such a system forced to live alongside recognised audiovisual regulators, and ii) how to ensure that press councils are taken into account in a media landscape that is continuously changing, both in terms of technologies and legislative framework.

Indeed, press councils, especially when they are quite recent, need to find their place, *vis-à-vis* the media regulators, but also among the journalists and the media themselves. Since the system of self-regulation works on a voluntary basis, if journalists and media refuse to submit to it, it will lack

¹ Article 30 of the AVMSD.

² See M. CAPPELLO (ed.), *op. cit.*

effectiveness. In fact, press councils cannot force media to commit to ethical standards.

Furthermore, despite the very different natures and competences of media regulators and press councils, these bodies do not operate in completely separate spheres. According to us, it would be utopian to believe that journalistic activities and information are solely governed by self-regulation mechanisms, just as it would be unfortunate to regulate information only through legislative and political interventions.

- 118** This statement leads to the third possible approach, i.e., a combination of both. It consists, when facing matters of information and journalistic ethics, in giving priority to self-regulation and resorting to regulation only in cases where self-regulation is ineffective. This would require the establishment of a system that would recognise the competences and tasks of press councils, provided that their independence is not compromised. This system could be arranged legally or in a more pragmatic way.

This is the approach adopted by the majority of the countries studied and/or surveyed for the purposes of this report. In Europe, regulators and press councils often co-exist in the media environment. This coexistence may be the subject of informal discussions or rather of legal arrangements. In case of legal intervention, the law should be used as a support. It should not interfere with the work of the press council by establishing, for example, rules on the handling of complaints. This would undermine the press council's independence, which is central to the system of self-regulation.

In any case, whether the press council is – directly or indirectly – legally recognised, and whether legal articulation mechanisms exist, a dialogue should exist between press councils and regulators. Regulators should recognise the importance of self-regulation and to interfere as little as possible with matters of journalistic ethics. Conversely, it is

important that press councils stay open to dialogue with the media regulators and cooperate with them.

It is only by being aware of each other and of their place in the media landscape that a media regulator and a press council can ensure consistency in their sharing of competences. The interactions, even if informal, between regulation and self-regulation are also crucial to solve the issue of overlapping competences. This prevents both bodies from making different decisions on the same complaint, or the media from being “sanctioned” twice if the decisions follow the same direction.

This statement is all the more topical as the recent adoption of the DSA and the future adoption of the EMFA may challenge the current divisions of competences in place in each EU Member State. ■

Part 2:

Discussion and recommendations¹

¹ Authors: M. Hanot & A. Michel.

DISCUSSION

A. European press councils

119 A summary of this report and its conclusions has been presented to European press councils throughout three working seminars¹. Central issues ran through these discussions, focusing on the recommended solution, i.e. the articulation between regulation and self-regulation in the field of information.

1. Convergence effects

120 Press councils have noted that because of digitisation and convergence, media players offer more and more multi-support contents. This leads to an overlap of competences between media regulation and journalistic self-regulation. It even happens where competences were and still are historically segmented between both authorities. The proposed articulation seems to offer an interesting solution to solve this issue. If one may consider that communication between both authorities has become a necessary part of the solution – as in Germany –, this is not the case everywhere. As mentioned in the 2022 Media Councils Debates, “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”². Relationships between both bodies can therefore be affected by a mutual

¹ To AIPCE members (France, Germany, Netherlands, Switzerland and United Kingdom) on April 20th, 2023; to self-suspended AIPCE members (Finland, Norway, Sweden and Ukraine) on April 11th, 2023; to CDJ (French- and German-speaking Belgium) and CDJM (France) members on May 10th, 2023.

² M. HANOT, “Conclusion. To be a source of inspiration and a part of the solution in current debates on media”, in M. HANOT (ed.), A. VIDAL (coord.), *op. cit.*, p.109.

ignorance (misunderstandings, misrepresentations on role, mission, functioning) or to an unequal balance of power (a private tool without “real” power and without important financial resources vs a legal, richly endowed instrument).

The “media interpenetration” (to quote one of the seminar participants) is thus a key element for the future: the formerly divided media genres are moving and according to him, legislation is becoming increasingly overtaken by technical and practical developments. He is afraid that one outlet could be exposed to different regulatory approaches (a “double checking system”) for the same journalistic content, thereby weakening the decision of each authority and distorting competition between media players depending on their distribution medium/support. Some express the fear of seeing media regulators reclaiming press regulation – even if print media are historically unregulated –, pushing print media outlets to restrict themselves to paper. Conversely, the situation could allow a new perspective where journalistic self-regulation prevailing for print media could be extended to all information content, regardless of the medium. This idea is bitterly discussed with regard to the transformation that this option might cause on the specificities of each self-regulatory national model (see *infra*).

2. Moving towards a legal recognition of press councils?

121 As expressed in the analysis of the online survey distributed among press councils, the question of “legalising” self-regulation does not reach consensus: on the one hand, legal recognition seems essential because it ensures the consideration and respect of the entire ecosystem for the self-regulatory newcomer; on the other hand, legal recognition appears as a danger if it is likely to restrict the independence of the press council (externally imposing operating or performance rules, for instance), or as a threat

for its organisational balance (via the obligation to broaden its activities to non (contributory) members).

This argument is very sensitive because despite their shared mission, EU press councils are very different from one another. It seems difficult to come up with a unique model as a reference and this is a major point of discussion (see *infra*), which makes it harder to agree on the possibility of establishing a legal articulation between regulation and self-regulation.

Nonetheless, the distinction between direct (i.e., formalisation of the structure creation by law – such as the French- and German-speaking model in Belgium) and indirect recognition (i.e., legal inclusion of the deontological commitment as an element of appreciation of a “derogatory regime” for a journalistic content, as in the German model) might help and alleviate concerns, as the second approach could take into account the variations in press councils (see *infra*).

3. Press councils’ particularities (“idiosyncrasy”)

122 Despite their differences, press councils share the same objective – to ensure and improve the ethical quality of information and to (re)build public trust in journalism – and the same ethical basis³. However, several press councils express their concern regarding the possible reversal of their national model if they choose the “legal articulation” solution. One participant used the term “idiosyncrasy”⁴ to underline how the operating modes of press councils are historically, culturally, and legally determined. Establishing uniform procedures or norms in different countries would thus entail the risk of losing their respective constitutional idiosyncrasy and journalistic communities.

This remark sets the limits of the proposed solution: defining

³ See the Ethical Codes Database on the Presscouncils.eu website (<https://www.presscouncils.eu/ethical-codes-database/>).

⁴ “A strange or unusual habit, way of behaving, or feature that someone or something has”, Cambridge Dictionary.

a common model of journalistic self-regulation in Europe in order to favour a legal and simple articulation between all regulatory bodies – insofar as it is possible – would challenge the way every press council has been built for its community. The particularities of each press council (among which material competence or “personal stake” are essential when articulating regulation and self-regulation) must be accepted and protected. Hence, the problem lies in determining to what extent press councils should cooperate in order to join a homogeneous framework which allows self-regulation to take its place, to assume its role and missions in the field of action of European legislation, without giving up specificities.

Recognising the general expertise of press councils in the field of information and journalism as well as the commitment of media to their jurisdiction could offer a way to define the conditions of a legal articulation without affecting the particularities of each model (and the existing articulations).

4. Self-regulation or co-regulation?

123 Press councils question the qualification to be given to this “articulation”. The fear of being assimilated to a form of co-regulation is obvious, since such integration would *de facto* lead to a loss of independence and, by its very nature, to the end of self-regulation. But according to the report, the proposed articulation is in no way similar to co-regulation. Rather, it’s a question of forging a beneficial relationship between the expertise of press councils on information/journalistic content (self-regulation) and the media regulator’s competence in applying the legal texts that govern the media (regulation). It is thus an approach that recognises and highlights the coexistence of equal players in the field. This recognition ensures that the role and work of (organised) self-regulation is taken into account within the ecosystem⁵.

⁵ The distinction between “collective” self-regulation – organised, as applied by press councils – and “individual” self-regulation – spontaneous, as applied by an individual actor – has to be recalled. See *supra*, para 36.

5. The general background

- 124 The proposed articulation is all the more necessary as concerns are expressed about press freedom: the need to protect information and journalism is reflected throughout exchanges on the war in Ukraine, propaganda and disinformation. Paradoxically, at the same time, press councils voice the necessity to fight those on a legal level and fear that this new legal framework might restrict the independence and freedom of the press.

On this issue, one participant pointed out the German example, where online media are only subject to the control of the regulator if they do not commit to journalistic self-regulation, noting that this is the second convincing example of the interest of articulating regulation and self-regulation after the one defined for French- and German-speaking Belgium (CDJ).

6. One voice at the European level

- 125 Press councils recognise the importance of speaking with one voice at the European level, and of structuring themselves in a more successful way than the existing network (AIPCE) if necessary and within the limits of their specificities (see *supra*). The question of human and financial resources arises as most press councils do not have time or money to invest outside of their primary prerogatives.

B. Regulators – ERGA

- 126 An informal meeting also took place with ERGA representatives⁶ in order to present the results of the report. Initiated discussions attracted considerable interest, although failing to obtain an official position from ERGA within the time limit for publication. Here are some of the undisputed points raised, which are purely observational or simply meet the views expressed by regulators in the online survey conducted

⁶ Stanislav Matejka (CMS, Slovakia) and Francesco Sciacchitano (AGCOM, Italy), on August 16th, 2023.

prior to the report. The following elements can thus be retained:

- the relevance of the report's conclusions in the context of the discussion regarding the EMFA proposal (in particular its article 17⁷);
- the advantage of having a pragmatic analysis detailing different existing situations, which could be useful for specialists in media law;
- the tension between the value of the recommended solution (legal articulation) and the presumed effectiveness of press councils (lack of "sanctions", diversity in functioning and (non-)membership);
- the (lack of) backup solution for countries where press councils do not (yet) exist. ■

⁷ Dialogue and interaction between regulators and press councils will be all the more necessary with the provisions currently being discussed at EU level. With the EMFA proposal, the very large online platforms will be compelled to set up a mechanism enabling users to declare that they (i) are "media service providers", (ii) enjoying independence from any state actor, and (iii) are subject to regulatory requirements for the exercise of editorial responsibility, or that they comply with a co-regulatory or self-regulatory mechanism governing editorial standards, widely recognized and accepted in the media sector. The practical implementation of this provision will give rise to discussion. Beside the implications of "self-declaration", the assessment of whether the declarant is subject to a co-regulatory or self-regulatory mechanism "widely recognised and accepted in the relevant media sector" will require exchanges with and collaboration of regulators and press councils.

ARTICULATING REGULATION AND SELF-REGULATION: FROM OBSERVATIONS TO RECOMMENDATIONS

127 The coexistence of media regulators and press councils is an established fact in most European countries¹. According to the circumstances – due to their prior art and their respective jurisdiction –, these bodies have either ignored each other, privileged the exchange of misdirected complaints, or already opened a dialogue and planned a way of articulating one another (mainly to avoid a double checking system penalising all parties, including the public).

Overlaps are originally limited to audiovisual media content, about which some press councils born at an early time – when paper was still king – were not concerned. These overlaps gradually extended to online content (text, image, sound and video). Even if both bodies are *a priori* organised on distinct missions and logics (some evolving with regard to the legal provisions, the others under ethical professional standards), they become aware of their respective existence as the legal framework includes questions potentially covering a principle of journalistic ethics (e.g., respect for dignity, confusion between information and advertising).

128 The fundamental reason for these more frequent overlaps is simple. Despite the evolution of content that has become multi-support (360°) due to digital convergence, the regulatory framework has remained stuck to a medium (understood as a “mean of dissemination”)-based approach. As a result, audiovisual media services and online videos are regulated, print and online written media are not, while content made available via online platforms is subject to a new (co-)regulatory approach². On the contrary, journalistic

self-regulation has adapted itself. Some press councils have integrated – with more or less flexibility – the online versions of print media (digital editions, web content or content on social media). Others have maintained their technologically neutral approach, logically opening their jurisdiction to new media and online platforms.

Where regulators extend – according to AVMSD transpositions or national legislations – to new provisions of law overlapping ethical principles, such as respect for human dignity, protection of minors, due diligence and accuracy, press councils continue to apply the same ethical standards to new media. Therefore, the same information content distributed on different media is likely to interest both the regulator and the press council.

As it stands, to understand such overlaps – and the double checking system they imply – and to tackle them – through a formal or informal articulation –, media regulators and press councils are naturally brought to interact and exchange. In any case, it is hard to imagine they can continue to ignore each other for much longer. Moreover, this exchange is even more important since their respective ignorance about their internal mechanics, mission, etc. is blatant.

This dialogue on their respective competences and scopes of action will be even more necessary as the new (and coming) instruments at the EU level create new regulators with new competences (EMFA’s “European Board for Media Services”, DSA’s “Digital Services Coordinator”).

¹ Some EU countries haven’t established any press council, namely Greece, Italy, Poland, Romania and Spain (at the national level). Other have emergent forms of press councils embedded in journalists’ associations, namely Croatia, Czech Republic, Latvia, Malta, Portugal and Slovenia.

² With the DSA, the regulatory framework remains based on a “mean of dissemination” approach (the online environment), even if the “modes of dissemination” (text, sound, image, video) are undifferentiated. This approach doesn’t take into account the very nature of information content that has to be protected as a whole and preferably autoregulated by press councils rather

than by other external actors. See *infra*.

Recommendation 1. Media regulators and press councils are meant to interact and exchange to resolve existing overlaps of competences and double checking systems.

- 129** However, if dialogue is necessary, so is the balance of power relation. One fact is obvious in this regard. On the one hand, we have legal bodies organised, funded, recognised at the national and European levels, using means of (administrative) punishment and constraints. On the other hand, there are private instruments with general interest missions, applying symbolic sanctions, without any common structure and formal EU coordination, unrecognised by policy makers.

This issue of recognition is crucial. It creates necessary conditions to equalise the aforementioned balance of power within the media ecosystem. Nonetheless, there are two conditions to be met: this recognition cannot alter the independence – and the conditions of this independence – of press councils; nor can it affect their DNA and national specificities.

A way to fulfil this requirement is to officially recognise the importance, the role, and the mission of press councils in the field of information and journalism. Including details on what characterises this self-regulation (professional, independent, organised, collective, recognised by the profession, open to public complaints), this recognition is a prerequisite for constructive exchanges between regulation and self-regulation without transforming the nature of press councils.

Recommendation 2. To create the conditions of a balanced dialogue between media regulation and journalistic self-regulation, the importance, the role, and the mission of press councils in the field of information and journalism should be officially recognised.

- 130** Another argument advocates for such formal recognition. Journalistic self-regulation presents itself as a genuine and concrete response to the main issues at stake in the field of information, whether it's to prevent the harmful effects of

disinformation and hatred contents on democratic societies, or to foster credible and reliable information.

Journalistic self-regulation and press councils are indeed systematically cited as key stakeholders in the fight against online illegal and harmful content. For instance, studies commissioned by the EU and policy documents support the role of journalists and press councils in the holistic approach advocated to empower citizens to detect attempts at disinformation, and to develop their critical-thinking skills. Offering (ethical) quality information to fight manipulations of public opinion and of public debate that operate on online platforms is an effective weapon that also respects freedom of expression. Supporting quality information necessarily means recognising press councils (i.e., “protectors” of information of “ethical quality”) and giving them a real place in the media ecosystem.

Recognising the importance and the role of press councils validates their expertise in the field of information and journalism, promotes their action for media ethical quality and accountability, defends press freedom and editorial independence. This stands as a different way of responding to concerns raised both by disinformation and diffidence.

Recommendation 3. This official recognition would help to assess the press councils' expertise and action to defend and promote ethical quality and accountability in news production and dissemination.

- 131** Talking about press freedom leads to another point of discussion. If the regulatory framework extends to news contents, then arises the question of an external “control” at risk for media independence. This risk is all the higher if the control, without focusing on the editorial lines, involves an appreciation of ethical and professional standards.

In other words, the regulation of journalistic content must remain an exception. This exception should ideally be constant, fair, and stable, i.e., indifferent to the passage of

time, to the type of media or journalists, and – if possible – to the mean of diffusion. The written press, historically unregulated – but largely self-regulated – should remain so; all news media whether traditional (legacy media) or pure players, with legal or physical personality, all journalists, whether in a professional capacity or in a functional sense, should be treated in the same way; information content should be subject to the same regulation regardless of its mean of diffusion, by application of convergence.

To put it briefly, regulating news content should remain an exception whatever the mean of diffusion, the type of media or journalist. Granted exemptions mustn't be reversed.

Such a formula obviously implies difficulties when regulation is needed because of the threatening specificities of a mean of diffusion or a platform. A convergent regulation for convergent content is not such an easy way. However, a change of perspective may help: the question brought forward by regulatory exceptions to press freedom is not about protecting the field of information – which raises clear problems of definition –, but rather about protecting constantly, fairly and stably the right to inform, the work of journalists and media pluralism. In this case, giving priority, where it exists, to (organised, collective, etc.) journalistic self-regulation over regulation made it possible to ensure the purposes of regulation without affecting press freedom.

Recommendation 4. In order to protect journalism, regulation of information could be achieved by giving priority, when it exists, to journalistic self-regulation (i.e., press councils).

132 There are three possible objections: what happens when there is no journalistic self-regulation; what happens if self-regulation is ineffective; how does this proposition take the variety of self-regulation models into account?

◆ Giving priority to journalistic self-regulation over regulation is only possible where it exists. This obvious fact does not undermine the relevance of the solution. On the one

hand, it invites public authorities to encourage and support the development of press councils in countries that do not yet have one. On the other hand, it encourages a solution where the media regulator – making up for the lack of self-regulation – would have to ask for the opinion of the professional union of journalists before making a decision. This fallback solution takes into consideration the protection of information and encourages journalists and media to tackle ethical issues together, as a prelude to the creation of a press council.

Recommendation 5. Public authorities should encourage and support the development of press councils where they do not (yet) exist.

Recommendation 6. Where there is no press council, the media regulator plays its role. In order to protect journalism, it asks for the opinion of the professional union of journalists before taking a decision.

◆ The alleged inefficiency of self-regulation, due to its voluntary nature and symbolic sanctions, is another argument raised to highlight the impossibility of achieving the regulatory objective. In this regard, it should be noted that the press councils' effectiveness has been a reality for a long time, and that journalistic self-regulation is far from being an ineffective tool to ensure information of (ethical) quality.

Firstly, the path of regulation and the imposition of binding sanctions can rarely be the best solution. To deal with complex issues (such as hate speech and disinformation), comprehensive approaches that empower and give responsibilities to all stakeholders while combining strong and flexible measures are much more promising.

Secondly, journalistic self-regulation is often taken into account by judicial bodies (e.g., the European Court of Human Rights³). Legal literature has already highlighted the fact that

³ For example, in the *Stoll v. Switzerland* case, the European Court of Human Rights recognised the importance and the role of journalistic self-regulation in the digital world. The Court stated that "in a world in which the individual

when judges have to decide a case calling into question the quality of information, they regularly refer to journalistic self-regulation. They do so both by citing and construing texts containing self-regulatory provisions and through direct reference to decisions adopted by press councils ruling on the ethical quality of a journalistic production. These practices further prove the importance and expertise of press councils in the field of information, even without any “sanctioning power”.

Because it is collective and refers to a common ethical framework, journalistic self-regulation leads practices into a virtuous circle: decisions encourage those responsible for ethical breaches but also all of their peers to correct or implement practices. Although symbolic, the publication of the decision (the most frequent sanction) not only makes the error or the fault public – which is not without effect – but it also takes in a competitive context a major evaluative dimension.

However, situations where self-regulation may be insufficient to achieve the purposes of regulation can occur. One self-regulated actor may refuse to play the game, “relapsing” again and again for instance. In this case, self-regulation could give way to regulation and the media regulator which have a wider range of sanctions at disposal.

Recommendation 7. When self-regulation proves to be inefficient (in cases such as recidivism), regulation takes the lead.

is confronted with vast quantities of information circulated via traditional and electronic media and involving an ever-growing number of players, *monitoring compliance with journalistic ethics takes on added importance*” (European Court of Human Rights (gd ch.), case of *Stoll v. Switzerland*, 10 December 2007, §104). In the same judgment, the Court also echoed the decision issued by the Swiss press council, which was “of particular importance” in the context of the case as a “specialised and independent body” (§145). The Court therefore expressly recognises the expertise of press councils in the field of ethical quality information.

Recommendation 8. In a way to prevent disputes and interpretation issues, media regulators and press councils must discuss the terms of procedure related to declaring inefficiency.

◆ A third objection related to the diversity of self-regulation models could temper the feasibility of the formula. Giving priority to journalistic self-regulation can’t be understood as a way to impose a one-of-a-kind model of self-regulation. Obviously, the existing press councils gather around the same core business and similar missions. Their approach, however, is the result of a particular history. The models vary from country to country (and for federal countries, from region to region), particularly in terms of material competence and personal stake. Neither of them thinks this needs to change. And indeed, enforcing a unique model would be contrary to their core principle of independence. This element is therefore central to the reflection.

Taking a closer look to this priority given to journalistic self-regulation over regulation is not contradictory to the specificities of press councils’ models since regulation would involve a national perspective where each media regulator would in any case be led to interact and exchange with the press council. This exchange – from equal to equal – would integrate the term of the articulation to be put in place within the framework of this first-line self-regulation according to the peculiarities and procedures of the actors, avoiding uncertainty and pitfalls.

Recommendation 9. Media regulators and press councils negotiate agreements in a way to adequately articulate self-regulation and regulation according to national existing specificities.

133 Finally, to contribute to this process, a European coordination of press councils should be supported. This federation of press councils would advise members, exchange best practices, improve processes, reflect together on the issues

of information and journalism, have a voice in political circles, etc.

It is urgent for press councils to speak with “one voice” as content regulation initiatives multiply, creating further threats to press freedom and media independence. The regulation of information has always been a source of debate due to the very nature of information, as it implies the regulation of a “public good”. Understanding this matter is becoming even more complex as the number of legal instruments applying to information increases (either voluntarily or, on the contrary, through the adoption of an “undifferentiated approach”).

On the one hand, some instruments are justified by the need to preserve the freedom of the press and the independence and pluralism of the media, such as the AVMSD and the EMFA proposal. These texts specifically target media and information content. The risk of this “regulation by mean of dissemination” is that it fails to consider digital convergence, and *de facto* imposes different requirements on journalistic content depending on the mean of dissemination used. The same content, i.e., information content, is therefore subject to different regulatory frameworks, which may contain different – and sometimes opposing – rules. It’s true that an audiovisual or digital medium can have a greater impact, but the difference in the mean of dissemination cannot lead to a situation where the same information can circulate freely on one medium, but not on the other. The intentions of these provisions may be good, but they can affect the ecosystem and destabilise the conditions of a fair competition in news, creating barriers to emerging media to the detriment of the right to information and pluralism.

On the other hand, some instruments are adopted to fight the online dissemination of illegal content. They are therefore not directly aimed at information, but risk undermining it by adopting an “undifferentiated approach” that treats all kinds of content equally. The regulatory approach is “differentiated” when the legal provisions consider the type of content and the purpose of its dissemination. This is for instance not the

case with the DSA which lays down due diligence obligations for online content moderation activities undertaken by digital actors (namely, “intermediary service providers”, including online platforms). Here, the EU legislator has failed to take into account the different objectives pursued by online content providers. Journalistic content which should enjoy the “enhanced protection” of freedom of the press can therefore fall within the scope of the DSA in the same way as other contents do. No derogation is expressly provided for to exclude journalistic content from the due diligence obligations imposed on digital actors⁴.

Recommendation 10. The structuration of a federation of EU press councils should be encouraged, promoted, and supported.

If these observations and recommendations are not “magical” to the point of bringing a turnkey solution to all current media issues, they should bring a transformation in the way these issues are so far addressed. Press freedom is fragile. Fighting those threatening our society by narrowing down press freedom and journalism is likely to prove them right and to surrender the vitality of our democracies. ■

⁴ With the EMFA proposal, we can wonder whether the EU legislator has not tried to soften the threats to press freedom posed by the DSA. Article 17 of the EMFA proposal adds additional due diligence obligations for content moderation activities undertaken by “very large online platforms” with regard to journalistic content. Thus, when a very large online platform wishes, for reasons of non-compliance with the terms and conditions, to impose a measure of suspension of service for content disseminated by a “media service provider” (therefore, journalistic content) that does not contribute to the systemic risks listed in the DSA, it will have to put in place “all possible measures” to ensure that this provider receives the “statement of reasons” (i.e., the justification) of the decision before the suspension of service becomes effective. Very large online platforms will also be compelled to enter into “meaningful and effective dialogue” at the request of the media service provider when it feels that it is frequently wrongly being imposed measures restricting or suspending services, in order to find an amicable solution. Despite the discussions surrounding these “new safeguards” for press freedom, journalistic content is still threatened by the moderation activities of digital actors, and these safeguards are only expressly discussed with regard to the practices of the “very large” actors.

ACRONYMS

AVMSD	Audiovisual Media Services Directive
CDJ	Conseil de déontologie journalistique
CJEU	Court of Justice of the European Union
CSA	Conseil supérieur de l'audiovisuel
DLM	Die Medienanstalten
DSA	Digital Services Act
ECtHR	European Court of Human Rights
EMFA	European Media Freedom Act
EU	European Union
GDPR	General Data Protection Regulation
MCDA	Media Councils in the Digital Age
NGO	Non-governmental organisation
TV	Television

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ANNEX I

REGULATORY AND SELF-REGULATORY BODIES STUDIED AND/OR SURVEYED

1. European media regulators studied and/or surveyed

Country/region	Name in native language	Acronym	Website
Belgium – Dutch-speaking	Vlaamse Regulator voor de Media	VRM	http://www.vlaamseregulatormedia.be
Belgium – French-speaking	Conseil supérieur de l'audiovisuel	CSA	http://www.csa.be
Belgium – German-speaking	Medienrat der Deutschsprachigen Gemeinschaft	Medienrat	http://www.medienrat.be
Croatia	Agencija za elektroničke medije	AEM	http://www.e-mediji.hr/
Czech Republic	Rada pro Rozhlasové a Televizní Vysílání	RRTV	http://www.rrtv.cz
Denmark	Radio- og tv-nævnet	/	https://slks.dk/omraader/medier/naevn-og-udvalg/radio-og-tv-naevnet
Finland	Liikenne- ja viestintävirasto Traficom	Traficom	https://www.traficom.fi/fi
Germany – State	Die Medienanstalten	DLM	http://www.die-medienanstalten.de
Greece	Εθνικό Συμβούλιο Ραδιοτηλεόρασης	NCRTV	https://www.esr.gr
Ireland	Broadcasting Authority of Ireland	BCI	http://www.bai.ie
Lithuania	Lietuvos Radijo ir Televizijos Komisija	LRTK	http://www.rtk.lt
Luxembourg	Autorité Luxembourgeoise indépendante de l'audiovisuel	ALIA	http://www.alia.lu
Netherlands	Commissariaat voor de Media	CvdM	http://www.cvdm.nl
Portugal	Entidade Reguladora para a Comunicação Social	ERC	http://www.erc.pt
Slovakia	Rada pre vysielanie a retransmisii	RpMS	http://www.rvr.sk
Slovenia	Agencija za komunikacijska omrežja in storitve	AKOS	http://www.akos-rs.si
Spain – State	Comisión Nacional de los Mercados y la Competencia	CNMC	https://www.cnmc.es

2. European press councils (or other self-regulatory bodies) studied and/or surveyed

Country/region	Name in native language	Acronym	Website
Belgium – Dutch-speaking	Raad voor de Journalistiek	Raad	https://www.rvdj.be
Belgium – French-speaking and German-speaking	Conseil de déontologie journalistique	CDJ	https://www.lecdj.be
Bulgaria	Национален съвет за журналистическа етика	NCJE	https://mediaethics-bg.org
Cyprus	Επιτροπή Δημοσιογραφικής Δεοντολογίας	CME	https://cmec.com.cy
Denmark	Pressenævnets	/	https://www.pressnaevnet.dk
Estonia	Pressinõukogu	/	https://meedialiit.ee/pressinoukogu
Finland	Julkisen sanan neuvosto	JSN	https://jsn.fi
France	Conseil de déontologie journalistique et de médiation	CDJM	https://cdjm.org
Germany	Deutsche Presserat	Presserat	https://www.presserat.de
Luxembourg	Conseil de Presse Luxembourg	CPL	https://www.press.lu
Netherlands	Raad voor de Journalistiek	Raad	https://www.rvdj.nl
Slovakia	Tlačovo-digitálna rada Slovenskej republiky	PDC	https://trsr.sk
Spain – Andalusia	Colegio Profesional de Periodista de Andalucía	CPPA	https://periodistasandalucia.es
Spain – Catalonia	Consell de la Informació de Catalunya	CIC	https://fcic.periodistes.cat
Spain – State	Federación de Asociaciones de Periodistas de España	FAPE	https://fape.es
Sweden	Medieombudsmannen och Mediernas Etiknämnd	MO	https://medieombudsmannen.se

3. Others

Country/region	Name in native language	Acronym	Website
Italy	Ordine dei Giornalisti	ODG	https://www.odg.it

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