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COMMITTEE ON CULTURE, SCIENCE, EDUCATION AND MEDIA

Media responsibility and ethics in a changing media environment

Rapporteur: Mr Volodymyr ARIEV, Ukraine, Group of the European People's Party

Draft report

A. Preliminary draft resolution

1. The Parliamentary Assembly recalls that freedom of expression in the media is a necessary condition of a democratic society and constitutes an indispensable requirement for its progress and for the development of every individual. Freedom of expression is comprehensively applicable only subject to the conditions and restrictions foreseen in the European Convention on Human Rights (ETS No. 5).
2. As the exercise of such freedom carries with it duties and responsibilities, the Assembly welcomes the Declaration of Principles on the Conduct of Journalists adopted by the International Federation of Journalists as well as codes of ethics adopted by journalists and media at national level in all member States. Such codes are a voluntary expression of professional diligence by quality-conscious journalists and media outlets to correct their mistakes and to make themselves accountable to the public.
3. Welcoming practical initiatives by journalists and their professional organisations to foster high ethical standards, such as the Ethical Journalism Initiative by the International Federation of Journalists adopted by its World Congress in Moscow in 2007 and supported by the European Union and the Council of Europe, the Assembly recalls its Resolution 1003 (1993) on the ethics of journalism and notes with concern that the changing media environment challenges journalistic ethics and that codes of ethics are not stringently adhered to by all journalists.
4. The Assembly is alarmed by an increase in racist discourse and hate speech in Europe and reminds member States that domestic laws must exist against war propaganda and advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence under Article 20 of the United Nations International Covenant on Civil and Political Rights, as well as against the dissemination of ideas based on racial superiority or hatred and the incitement to racial discrimination under Article 4 of the United Nations International Convention on the Elimination of All Forms of Racial Discrimination.
5. Journalists work in many parts of Europe under conditions which are legally insecure and financially weak, often in freelance positions, thus making them more vulnerable to pressures on their work by third parties. Many media outlets have financial problems due to reduced readership, audience or viewers because of the growth of Internet-based media and the latter's evolving and often less profitable business models, thus challenging editorial independence of such media. In addition, journalists and media are increasingly threatened by organised crime, terrorism and armed conflicts, thus threatening their whole work as such.
6. Recalling its Resolution 1577 (2007) towards decriminalisation of defamation, the Assembly reminds member States that statements or allegations in the media, even if they prove to be inaccurate, should not be punishable provided that they were made without knowledge of their inaccuracy, without conscious intention to cause harm, and their truthfulness was checked with proper diligence. Member States should advance in decriminalising defamation.

7. Recalling its Recommendation 1878 (2009) on the funding of public service broadcasting, the Assembly reaffirms that public service broadcasters must be an important public source of unbiased information and diverse political opinions; they must function under high editorial standards of objectivity, fairness and independence from party political or economic interference. Therefore, the Assembly welcomes and supports the Editorial Principles and Guidelines by the European Broadcasting Union and calls on member States to ensure that their public service broadcasters fully implement them.

8. Recalling its Resolution 1438 (2005) on freedom of the press and the working conditions of journalists in conflict zones, the Assembly reminds member States that journalists must be considered civilians under Article 79 of Protocol I to the Geneva Conventions of 1949, provided that they take no action adversely affecting their status as civilians, and invites all media to indicate clearly to the public which reports are from war correspondents embedded in military or security forces.

9. Recalling its Resolution 2001 (2014) on violence in and through the media, the Assembly welcomes self-regulatory mechanisms by broadcasters as well as the film and games industry for protecting minors from violence by voluntarily rating their media content. Media outlets are editorially responsible for avoiding that violent media content prejudices the dignity of the human being or is likely to impair the physical, mental or moral development of children and adolescents.

10. In view of the exponential growth in Internet-based media and the related changes in the internal structure of media outlets, the Assembly believes that media outlets should be a primary factor for defining and upholding the professional standards of their staff as well as those contributing to their media content. In this context, corporate codes of ethics and media ombudspersons should be established by media outlets as well as mechanisms for complaints or other reactions by their readers, listeners or viewers with regard to compliance with such corporate codes.

11. The Assembly recognises self-regulation by the media as a means to reduce influence by the State and other sectors of society over media content. In addition, self-regulatory mechanisms can facilitate settling out-of-court disputes over media content. However, the Assembly reminds member States, that limitations by public authorities to freedom of expression and information through the media must be prescribed by law, pursue a legitimate objective and be necessary in a democratic society. Media self-regulation necessarily has a voluntary and ethical aspect instead of a legally binding character.

12. Systems of media self-regulation have developed differently among member States, depending on political, cultural and legal traditions. In several countries, systems of co-regulation exist whereby domestic law sets the legal framework for self-regulatory media ethics. Where such systems include the possibility to impose fines and other penalties, the European Convention on Human Rights, in particularly its Article 10, is applicable and must be respected.

13. Therefore, the Assembly invites media outlets, media staff and their organisations to increase voluntary adherence to their codes of ethics as well as their mechanisms for analysing breaches of such codes with a view to provide adequate redress for those affected by such breaches. For this purpose, the Assembly invites the Alliance of Independent Press Councils of Europe to strengthen coordination among its members, in order to raise ethical standards across Europe, facilitate complaints procedures across borders and raise awareness among European media users.

14. The Assembly invites the European Union to cooperate with the Council of Europe in promoting media self-regulation, for instance by extending the standards of the Audiovisual Media Services Directive beyond the European Union as it has been attempted by the European Convention on Transfrontier Television, but also through practical cooperation activities with national associations of media and journalists.

B. Preliminary draft recommendation

1. Referring to its Resolution (2015) on media responsibility and media ethics in a changing media environment;
2. Having regard to Resolution (74) 26 of the Committee of Ministers on the right of reply - position of the individual in relation to the press, as well as Recommendation (2004)16 of the Committee of Ministers to member States on the right of reply in the new media environment;
3. Having regard to Recommendation (97) 21 of the Committee of Ministers to member States on the media and the promotion of a culture of tolerance;
4. The Assembly welcomes that media freedom is a priority for the Council of Europe and recommends that the Committee of Ministers:
 - 4.1. call on member States, where this has not been done yet, to introduce a right of reply in their domestic laws and to ensure that such a reply by the media is legally recognised by the courts in case of judicial proceedings against those media for the same facts;
 - 4.2. produce guidelines for governments in order to support media self-regulation nationally while respecting media freedom in accordance with the European Convention on Human Rights;
 - 4.3. strengthen practical activities aimed at raising self-regulatory ethical standards among journalists and the media, including support for professional training of journalists as well as support for public service broadcasters to set ethical standards such as the Editorial Principles and Guidelines by the European Broadcasting Union;
 - 4.4. provide for more concrete action by the Council of Europe, such as the No-Hate campaign by the Council of Europe's youth sector as well as the Media in Europe for Diversity Inclusiveness (MEDIANE) and Media Against Racism in Sport (MARS) programmes of the European Federation of Journalists and the Council of Europe.

C. Explanatory memorandum by Mr Arieu, rapporteur

1. Introduction

1. The initiative for this report stemmed from Mogens Jensen (Denmark, SOC), who had tabled with other members a motion for a resolution on “media responsibility and media ethics in a changing media environment” on 30 January 2013 (doc. 13122). Having been appointed Danish Minister for Trade and Development Cooperation on 3 February 2014, Mr Jensen left the Assembly. The Committee on Culture, Science, Education and Media appointed me subsequently rapporteur on this subject. Having started with the BBC in 1993, I worked as a journalist and film director in Kyiv until 2007, when I was elected to parliament. This professional experience and the impact of media on democratic transition in my own country as well as neighbouring countries explain my commitment to media freedom, responsibility and ethics.

2. Two decades ago, the Assembly adopted Resolution 1003 (1993) on the ethics of journalism. That epoch was marked by the fall of the Iron Curtain which had divided Europe into East and West as well as by a gradual transition towards democracy in countries in central and eastern Europe. At that time, the traditional role of media in communist regimes had also changed. While media had been considered a tool to guide the masses through propaganda, they were from now on a means for every citizen to receive information and discuss views, both of which are necessary in a democratic society. During that transition period, it was therefore important to recall ethical standards of journalism corresponding to such values as democracy and human rights.

3. The technological progress in electronic media has changed the media landscape dramatically over the last decade, especially through technological convergence on the Internet. Traditional print media have lost subscribers and advertising revenue, making them often targets for take-overs by financially strong investors with political ambitions rather than commercial interests. The journalistic profession has also changed in parallel to these changes in the media environment. While journalists had a perspective of a long-term employment in the past, ever growing numbers of free-lance positions have reduced the number of permanent media staff, thus leading to an increased competition among journalists. In addition, journalists in many countries have very low income and poor social rights, making them more vulnerable to political and other pressures on their work.

4. Therefore, it is timely and necessary to recall to parliaments and governments in Europe the need for giving media the freedom to organise their own professional ethics while reminding them of their professional obligations in a democratic society based on the rule of law.

2. Preparatory work

5. On 22 May 2013, the Committee on Culture, Science, Education and Media held a hearing on this subject in the House of Commons in London with Ms Agnès Callamard, Executive Director, ARTICLE 19, London, Mr Lutz Tillmanns, Secretary General, German Press Council, Berlin, Ms Judit Bayer, Representative of the Southeast European Network for Professionalization of the Media, Budapest, and Dr Rachel Craufurd Smith, School of Law, University of Edinburgh. Dr Rachel Craufurd Smith subsequently presented an introduction to media self-regulation at the meeting of the Sub-Committee on Media and Information Society in Istanbul on 12-13 May 2014. Based on this preparatory committee work and in accordance with my thematic instructions, Dr Rachel Craufurd Smith was finally commissioned to prepare a substantial background report, which she presented to the Committee in Strasbourg on 27 January 2015. This explanatory memorandum is based on her background report, which I am very grateful for.

3. Media legislation and media ethics

6. As the European Court of Human Rights has consistently held, freedom of expression is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population, subject only to the conditions and restrictions foreseen in the European Convention on Human Rights. This is the yardstick for media freedom and all media legislation.

7. Under Article 10 of the Convention, any restriction to media freedom must be established by law and be proportionate to a legitimate aim as necessary in a democratic society. Therefore, States can only restrict media freedom by law as opposed to any arbitrary or unspecified “soft” standards attempting to restrict Article 10. The emphasis on law is due to the fact that legal standards can be applied as well as reviewed by courts, as they are publicly accessible as published laws and require sufficient precision.

8. Media ethics is hence a non-legislative approach, which is typically equalled with media self-regulation. The latter implies that media outlets and those working for the media voluntarily comply with certain professional standards. While such ethical standards cannot logically be enforced by courts of law, compliance with professional ethics or diligence can be taken into account by courts when applying legal norms to journalistic behaviour. A typical example is the legal defence against defamation charges: statements or allegations in the media which are made in the public interest, even if they prove to be inaccurate, should not be punishable provided that they were made without knowledge of their inaccuracy, without intention to cause harm, and their truthfulness was checked with proper diligence.

9. Standards of media ethics could be very wide and diverse, depending on the particular sector of the media and their staff as well as their willingness to prescribe professional editorial lines. A rather exhaustive list of such ethical standards had been developed by Assembly Resolution 1003 (1993) on the ethics of journalism.¹ As we will see from the discussion below, there are no common national ethical standards, except for very basic ones such as the professional obligation for accuracy and respect for the truth, impartiality and editorial independence, fair comment, respect for others, and correction of errors.²

4. The role of self-regulation in the media sector

10. Self-regulation is an important and long-standing component of media regulation in Europe. Regulation of the printed press, film, video-game, and advertising sectors has characteristically involved significant self-regulatory elements. Self-regulation involves the setting and enforcement of rules by those whose behaviour is to be governed, without formal state oversight. A key motivation for self-regulation in the media field is to protect freedom of expression and to support the media in performing their democratic functions - reporting on matters of public interest, providing comment and opinion, offering a forum for debate, and acting as a 'watchdog' of powerful political and other social interests.

11. The democratic role of the press is specifically recognised in a number of national constitutions, such as article 5 of the Basic Law of the Federal Republic of Germany and the Swedish Freedom of the Press Act, while the European Court of Human Rights (ECtHR) has held not only that freedom of expression under Article 10 of the European Convention on Human Rights (ECHR) 'constitutes one of the essential foundations of a democratic society' but that it is 'incumbent on the press to impart information and ideas on political issues and on other subjects of public interest'.³

12. Self-regulation not only reduces the capacity of the state to influence the media for its own ends, it can also be a flexible form of regulation that can adapt rapidly to changing circumstances. Self-regulation draws on industry expertise, which can enhance its effectiveness, and can offer speedy and straightforward methods for resolving disputes. Because self-regulatory systems tend to be funded wholly or mainly by the regulated industry, they may also reduce the cost of regulation for the general public.

13. Though state regulation of the media can raise censorship concerns, the ECtHR has held that state restrictions on freedom of expression can be justified when intervention is prescribed by law, pursues a legitimate public interest, notably the protection of the rights of others, and is necessary in a democratic society. In practice, the media in all European states are subject to a significant component of state regulation. Not only are the media expected to comply with the general law in civil and criminal matters, particular media sectors, notably the broadcast media, have been subject to extensive state regulation, notably on the basis of their perceived capacity to influence the public. State regulation may sometimes be required to support media freedom, for example, by tackling concentrations in media ownership.

14. More controversial is the use of state regulation to support self-regulation in the media field. Pure self-regulatory regimes are voluntary in nature and adherence is primarily encouraged through the reputational and other advantages on offer. These incentives may not be sufficient to ensure that members comply with the set standards and certain operators may calculate that it is in their best interests to remain outside the system altogether. Effectiveness and adherence are thus major problems for self-regulatory systems and may offer the public only patchy protection. To the extent the state itself wishes to advance the interests pursued by the self-regulatory body, or sees particular advantages in so doing, such as a reduction in the number of cases coming before the courts, it may seek to 'reinforce' or 'underpin' the regime through statutory or other intervention, resulting in what is often termed a 'co-regulatory' approach.

¹ See <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta93/ ERES1003.htm>

² See the paper prepared by Aidan White for the Commissioner for Human Rights of the Council of Europe, 8 November 2011, available at https://wcd.coe.int/ViewDoc.jsp?id=1863637#P309_47187

³ See, for example, App. No. 38433/09, *Centro Europa 7 SRL and Di Stefano v Italy*, 7 June 2012 at para.131

15. In the media sector co-regulation takes a number of different forms. In some cases the state has established the terms on which the self-regulatory system can operate (Denmark, UK); in others it has mandated adherence to the self-regulatory regime (Denmark) or provided 'backstop' powers of enforcement or sanction (Denmark, Ireland and the UK). Carefully framed, such intervention may serve to enhance the independence of the regulatory regime from external pressures, including from the industry itself, but it may also open the door to state influence, fundamentally changing the nature of the self-regulatory institution from a body stemming from, and pursuing interests established by, the industry, to a body acting on behalf of the state. As noted above, the state may have its own distinct motivations for the success of the self-regulatory regime and these motivations may influence the nature of its intervention.

16. It can be argued that there should be no further regulation of the media beyond that established by the general law, in that even industry self-regulation can open the door to censorship and external direction. Such concerns have influenced the development of media regulation in countries such as France, where there is considerable opposition to the development of self-regulatory mechanisms for the press.⁴ Throughout much of Europe, however, distinct self- and co-regulatory regimes frequently sit alongside, and subtly interact with, the general law.

17. There are a number of reasons why industry supports the development of self-regulatory regimes in the media sector.⁵ Firstly, such regimes are often introduced in order to pre-empt state regulation. Secondly, they seek to build trust with citizens and consumers by establishing basic standards to which participating organisations or individuals commit. These may overlap with the general law, for instance a commitment not to harm children or invade privacy, but characteristically go much further in requiring standards of honesty, transparency, diligence and respect that, if breached, would not give rise to any legal repercussion. Such regimes serve to underline the professional nature of journalism and promote fulfilment by the media of its democratic role. Thirdly, certain regimes establish a relatively cheap and speedy procedure for public complaints regarding published content or journalistic practices that contravene the regime's specified standards, thereby enhancing media accountability. Fourthly, industry is aware that compliance with professional standards can sometime offer a degree of protection in legal proceedings on the basis that the individual or body concerned has acted responsibly or may lead to certain privileges being awarded, such as access to information. Last, and by no means least, such regimes may have a broad remit to support freedom of the press and expression through educational or training initiatives and active engagement in policy and political debates relating to these freedoms.

18. Certain of the objectives noted above are essentially self-serving, designed to protect the industry from various external threats or provide certain advantages, while others seek genuinely to enhance the public interest. The particular emphasis adopted will have an important impact on the ability of the regulatory body to influence overall media standards. The rather limited focus on complaint resolution on the part of the previous Press Complaints Commission in the UK, for example, arguably deterred the regulator from exploring the cultural and organisational factors that undermined ethical behaviour in certain sections of the press. The public interest in free, independent and responsible journalism is most likely to be realised where those framing self-regulatory systems explicitly recognise the centrality of these goals both in their published codes and constitutional framework.

5. Media self-regulation in practice

19. Self-regulation in the media sector usually has one or both of the following components:

- a code of conduct,
- a body, typically a council and/or an ombudsman, charged with the promotion or enforcement of the code, though, as indicated above, the duties of the body may be considerably more extensive.

20. In certain media sectors, notably the film and games sectors, self-regulation has tended to take a rather different form, involving the creation by industry of rating systems that can then be used to inform the public as to the nature of the content on offer. An example is the Pan European Game Information or 'PEGI' system, developed for the Interactive Software Federation of Europe, and used to rate computer games in thirty European countries. Self-regulation is here designed to provide public information rather than maintain editorial standards. Ratings are typically employed to facilitate the protection of children from exposure to unsuitable content and to flag-up violent or sexually explicit content in contexts where audio-visual goods or services, considered to be particularly influential, are sold on an on-demand basis.

⁴ See the website of the *Association de préfiguration d'un Conseil de presse en France* at <http://apcp.unblog.fr/pourquoi-un-conseil-de-presse/>

⁵ Haraszti, M., *The Media Self-Regulation Guide Book*, (OSCE, Office of the Representative on Freedom of the Media, Austria, 2008), at p. 12

5.1. Codes of conduct: a typology

21. Codes of conduct have been developed by a wide range of media organisations both across and within specific industries:

22. Certain representative organisations, notably unions, have established codes of conduct for their individual members that may, as in the case of the National Union of Journalists in the UK, extend across traditional print and broadcast media to online services.⁶

23. Codes of conduct may also be adopted by specific public or private media organisations to be followed by their staff, contributors or users. The BBC, for example, has developed detailed editorial guidelines for its producers.⁷ As public service broadcasters must have higher standards of quality and ethics, the values adopted by the European Broadcasting Union in 2012 and its Public Service Values, Editorial Principles and Guidelines are a reference point for its members.⁸ Social media sites such as YouTube establish guidelines for users regarding content that they post on their sites. Persistent violation of these guidelines may lead to the termination of the user's account.⁹

24. Codes of conduct have also been adopted for specific media sectors, such as the print, broadcast and video on demand sectors.

25. Many codes operate at the national level but private codes operated by specific multinational companies or codes developed by representative organisations such as the International Federation of Journalists (IFJ)¹⁰ can also be international in their scope.

5.2. Codes of conduct in an evolving media environment: current challenges

Complexity, opacity and potential gaps

26. The number and variety of codes in operation can create a complex and confusing regulatory environment. This can make it difficult for the public to ascertain whether a given service is subject to self-regulation, who is responsible for the service, and the applicable standards. The piecemeal development of distinct self- or co-regulatory regimes for specific media sectors over time has in certain countries, such as the UK, resulted in gaps and inconsistencies in the protection offered the public. It has also led to demarcation disputes between regulatory bodies, as industry members seek to locate within the most beneficial regime and avoid any duplication in membership fees.¹¹

27. In my own country, Ukraine, two competing journalists unions had developed their own codes of ethics. In practice, those codes played an insignificant role in raising journalistic ethics, but both unions agreed in 2013 on one single code of conduct and thus strengthened their professional ethics.

Convergence and regulatory scope

28. The impact of media convergence on domestic self-regulatory systems thus underlines the importance of creating a coherent and transparent regulatory framework. Though text and video content may raise rather different questions regarding production procedures and presentation, the underlying regulatory principles relating to responsible journalism remain the same. The specificities of particular media can be addressed, if necessary, through additional guidance. Moreover, comparison of how different sectors are regulated can lead to standards being enhanced across the board. In the UK, for example, the regulatory regimes for the broadcast media include detailed procedural requirements to be undertaken prior to action that could infringe privacy. If these procedures had been applied in the print context some of the unlawful behaviour that precipitated the Leveson Inquiry may well have been pre-empted.

29. Certain regulatory regimes have moved more quickly than others to address convergence and accommodate online-only content providers, bloggers and social media services, as well as news agencies.

⁶ See <https://www.nuj.org.uk/documents/nuj-code-of-conduct/>

⁷ See <http://www.bbc.co.uk/editorialguidelines/>

⁸ See <http://www3.ebu.ch/contents/publications/public-service-values-editorial.html>

⁹ See https://www.youtube.com/t/community_guidelines?hl=en-GB&gl=GB

¹⁰ See <http://www.ifj.org/about-ifj/ifj-code-of-principles/>

¹¹ See, for example, the Ofcom decision regarding competence for the Sun video section of the Sun newspaper's website at: http://www.atvod.co.uk/uploads/files/Ofcom_Decision_-_SUN_VIDEO_211211.pdf

The Finnish regime, for example, now extends to Finnish news agencies, the print and broadcast media and their web services as well as online-only services, the Swedish Press Council is similarly open to online-only players, while the German Press Council handles complaints relating to 'journalistic and editorial content from the internet'. The professional rules developed by the Danish Press Council require all domestic print and broadcast services to accede to the regime but certain internet media, including blogs and social media, subject to editorial control, can also apply for registration and have taken advantage of this opportunity. These developments raise questions as to the fees that online players should be expected to pay and their representation in the management structures of self-regulatory bodies. Dialogue among the various regulatory bodies operating in Europe and exchange of experience may thus prove useful to those that have still to progress some way down this road.

30. It may remain desirable, however, to have a number of self-regulatory regimes operating in a given country in order to reflect the diversity of media operators that now exist and their different aspirations. Lara Fielden, for example, has suggested the adoption of a range of regulatory regimes that vary in intensity but which are equally open to providers of text, audio and video-based services.¹² She proposes four tiers of regulation. The first, most demanding 'public service tier' would set standards generally expected of public service broadcasters, including impartiality. The second, an 'ethical private content tier' would be somewhat more exacting than the current press regime in the UK but less so than those applicable to broadcasting. The third, a 'baseline private content tier' would maintain the minimum standards set out in the EU Audiovisual Media Services Directive (codified in Directive 2010/13/EU), while the fourth tier would involve no regulation beyond the general law. Operators adhering to one or other of the three initial tiers would be able to employ standard or 'kite' marks to inform the public as to the type of service they offered. The various schemes would be open to bloggers and amateur publishers who could opt-in to one of the tiers in order to benefit from the quality mark and reputational advantages.

31. Clarity is also now required as to the extent to which media organisations can be held responsible for user-generated content hosted on the various fora or chat sites that many now provide. These sites enable newspapers to test-out content prior to printing and offer an important venue for democratic dialogue and debate. A number of regulatory bodies, such as the new Independent Press Standards Organisation (IPSO) in the UK, review complaints only in relation to readers' letters or content where it has been edited or subject to moderation. Requiring providers to pre-moderate all such content, however, would impose an impossible administrative burden on media organisations and would impede public engagement.

32. The recent ECtHR ruling (First Section) in *Delfi v Estonia* (application 64569/09, 10 October 2013), now being considered by the Grand Chamber, suggests that flagging systems and selective filtering may not be sufficient to protect news providers from liability in actions for defamation regarding user-generated content in the courts. The case underlines the importance of developing an appropriate conception of 'responsible journalism' in relation to all service now offered by the media, taking into account its changing role, which now extends well beyond the simple delivery of internally produced and edited information. It is worth noting in this respect the guidance on 'material generated by the public on a media website' published by the Finnish Council for the Mass Media in 2011¹³ and the provision on editorial materials in the Danish Press Council ethical rules.¹⁴

5.3. Enhancing the quality of codes of conduct through a comparative approach

33. Across Europe opinions diverge as to whether the framing of media codes should be left to the industry itself, potentially leading to self-serving provisions or omissions, or whether citizen, consumer, or even judicial representation as in Denmark, should be incorporated. Article 9 of the IFJ Declaration of Principles on the Conduct of Journalists states that 'within the general law of each country the journalist shall recognize in professional matters the jurisdiction of colleagues only, to the exclusion of every kind of interference by governments or others'.¹⁵ In Finland the Management Group, which incorporates representatives from publishers, broadcasters and the journalists' union draws up and revises the rules. Similar concerns regarding the risks of external intervention can be seen in the German system, which relies on industry members to draft the press code. In a number of post-communist countries there have also been fears that vested interests may compromise the independence of self-regulatory bodies through the participation of non-journalists. Other countries, such as Denmark, incorporate input from journalists, management and the public alongside independent legal professionals, a system designed to ensure that the wider public interest in press standards is reflected.

¹² Fielden, L., *Regulating for Trust in Journalism: Standards Regulation in the Age of Blended Media* (Reuters Institute for the Study of Journalism, Oxford, 2011)

¹³ See http://www.jsn.fi/en/guidelines_for_journalists/

¹⁴ See <http://www.pressnaevnet.dk/Information-in-English/The-Press-Ethical-Rules.aspx>

¹⁵ See <http://www.ifj.org/about-ifj/ifj-code-of-principles/>

34. In relation to industry representation, it is important that the interests of both management and journalists are taken into account. It is arguable, that the failure of the former Press Complaints Commission (PCC) in the UK to incorporate representation by journalists below the grade of editor in the formulation and enforcement of standards undermined its credibility and effectiveness. Regardless of the make-up of the body drafting or revising the code, provision should be made for public consultation and adequate time for input allowed prior to its adoption.

35. Codes of media ethics are influenced by a range of social and cultural factors. Expectations of privacy in France, for example, are rather different from those in the UK. Divergences between codes in different countries are thus to be expected and, indeed, welcomed. There remains, however, scope for further dialogue among the various self-regulatory regimes operating in Europe with a view to identifying and sharing best practice both in relation to substantive standards and procedural requirements. This may also lead to the identification of genuine omissions or different and important emphases. The Danish Press Council ethical rules, for example, seek to protect journalists from being required to carry out tasks contrary to their conscience or convictions;¹⁶ while the German Press Code clearly identifies contexts in which there may be a conflict of interest and expressly calls for the separation of advertising and editorial content.¹⁷

36. Certain issues are problematic in all countries, in particular the circumstance in which journalistic activities, otherwise considered to infringe code provisions, should be held legitimate in the public interest. Co-ordinated discussion at a regional and indeed international level on such matters could help to clarify and increase awareness of the concerns at stake.

37. Given the increasingly international nature of the mass media consideration could also be given to identifying a core of fundamental standards and principles that should be reflected in all codes. A number of criteria that enhance in a general way the quality of media codes of conduct have been identified. In particular, codes should be written in clear language and be regularly revised in the light of technological and social developments. They should also be readily accessible to the public. Given the evolving nature of the field, it is preferable to concentrate in the code on key principles and values, with detailed supporting guidance provided to indicate how the principles and values should be applied in practice and how potential internal conflicts can be addressed.

38. In substantive terms, Article 19 has argued that, at a minimum, all codes of conduct/ethics should include a commitment to the following principles:¹⁸

- Respect for the public's right to know;
- Accuracy in news gathering and reporting;
- Fairness in methods to obtain news, photographs and documents;
- Non-discrimination in relation to race, ethnicity, religion, gender and sexual orientation;
- Sensitivity in reporting on vulnerable groups such as children and victims of crime;
- Presumption of innocence in reporting on criminal procedures;
- Duty to protect sources of information obtained in confidence;
- Duty to rectify published information found to be inaccurate or harmful.

39. Reference may also be made to the codes and declaration developed by organisations such as the IFJ. There is, however, a risk that these minimum requirements could be interpreted as establishing a sufficient benchmark, deterring adoption of additional standards.

40. Enhanced dialogue among the various national press councils could potentially be taken forward through the Alliance of Independent Press Councils in Europe in co-ordination with interested citizens, consumer, industry, and press freedom organisations. The nature of the deliberations and conclusions reached should be made as transparent and accessible to the public as possible.

6. Implementation and enforcement

6.1. Implementation of media standards: the need for a multi-level approach

41. Even where a code meets the various requirements identified above and reflects the public interest in press responsibility and freedom, it will be of little moment if it does not influence media practice on the

¹⁶ See <http://www.pressnaevnet.dk/Information-in-English/The-Press-Ethical-Rules.aspx>

¹⁷ See http://www.presserat.de/fileadmin/user_upload/Downloads_Dateien/Pressekodex13english_web.pdf

¹⁸ Article 19, Freedom And Accountability Safeguarding Free Expression Through Media Self-Regulation (2005), p. 8, available at: <http://www.article19.org/data/files/pdfs/publications/self-regulation-south-east-europe.pdf>

ground. Indeed, there is then a danger that the self-regulatory system will obscure the need for further action. A major challenge for any self-regulatory regime is to attract sufficient members to ensure credibility and to ensure that industry pays more than mere lip-service to the standards identified.

42. The ability and willingness of media owners, editors and journalists to act responsibly in line with ethical standards cannot be attributed to any one factor but is rather dependent on a complex interaction of factors that influence the overall media ecology. In particular, adherence to professional standards depends on:

- i) *the individual journalist* – level of training, perception of the profession and own role as a journalist,
- ii) *the institution in which the journalist works* – security of tenure, pay, workload, internal mechanisms for raising and discussing ethical questions,
- iii) *the professional and legal environment* – effectiveness of professional organisations in representing the interests of journalists and addressing consumer and public concerns, recognition of the important democratic role played by journalism in constitutional texts, statutes and the operation of the common law,
- iv) *the social and cultural environment* – understanding by the public of the role of journalism in society (media literacy) and the factors that shape it, as well as a willingness to engage critically with the media, particularly where intrusive stories or unethical reports are published.

43. To be effective a self-regulatory body may need to address all these dimensions. The importance of a working environment that protects and respects professional standards was underlined by the failings at the UK newspaper News of the World, which ultimately led to the Leveson Inquiry.¹⁹ The phone-hacking scandal exposed the importance of an environment in which ethical issues can be discussed and where staff is not afraid to speak-up. Ultimately, the commercial benefits of unethical behaviour turned out to be a false economy, though this was not understood at the time.

44. How can such problems be pre-empted in future? A clear statement by the firm of its commitment to ethical standards, published on its website, can set an important precedent. In particular, company editorial guidelines were considered among the most influential media accountability instruments by those journalists surveyed across Europe and the Arab world in the course of research carried out by the MediaAcT project.²⁰ Professional codes of ethics and journalism education were considered similarly influential. It has also been argued that independent trade union representation would have given staff at the News of the World more confidence in dealings with management,²¹ and one criteria for membership of a self-regulatory body could be its willingness to recognise collective representation, particularly in ethical matters. Research also suggests that the more journalists are organised in unions, the higher they rate the impact of traditional media accountability instruments.²²

45. Alternatively, a specific individual could be designated to discuss with journalists ethical issues that might arise in the course of their work, though this could be seen as detracting from the role of the editor. Indeed, in a number of European countries such as Finland, certain press organisations are required to designate a 'responsible editor' who is explicitly expected to take responsibility for the content published. Similar concerns have been expressed in relation to the appointment of ombudsmen or readers' editors within individual firms, which can be found in countries such as Germany, Portugal and the UK. The readers' editor at the Guardian newspaper in the UK considers not only readers' comments and complaints but is also tasked with considering, more strategically, how the paper's work and performance can be improved.²³

46. Maciá-Barber has argued that ombudsmen should perform more than a merely advisory role and be empowered to ensure that editors meet their ethical obligations.²⁴ At times of economic stringency, any additional obligations that take journalists away from their journalistic role is problematic but the provision of a speedy, first-line response to complaints can pre-empt more costly and time-consuming disputes further

¹⁹ Leveson, B., *An inquiry into the culture, practices and ethics of the press*. HC 780-1 (Stationery Office, London, 2012)

²⁰ Fengler, S., Eberwein, T., Lönnendonker, J., and Schneider-Mombaur, 'Journalists, Journalism Ethics, and Media Accountability: A Comparative Survey of 14 European and Arab Countries', in Wyatt, W. (ed.), *The Ethics of Journalism. Individual, Institutional and Cultural Influences* (Reuters Institute for the Study of Journalism, I.B. Taurus, 2014) at p. 94-95

²¹ Harcup, T., 'The Ethical Newsroom: Where the Individual and the Collective Work Together', in Wyatt W. (ed.), *The Ethics of Journalism. Individual, Institutional and Cultural Influences* (Reuters Institute for the Study of Journalism, I.B. Taurus, 2014) at p. 13-32

²² Fengler et al., cited above

²³ The Guardian, Reader's Editor Terms of Reference, the Guardian, 14 May 2009 at:

<http://www.theguardian.com/theguardian/2009/may/14/readers-editor-terms-of-reference>

²⁴ Maciá-Barber, C., 'How News Ombudsmen Help Create Ethical and Responsible News Organisations' in Wyatt W. (ed.), *The Ethics of Journalism. Individual, Institutional and Cultural Influences* (Reuters Institute for the Study of Journalism, I.B. Taurus, 2014) at p. 107-124

down the line. It may be possible to rotate posts to provide coverage or for an ombudsman to work for a number of separate outlets, thus spreading the cost.

47. The Leveson Inquiry also discussed the provision of a 'whistleblowing' line, which journalists could use to raise ethical concerns with a press regulatory body, on a confidential basis. Whether or not concrete initiatives of this type are pursued, it is apparent that an important role that ombudsmen and media councils can play is the provision of support for journalists in developing and maintaining a respectful and ethical working environment.

6.2. The role of press councils and ombudsmen in enforcing professional standards

48. Looking beyond the individual firm, media standards set out in formal codes are most commonly promoted and 'enforced' by specific Media Councils and/or Ombudsmen. As with the committees designated to create and formulate industry ethical codes, the composition of the management bodies of domestic media councils vary widely, from all-industry as in Germany to a combination of industry and independent representatives, sometimes with a legal chair, as is the case in Denmark.

49. The sanctions at the disposal of these organisations are characteristically limited and primarily take the form of a requirement that the media organisation concerned publishes a correction or apology. The degree to which complaints are facilitated varies from country to country, with different time limits for lodging the complaint and standing requirements. In Ireland and Denmark, for example, only those personally affected by the publication in question can bring a complaint, while in Germany any member of the public can complain. The position adopted by IPSO in the UK is more nuanced: in relation to complaints of inaccuracy on a general point of fact, anyone can complain, but where the inaccuracy relates to a specific organisation or person IPSO will consider their position before determining whether to accept a complaint from a third party. In other matters, only those affected can bring a complaint although IPSO will consider complaints from representative bodies where the alleged breach of the Code is considered significant and there is a public interest in proceeding.²⁵

50. Although media organisations themselves emphasise the significant deterrent effect of being required to publish a correction or negative ruling, only just over 30% of the journalists interviewed for MediaAcT considered press councils to have a 'high' or 'very high' impact on media accountability. In some countries, such as the UK, the deterrent and educational effect of negative decisions has been undermined by an emphasis on mediation, enabling media companies to escape without a formal finding of fault. As the Media Standards Trust has noted, mediation is fundamentally different from regulation, which characteristically involves the setting of precedents to inform future action and determinations that establish what constitutes adequate redress for certain types of breach.²⁶ Many Press Councils in Europe do, however, promote mediation prior to adjudication, though the Danish Press Council excludes mediation. Once again, it is necessary when framing the regulatory regime to consider what the ultimate priority is. In the Danish context this appears to be the public interest in the maintenance of press standards.

51. In addition to requiring publication of a correction or apology it is theoretically possible that a recurrent offender might have its membership revoked. Under the Swedish system publications against which a complaint is upheld are required to pay a limited administrative fine. The general absence of significant financial sanctions serves to distinguish press self-regulatory regimes from judicial enforcement of the civil and criminal law in the courts, where significant damages or fines may be levied. Meaningful financial sanctions could lead to pressure for greater formalisation and legal representation, potentially undermining the constructive approach on which self-regulation is built and deterring membership.

52. That it is not in principle impossible, however, for self-regulatory systems to incorporate much more significant sanctions is illustrated by the new UK press regulator, IPSO, empowered to fine members up to 1 million pounds or 1% of annual turnover. The scale of the potential fine distinguishes IPSO from other media self-regulatory bodies but it is unlikely that its deterrent effect will be tested in the near future. This is because the Chairman of IPSO, Sir Alan Moses, has himself stated that 'the instruction booklet for the use of so novel a weapon is rather too complicated for we ordinary mortals at IpsO to understand'.²⁷ Nor is there any mention of the power to fine on the IPSO webpage dealing with complaints. It is not clear, however, why criteria could not have been established for at least a lower level of fine in particular cases though the

²⁵ IPSO, 'Make a Complaint' at <https://www.ipso.co.uk/IPSO/index.html>

²⁶ Media Standards Trust, *A Free and Accountable Media. Reform of Press Self-Regulation: Report and Recommendations*, (The Press Review Group, June 2012) p. 29-30

²⁷ Moses, A., Speech to the Society of Editor's Annual Conference, October 2014, at: <https://www.ipso.co.uk/IPSO2/news/speeches.html>

approach adopted undoubtedly reflects a widespread view that fines are not an appropriate sanction in the press (as opposed to say advertising) regulatory context.

53. A strong presumption against prior censorship means that Ombudsmen and Press Councils generally respond to complaints in relation to published material or press practices that have already taken place. Though falling short of empowering the Press Council to block publication of certain content, the Danish press code does require publishers to examine carefully content that could be prejudicial to individuals and, if possible, to submit it to that individual prior to publication. As a result of their advisory functions media regulators may be willing to give advice to members (as opposed to the public) in relation to a particular proposed story or investigation and, through the publication of past decisions and specific guidance on code provisions, can help to pre-empt unethical practices.

6.3. State intervention and the role of co-regulation

54. The potential for weak implementation and an inability to ensure that all major players participate have led certain states to complement or strengthen the self-regulatory system through statutory provision. In some cases they have introduced specific statutory remedies. A number of countries, such as Finland and Denmark, have established a statutory right of reply, while Article 28 of the EU Audiovisual Media Services Directive calls on states to ensure that a right of reply is made available to legal persons whose legitimate interests are damaged by an incorrect assertion of facts in a broadcast television programme (Directive 2010/13/EU).

55. In other instances, the state has sought to shore up and enhance the effectiveness of self-regulatory structures through a co-regulatory approach. Denmark has been one of the most interventionist in requiring that all domestic print media and broadcasting services participate in the regulatory regime operated by the Danish Press Council. Failure to comply with a Press Council decision can lead to a limited fine and, potentially, to up to four months in prison. In Ireland a rather different approach has been adopted in the Irish Defamation Act 2009, which requires that courts take into account membership of the Press Council and compliance with its Code of Practice when determining whether it was 'fair and reasonable' for a media organisation to publish a particular defamatory statement (section 26). In order for the Press Council to be recognised in this way it is required to maintain a code of conduct covering specific matters, in particular, accuracy, intimidation and harassment, privacy, integrity and dignity. A further form of support is the provision of funding to assist the operation of press or media councils, exemplified by the contribution of the German state of around 30% of the costs of the German Press Council.

56. As with the Irish position, the UK has stopped short of requiring that media companies join a self-regulatory scheme, so that adherence remains voluntary. The Crime and Courts Act 2013, however, establishes a number of incentives and disadvantages designed to encourage press publishers to join an independent media regulator approved under the terms of the 2013 Royal Charter on Self-Regulation of the Press. Such organisations are offered a degree of protection from the imposition of exemplary damages and costs in civil proceedings, while organisations that are not members are potentially exposed to liability in costs, whether or not they win the action (sections 34-42). One consequence of this is that it has been necessary to define who should be a member of such a recognised body (see section 41 and Schedule 15 of the Act, which excludes, inter alia, 'micro-businesses'). A specific feature of the 2013 Royal Charter is the requirement that recognised regulatory bodies make provision for an arbitration system for civil disputes involving their members (criterion 22). The linking of the self-regulatory body with the resolution of civil disputes in this way blurs the line between self-regulation relating to agreed standards and the resolution of legal disputes. Opposition to the new system has led most UK newspapers, with the notable exception of the Guardian and Financial Times, to become members of IPSO, which does not intend to seek recognition under the 2013 Royal Charter.

57. In certain countries there has been a simple preference for state rather than self-regulation, even in the press sector. In Portugal, for example, an independent administrative body, the *Entidade Reguladora para a Comunicação Social* (ERC), was set up by statute with the remit to oversee the operation of both the print and audiovisual media in 2005 (Law 53/2005 of November 8). Four of the five members of the regulatory body of the ERC are appointed by the Portuguese Parliament, and these members then appoint the fifth. Reliance on political appointments in this way can bring into question the independence of the regulatory body.

6.4. Appeal and review

58. There is considerable variation across Europe as to whether appeal or review is possible in relation to a decision by a media regulator. Where the regulatory system incorporates both an ombudsman and

press council, as in Ireland and Sweden, an appeal in relation to a ruling by the ombudsman to the press council is usually available. A number of countries provide for appeals on certain matters. In Germany an internal appeal mechanism is provided, allowing appeal to a differently composed board; in Finland an appeal from a decision of the Press Council is allowed only where a ruling has been based on incorrect information; while in the UK IPSO allows complainants to refer procedural as opposed to substantive matters relating to the handling of their dispute to a designated Complaints Reviewer.

59. Judicial review of the regulator's decision is not possible in countries such as Finland though it is in others, such as Denmark and the UK. UK experience suggests, however, that this is likely to be of only limited value to complainants, given the potential costs and the deference afforded by courts to the judgement of professional bodies. In an application for judicial review of a PCC decision by the television presenter Anna Ford in 2001, for example, the judge held that the court should show deference to the PCC's decisions and only interfere 'where it would be clearly desirable to do so'.²⁸ For this reason, incorporation of a procedure for appeal, along German lines, could reassure complainants in countries such as the UK that their concerns will be taken seriously, though there will inevitably be cost and administrative implications for systems that have been designed to provide the public with quick and relatively informal means of redress. This is thus an area where further comparative work into the value of such procedures in practice could prove useful.

6.5. Enforcement in an international context

60. The media are increasingly distributed on an international basis, rendering it increasingly likely that an individual will wish to complain about a publication that is based in another country. Certain regulatory bodies, such as the Irish Press Council, allow companies established abroad that have a presence in Ireland to become members, though organisations that are not members and 'adhere to standards equivalent' to those of the Council can still take advantage of the terms of the 2009 Defamation Act.

61. From the perspective of the media organisation itself, membership of media self-regulatory bodies in all the territories it covers could entail substantial costs and is unlikely to be an attractive. One option would be to draw on the experience of the cross border complaints system operated by the European Advertising Standards Alliance (EASA), under which individuals who wish to complain about an advertisement published by an organisation subject to a self-regulatory body in another country can complain to their own national regulator who will assist by referring the matter on to the relevant regulator.²⁹

62. An alternative, much more ambitious, approach would be to support the development of effective self-regulatory systems operating at the regional or even international level, incorporating their own codes of fundamental ethical standards and dispute resolution procedures. As indicated above a number of European and international organisations, such as the European and International Federation of Journalists have developed codes that cross domestic borders. Further consideration should be given to how this increasingly important matter can be resolved in the public interest.

7. War propaganda and hate speech: international legal limits for the media

63. Self-regulatory action by the media can only take place within the legal limits of media freedom. While it is not possible to refer to all general laws regulating media content, hate speech has become of particular concern in Europe. As there is no clear definition of hate speech, ethical considerations may be applied in the grey area around it, although hate speech as such is to be punished by law in accordance with international legal standards. Therefore, it is important to recall also such limits in this context.

64. Article 20 of the United Nations International Covenant on Civil and Political Rights (ICCPR) is the foremost universal standard against war propaganda and hate speech. It stipulates: "(1) Any propaganda for war shall be prohibited by law. (2) Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law." The second part of Article 20 has been analysed and interpreted internationally (see, for example, Article 19 (b), 2010) and was further developed by Article 4 of the United Nations International Convention on the Elimination of All Forms of Racial Discrimination which inter alia stipulates: "State Parties (...) (a) shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof; (b) shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which

²⁸ R(Ford) v PCC, [2001] EWHC Admin 683

²⁹ See the EASA website at <http://www.easa-alliance.org/Home/page.aspx/81>

promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law.”

65. The Committee of Ministers of the Council of Europe adopted in 1997 its Recommendation No R (97) 20 on "hate speech". Hate speech is also addressed by the Council of Europe through its European Commission against Racism and Intolerance (ECRI), which adopted the General Policy Recommendations N° 7 on national legislation to combat racism and racial discrimination and N° 8 on combating racism while fighting terrorism.

66. As regards the prohibition of war propaganda under Article 20, paragraph 1 of the ICCPR, reference can be made to the General Comment No 11 adopted by the UN Human Rights Committee 29 July 1983: "The prohibition under paragraph 1 extends to all forms of propaganda threatening or resulting in an act of aggression or breach of the peace contrary to the Charter of the United Nations. (...) The provisions of article 20, paragraph 1, do not prohibit advocacy of the sovereign right of self-defence or the right of peoples to self-determination and independence in accordance with the Charter of the United Nations."³⁰

8. Conclusions

67. Legislation by States should secure media freedom and establish its boundaries; thus no "external" interference by public authorities shall be admissible unless clearly provided therein. Corporate policies of individual media outlets are the expression of free choices by the media themselves. Such corporate policies may establish procedures or editorial rules on media content which, to some extent, limit the freedom of individual journalists or other employees or contractors. Between these two levels, there is a space for the "codes of ethics", established in particular at national level.

68. As the Parliamentary Assembly of the Council of Europe stated in its Resolution 1636 (2008) on indicators for media in a democracy 'Media should set up their own self-regulatory bodies, such as complaints commissions or ombudspersons, and decisions of such bodies should be implemented' (para 8.25). In practice there is a rich and varied history of self-regulation in the media sector across Europe, with self-regulatory systems operating at both national and regional levels, within individual firms, and within and across media sectors. Many of the domestic systems, which vary significantly depending on the political, economic and cultural environment, attract a high level of both public and industry support. Self-regulatory systems are, however, prone to certain failures, notably limited coverage and weak enforcement, and there is a real opportunity to draw on experience at the European level to strengthen and enhance the existing regimes.

69. Key challenges facing self-regulatory systems in Europe today are the need to respond to media convergence and an increasingly international media environment. The gradual accretion of new self-regulatory systems over time, alongside state and co-regulatory initiatives, has created an unduly complex regulatory landscape in certain countries, one that it is difficult for individuals to navigate and where there may be significant gaps in the protection offered the public. Consideration should thus be given to rationalising existing frameworks and moving beyond a medium specific focus. A number of regulators, such as the Press Council in Denmark, have already gone a considerable way in adapting to this new environment and have opened up membership to online publishers that are subject to editorial control. The challenge of international distribution has received rather less attention to date and further work needs to be done to develop viable systems of co-ordination or supra-national regulation within Europe, drawing on the experience in other sectors such as advertising.

70. Self-regulatory codes require continuous review and revision and further efforts should be made by those overseeing such codes to ensure that they are kept up to date. Comparison of the various regulatory regimes in Europe can reveal gaps or suggest improvements in relation to both substantive and procedural requirements. It is suggested that enhanced dialogue among the various national press councils be taken forward, possibly through the Alliance of Independent Press Councils in Europe, in co-ordination with interested citizens, consumer, industry, and press freedom organisations. Such dialogue would seek to identify and lead to the publication of best practice among the members and to address common concerns, such as the degree of oversight publishers should apply to user-generated content hosted on their sites.

71. Particularly at the procedural level there is considerable diversity in approach across Europe and although care needs to be taken in transplanting specific provisions outwith the home environment, there is scope to consider from a comparative perspective matters such as the role of own initiative investigations; time limits for bringing proceedings, particularly in relation to online content; the respective merits of

³⁰ See <http://www.ohchr.org/Documents/Issues/Opinion/CCPRGeneralCommentNo11.pdf>

mediation and adjudication; the desirability of appeal procedures; the effectiveness and implications of financial sanctions; and the extent to which decisions of the regulatory body are published, accessible and searchable.

72. The phone-hacking scandal in the UK has underlined the importance of a workplace environment in which ethical issues can be openly addressed and where staff are treated with respect. The role of media self-regulatory bodies should ideally extend beyond the resolution of public complaints to supporting, through monitoring and training, the development of such a climate. The explicit articulation and publication by firms of their own ethical standards is to be encouraged and firms should be expected, as a term of membership, to support collective representation on the part of their staff. To the extent that self-regulatory bodies open their doors to professional and amateur publishers that do not work within established media organisations, as in the Danish context, they can themselves offer a valuable point of contact and forum for ethical debate.

73. Systemic failures in certain self-regulatory systems have encouraged a number of states to seek to enhance the effectiveness of those systems through statutory intervention. Experience in Denmark and Ireland suggests that it is possible for carefully crafted state measures to be introduced that do not undermine the independence of the media (ranked 7th and 16th in the Reporters without Borders World Press Freedom Index for 2014). In contrast, state initiatives in the UK have been fiercely opposed by the press and rendered largely ineffective. By requiring a recognised self-regulatory body to provide an arbitration service for civil claims a very direct and controversial link was being made between the self-regulatory regime and the protection of legal rights. The UK experience suggests that states considering intervention to support self-regulation in the media sector should take care to ensure that their measures work with, rather than potentially distort, the regulatory regime in question.