From journalistic ethics to fact-checking practices

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FROM JOURNALISTIC ETHICS TO FACT-CHECKING PRACTICES:
DEFINING THE STANDARDS OF CONTENT GOVERNANCE IN THE FIGHT
AGAINST DISINFORMATION

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Abstract

This article claims that the practices undertaken by digital platforms to counter disinformation, under the EU Action Plan against Disinformation and the Code of Practice, mark a shift in the governance of news media content. While professional journalism standards have been used for long, both within and outside the industry, to assess the accuracy of news content and adjudicate on media conduct, the platforms are now resolving to different fact-checking routines to moderate and curate their content.

The article will demonstrate how fact-checking organisations have different working methods than news operators and ultimately understand and assess ‘accuracy’ in different ways. As a result, this new and enhanced role for platforms and fact-checkers as curators of content impacts on how content is distributed to the audience and, thus, on media freedom. Depending on how the fact-checking standards and working routines will consolidate in the near future, however, this trend offers an actual opportunity to improve the quality of news and the right to receive information.

Keywords: Disinformation, Media Freedom, Journalistic Ethics, Platform Responsibility, Fact-checking.
Introduction

The European Union, like several other organisations at the national and international level, has intensified its efforts to fight disinformation in recent years. Central to the EU’s strategy is the role envisaged for online platforms: by developing their own internal policies and partnering with independent fact-checking organisations, platforms are encouraged to prioritise information deemed as trustworthy, and demote false or misleading content.

Against this background, this study is specifically concerned with how digital platforms, with the official underpinning provided by the Code of Practice on Disinformation, rely on fact-checking to curate content. Somehow surprisingly, what remains most difficult to discern about the whole project is whether it ultimately belongs in the tradition of journalism, or if instead it marks a shift towards new ways of assessing information for its truthfulness. Mixed signals about its nature come from both the way the authorities present the project, and the nature of the parties involved. On the one hand, EU authorities have made explicit their consideration of fact-checking and journalism as closely connected, one in continuity with the other, defining the recent rise of fact-checking ‘as an integral element in the media value chain, verifying and assessing the credibility of content based on facts and evidence’.1 The Code explains that relevant indicators should be based on objective criteria, endorsed by news media associations, and in line with journalistic principles and processes.2 In support of this view, several of the partner organisations contributing fact-checking work, like the Journalism Trust Initiative and the Trust Project,3 two consortia that aim to develop indicators for trustworthiness of journalism, have indeed direct ties in the journalism industry and a clear commitment to upholding its established professional norms and ethics. But, on the other hand, other circumstances seem to suggest a drift away from journalistic standards towards different standards and practices. Some partners drawn upon a more diversified wealth of expertise, like the Credibility Coalition which comprises ‘researchers, academics, students, policy-makers, technologists and engaged non-specialists’,4 amongst others. Different signals, as it will be illustrated in the remainder of this article, may lead to thinking that the collaboration between platforms and fact-checkers will soon bring new working methods and substantive standards for the assessment of trustworthy content to replace those presently in place.

There is, of course, no immediate reason why digital platforms should in principle bear an expectation, let alone a duty, to implement the internal standards of a different industry. In fact, recent academic works have discussed how digital platforms are not bound by the same editorial principles as media outlets, nor by the same legal obligations, and their efforts to moderate content respond instead to a combination of political pressure and economic interests.5

Journalism standards, however, have a long and deep-rooted history of being used by external decision-makers, including courts of law and, most notably, the European Court of Human Rights, in decisions concerning the limits of press freedom and the special privileges granted to publications of public interest. A change of standards would thus have very direct and material consequences, and involve larger questions, such as the nature of quality journalism, who is called to define and assess it, and how such content is distributed and made

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2 Ibid., par. II.D.
4 Credibility Coalition, ‘Who we are’ <https://credibilitycoalition.org/who-we-are/>.
available to the public. Up until this very moment, these decisions have been a prerogative of professional bodies within the industry, and courts have been relying on those standards out of respect for the authoritativeness of journalistic routines and traditions and, ultimately, media freedom. But now, as the authority over such decisions shifts towards different actors and entities, the journalism industry appears on the brink of losing control over those traditional prerogatives; and in turn, the impact of this shift will cascade down onto the right of the public to receive information.

In light of the above, this article will, in the first place, investigate whether digital platforms and fact-checkers who collaborate with them are steering away from established journalistic standards towards alternative tests. To answer this question, the analysis will focus on how signatories’ actions against disinformation compare to journalistic professional standards. As it will be demonstrated below, although the fact-checking industry is still undergoing a process of consolidation of its working ethos and methods, significant discrepancies from the standards of journalistic accuracy are already emerging.

The significance of this shift resides in the expectation that the signatories of the Code establish sui generis standards of accuracy, substantively different, but functionally equivalent to those developed in the news industry and used by the European Court. Therefore, the EU strategy to counter disinformation, which asks private companies to enforce public policy objectives, can be ascribed to the growing momentum of privatised regulation of speech, a trend taking place at multiple levels – both national and internationally – over the last few years.

The analysis will unfold as follows: first, the range of actions that platforms take in compliance with the Code will be illustrated in detail, explaining why they amount to a form of privatised content curation and their impact on the right to receive information. Second, the origin and aims of principles of ethics and good practice in professional journalism, and how they have been used outside the realm of professional self-regulation, particularly by the European Court of Human Rights, to grant enhanced protection to media operators, will be examined. Afterwards, the current practices of fact-checking organisations, their origin and aims will be compared to those of journalism, to understand the extent and impact of the switch. Finally, the impact on the current media landscape and on the fight against disinformation will be discussed.

**The European Union’s strategy against disinformation and the Code of Practice**

Since the outbreak of the disinformation crisis in 2016, several initiatives have been taken at multiple levels to counter the issue. Among the most comprehensive and wide-ranging is the European Union’s strategy launched in 2018. In April of that year, the EU adopted a Communication on ‘Tackling Online Disinformation’ which formed the basis for the development of a Code of Practice on Disinformation. Finally, in December, a joint Communication announced the Action Plan against Disinformation.

The Communication defines disinformation as ‘verifiably false or misleading information that is created, presented and disseminated for economic gain or to intentionally deceive the public, and may cause public harm’. The same definition was reprised in the Action Plan and in the Code of Practice.

The definition proposed by the EU authorities builds on a Report prepared for the Council of Europe proposing a three-fold categorisation comprising the notions of mis-, dis- and mal-information, respectively defined as information that is false, but not harmful; false and ‘knowingly

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6 Communication (n 1).
shared to cause harm’; and genuine, but nonetheless harmful.9 The Action Plan also clarifies the scope of application of the different measures proposed, explaining that they would only target ‘disinformation content that is legal under Union or national law.’10

The Action Plan adds three new elements to the definition of disinformation: the falseness of the information needs to be verifiable, or otherwise the information needs to be misleading; falseness does not equate a reporting mistake; finally, as a category, disinformation includes content otherwise lawful. The Code of Practice was signed by online platforms such as Facebook, Google and Twitter. Other signatories include the technology company Microsoft (owner of the search engine Bing), software community Mozilla, and various members of the advertising industry. TikTok signed the Code in June 2020. The signatories to the Code are expected to take a range of actions to minimise the spread of disinformation, and to write an annual account of their work: the first baseline reports were published in January 2019. In the wake of the Covid-19 pandemic, a Joint Communication11 outlined the expectation that platforms take further efforts to counter disinformation related to the disease; from July 2020, the signatories have started a monitoring and reporting programme on the actions taken in this respect, and in September the Commission published a general assessment.12

The Code’s requirements

The actions envisaged typically do not require that content is removed; they require, instead, to restrict its visibility and distribution, or to increase the visibility of trustworthy content. The second annual assessment of the Code reported that, as part of the action taken under pillar D (Consumer Empowerment) of the Code, platforms have reduced the distribution of content fact-checked as false or misleading,13 at times in a way that raised concerns or criticism: for instance, political parties across Europe reported problems of ‘editorial censorship’14 during the campaign for the 2019 European election. The Code has a distinct focus on advertisements; the signatories are expected to scrutinise ad placements and disrupt monetisation incentives for advertisers who misrepresent material information, potentially in partnership with fact-checking organisations.15 Political advertisement, in particular, needs to be made ‘clearly distinguishable from editorial content’16 and its sponsors and expenditure publicly disclosed;17 platforms have to provide a ‘working definition’18 of issue-based advertising.

The Code refrains from requiring platforms to delete or prevent access to content solely based on its falsity; instead it aims to empower users to access valuable information more easily with the avail of technological tools. In this respect, the signatories committed to develop ‘effective indicators of trustworthiness in collaboration with the news ecosystem’19 and prioritise ‘relevant, authentic and authoritative information’20 through apposite technological means. On this basis, the Code foresees the Commission supporting the creation of an

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10 Action Plan (n 11), 1.
12 Assessment of the Code of Practice on Disinformation (n 3).
13 Ibid., 6.
14 Ibid., 26.
15 Code (n 7), Commitment #1.
16 Ibid., Commitment #2.
17 Ibid., Commitment #3.
18 Ibid., Commitment #4.
19 Ibid., Commitment #7.
20 Ibid., Commitment #8.
independent European network of fact-checkers ‘to establish common working methods [and] exchange best practices’ as a first step, and subsequently launching a European online platform on disinformation to facilitate ‘cross-border data collection and analysis tools’ to enable the network to act as trusted flaggers. The Code requires the signatories to ‘support good faith independent efforts to track disinformation and understand its impact, including the independent network of fact-checkers facilitated by the European Commission upon its establishment’.

Since the outbreak of the Covid-19 pandemic, platforms have been faced with expectations of taking up an ‘intensified role’ to contrast the risks of medical disinformation by promoting authoritative information from the World Health Organisation and health authorities at the national level. Platforms have responded by adjusting their moderation policies: for instance, in May 2020 Twitter introduced a new label and warning message to contextualise tweets that may contain disputed or misleading information related to the disease and launched a search prompt service aimed at pointing users towards authoritative sources of information about 5G and Covid-19. Other platforms intervene more decisively on the way information is presented to the public: TikTok uses ‘stickers’ and in-app notices to redirect users to information coming from trusted sources, while Google and YouTube prioritise and elevate content coming from health authorities and authoritative sources.

The signatories’ actions against disinformation

The combined effect of these commitments has fuelled close partnerships between the signatories and independent fact-checkers; while in some cases, such as Google, partnerships began well before the Code, thanks to these commitments the collaboration has now scaled up to a further level.

Facebook’s Third-Party Fact-Checking programme builds on a collaboration between the platform and an ever-increasing number of fact-checkers from different countries. UK-based fact-checkers Full Fact shared in their 2019 report some operating details of the agreement. Fact-checkers receive from Facebook a queue of content pre-identified as possibly false; Full Fact was able to understand that each queue is specifically generated for the territory where the fact-checking organisation operates and is based on a combination of users’ flagging and algorithms, although even the partner fact-checkers do not know the specificities of how the queue is generated.

Facebook explained that content submitted to fact-checkers for review can include any ‘public, newsworthy Facebook and Instagram posts, including ads, with articles, photos or videos’. Fact-checkers assess the content and assign it one of nine possible ratings, such as False (i.e. ‘factually inaccurate’), Partly False, True, False Headline (i.e. when the ‘primary claim(s) of the article body content is/are true, but the primary claim within the headline is

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21 Ibid.
22 Ibid.
23 Ibid., Commitment #12.
26 Response from TikTok to the European Commission Communication on Covid-19 Disinformation, 5-6.
factually inaccurate’), Not Eligible (i.e. the claim is ‘not verifiable [or] was true at the time of writing’), Satire, Opinion or Prank.30

Basing on the fact-checkers’ assessment, Facebook can adopt a range of actions. These include, in the first instance, prioritising trustworthy content and empowering users to make informed choices regarding the content they access.31 Content considered to compromise the authenticity of the platforms can be down-ranked and de-prioritised, and publishers who repeatedly share disinformation could see the distribution of their pages reduced and their ability to monetise and advertise removed.32 Full Fact understands that Facebook would reduce the distribution of stories ranked as False, Partly False or False Headline.33 Fact-checkers’ monitoring may extend to links shared on Facebook from other social media domains or hosting sites, although the platform would not be in the position to reduce the distribution of such sites or their ability to monetise and advertise.34 In its first baseline report, Facebook noted that when a story is rated as false by fact-checkers, its distribution in News Feed and future views are cut by more than 80 percent.35

A notable feature of Google’s approach is not to define disinformation per se;36 instead, its approach to curation revolves around the concept of quality, which forms the bedrock for ranking webpages in search results: the higher the quality of a page, the more it is elevated to visible positions in Search or News.37 Google News’ ranking could give ‘additional importance’38 to a webpage’s newsworthiness or journalistic value, and more restrictive content policies operate against sites that engage in ‘coordinated activit[ies] to mislead users’ through impersonation or misrepresentation.39 The same standards apply to YouTube’s Breaking News and Top News shelves which elevate content from sources deemed as authoritative according to those parameters.40

Google’s curation depends partly on internal ranking systems and partly on collaborations with external partners. The ranking system, however, is not strictly dependent on factual accuracy, but rather on a more complex assessment of criteria such as expertise, authority, and trustworthiness of the source of the content;31 it is said to be entirely dependent on algorithms rather than human intervention,42 although human raters perform evaluations of search results to help train the algorithms.

Since 2017, Google has extended to EU countries its fact-checking programme originally implemented in the US; the programme, developed in partnership with the

30 Ibid.
33 Full Fact (n 28) 11.
34 Facebook (n 37).
37 Ibid., 12.
38 Ibid., 11.
39 Ibid.
41 Google (n 36) 12
42 Ibid., 11.
International Fact-Checking Network (IFCN) and Duke University’s Reporters’ Lab,\textsuperscript{44} allows the search engine to add a ‘Fact Check’ label to news articles to increase their visibility: tagged articles appear in an expanded story box on Google News landing page.\textsuperscript{45} The company is also supporting initiatives to develop trustworthiness and credibility indicators for online sources with other external partners (the Trust Project and the Credibility Coalition).\textsuperscript{46} Like Facebook, Google too joined in 2019 the FactCheck EU initiative led by the IFCN.\textsuperscript{47}

Microsoft noted in its report that disinformation may appear in both organic and paid results on its search engine Bing, and the company ‘strives’ to rank trusted and authoritative news first in its organic search results.\textsuperscript{48} Although Microsoft’s policies explicitly prohibit misleading ads,\textsuperscript{49} the company acknowledged in its report that the case of political and issue-based advertising is ‘more complex’ due to the lack of a common definition across jurisdictions.\textsuperscript{50} Since mid-2019, Microsoft has banned from its services ads for election-related content, political candidates and parties globally.\textsuperscript{51} The company reported that over the course of five months in 2019 it prevented almost 3 million political ads from being displayed in EU countries.\textsuperscript{52}

In an effort to provide reliable information through its Microsoft News service, the company has entered into partnerships with ‘over 1000’ news providers deemed reputable\textsuperscript{53} and with U.S.-based fact-checking service NewsGuard. NewsGuard reviews news websites and assigns them a Red or Green Reliability Rating.\textsuperscript{54} The company’s search engine Bing also implements a label called ‘Fact Check’; when news articles or webpages can demonstrate to contain fact-checked information and adhere to certain standards (transparency of analysis and sources; ease of access for claims and conclusions for the readers; a summary of the final evaluation) Bing will display a tag to flag up the content’s trustworthiness.\textsuperscript{55} Microsoft intends to further develop the feature so that its users ‘will be exposed to fewer sites of low reliability (including sites disseminating disinformation)’\textsuperscript{56} in the future.

Twitter represents a partially different case: the company did not subscribe to the Code’s commitments to develop trustworthiness indicators for new sources and prioritise authentic content. For a long time, Twitter employed the same policy for advertising of all kinds, holding political ads accountable against the same standards as other content of commercial nature; the platform’s policy included principles of honesty and high editorial standards that advertisers were required to abide by.\textsuperscript{57} In its baseline report, the company expressed its scepticism towards the idea that fact-checking would be the only effective way

\textsuperscript{44} Reporters’ Lab, ‘Fact-Checking News’ \textit{<https://reporterslab.org/fact-checking/>}.
\textsuperscript{46} Google Report, 18.
\textsuperscript{47} Chase (n 35), 22.
\textsuperscript{48} Microsoft, ‘Microsoft Self-Assessment and Report on Compliance with the EU Code of Practice on Disinformation’ (2019) (Microsoft Report), 3.
\textsuperscript{49} Microsoft, ‘Misleading Content Policies’ \textit{<https://about.ads.microsoft.com/en-us/resources/policies/misleading-content-policies/>}.
\textsuperscript{50} Microsoft Report, 5-6.
\textsuperscript{51} Ibid., 6.
\textsuperscript{52} Ibid., 6.
\textsuperscript{53} Ibid., 11.
\textsuperscript{54} Ibid., 12.
\textsuperscript{56} Microsoft Report, 14.
to tackle disinformation, as in fact the (allegedly excessive) focus on truth or falsity would overshadow the problem of emotional manipulation tactics in disinformation campaigns. However, in an apparent change of direction, the platform first introduced a global ban on the promotion of political content in late 2019 and then, after the much-discussed move to place a fact-check warning on some of the U.S. President Donald Trump’s tweets in May 2020, it went on to introduce more of such labels on large numbers of coronavirus-related content.

European Commission Vice-President Věra Jourová promptly praised Twitter’s decision; almost contemporaneously, the European Digital Media Observatory (EDMO) launched in June 2020 bringing together fact-checkers, academics, media organisations and other relevant stakeholders to foster joint endeavours, exchange best practices, and provide recommendations to policymakers at national and European level on responses to disinformation ‘including self and co-regulation’. The Vice-President’s statement to the press and the launch of the EDMO come as the latest evidence of the strong emphasis that the EU is placing on private companies’ policies, and how quickly the focus on fact-checking as a tool for content governance is scaling up.

**Content governance and its impact on freedom of expression**

As shown in the survey above, the measures taken in compliance with the Code in most cases fall short of removing content; instead, platforms intervene on the ranking and findability of information. In this section, it will be illustrated how these emerging practices can be conceptualised against the background of freedom of expression, and how the types of moderation and curation envisaged in the Code are examples of a wider trend of privatised governance of media content.

Compared to more draconian laws passed to tackle the issue of ‘fake news’ in several countries in the last few years, oftentimes raising concerns for their lack of compliance with international human rights standards, the Code attempts to fight disinformation by facilitating access to authoritative sources ‘while at the same time preserving the freedom of expression’, at least in the intentions of EU authorities. The impact of content governance frameworks like this, however, should not be too easily dismissed as these measures still raise significant implications for the free flow of information.

Practices like those undertaken by digital platforms in compliance of the Code of Practice raise a conceptual challenge to the protection of freedom of expression under human rights frameworks. Although the notion of ‘interference’ with freedom of expression has been traditionally understood as factual restrictions to publication imposed by public authorities, the

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64 European Digital Media Observatory, ‘Policy’ [https://edmo.eu/policy/](https://edmo.eu/policy/).
concept is now often framed in more comprehensive terms, so to account for more different kinds of hurdles imposed on speech, and to consider a possible indirect horizontal application of the safeguards provided by Article 10 ECHR, at least in the fields of privacy and defamation law.67

Following this direction, both international institutions68 and scholarly literature69 have recently moved on to a rounder appreciation of the comparable effects of public and private restrictions on freedom of expression. Content moderation and curation have been described as instances of ‘soft control’ (as opposed to forms of ‘hard control’ such as removals and take-downs)70 and a ‘major concern’ due to their currently uncertain shape, which the human rights community should endeavour to understand and conceptualise better.71

A useful framework to understand the role of platforms’ content moderation and curation is through the prism of the governance approach, a theoretical perspective which posits platforms’ moderation and statutory regulation by law as the horizontal and vertical dimension, respectively, of media governance – thus effectively capturing the alternative but ultimately complementary nature of public and private entities. In the context of disinformation, platforms’ governance has been interpreted as a form of accountability in response to the key role played in facilitating the distribution of content.72

Civil society organisations have oftentimes expressed concerns for the severe impact that these practices can spark on the right to access information, especially for the most vulnerable categories of users.73 A specific concern about soft control resides in the lack of transparency and extreme centralisation of the procedures through which such rules are formed, compared to the traditionally more open and participatory democratic legislative procedures.74 Activists75 and academics76 have called on multiple occasions for platforms’ content governance to be underpinned by principles of legal certainty and transparency, and to allow for external accountability.

Academic authors have already noted how the Code of Practice belongs in this broader trend of privatised regulation of speech, since it assigns a responsibility to enforce public policy objectives to private companies.77 Its transformative impact on a series of established key

70 JC York and E Zuckerman, ‘Moderating the Public Sphere’ in Jørgensen (n 69) 137, 140.
71 Ibid., 154.
72 F Saurwein and C Spencer-Smith, ‘Combating Disinformation on Social Media: Multilevel Governance and Distributed Accountability in Europe’ (2020) 8 Digital Journalism 820.
74 York and Zuckerman (n 70) 155.
77 A Kuczerawy, ‘Fighting online disinformation: did the EU Code of Practice forget about freedom of expression?’ in G Terzis et al. (eds), Disinformation and Digital Media as a Challenge for Democracy (Intersentia, 2020) 291.
principles of media governance has also been acknowledged, for instance noting that it requires re-adjusting principles such as transparency, impartiality and equality of opportunity for all contenders in political campaigns, amongst others, to the on-line environment.\(^78\)

Crucially, the transparency of content moderation is a key safeguard against the risk of over-censorship on private platforms; unfortunately, at present, the shift from journalistic to fact-checking standards is marred by little to no transparency. Academic literature in the field of communication studies has recently started grappling with the novelty of this approach, noting a general lack of detail concerning the methodological frameworks proposed by the European Commission and questioning the effectiveness and efficiency of fact-checking initiatives.\(^79\) The recent Draft Opinion released by the EU Parliamentary Committee on Culture and Education expresses a largely similar concern, noting that new forms of control may be on their way to replacing established forms of independent oversight for journalistic content.\(^80\)

Platforms’ moderation and curation are thus emerging as a form of horizontal governance which complements – but often, quite subtly, replaces – public authorities’ vertical governance. The next two sections will demonstrate that, within the context of this emerging governance framework, platforms are beginning to use fact-checkers’ standards as a functional complement – or rather, alternative – to journalism rules of accuracy, and discuss the significance of this shift to media freedom.

**The notion of accuracy in journalistic ethical standards**

Professional journalism has a longstanding tradition of resorting to the principle of accuracy and other ethical standards to assess the integrity of news content. Before comparing these standards, in the next section, to those of independent fact-checkers implemented by the signatories to the Code, this section will explain how journalistic standards were most commonly developed and applied internally as a matter of self-regulation within the news industry, only to be adopted, at a later stage, by regulators and even courts, including the European Court of Human Rights, in their overseeing of the media industry. The re-purposing of professional standards outside the original self-regulatory domain has however often proven controversial or given unsatisfactory results, and it is possible that this historical origin could make journalistic standards an imperfect fit to protect the public right to receive information – a crucial difference compared to fact-checkers’ standards.

**The normative value of accuracy in journalism’s ethical standards**

Historians of journalism generally acknowledge that the centrality of the value of truth-telling in journalistic practices pre-dates the beginning of modern journalism. Press editors in 17\(^{th}\) century England established routines of ‘facticity’, and the development of consolidated methods became central to lending them reliability.\(^81\)

Several studies have claimed the universality of the principle. Truth-telling has been identified as a ‘fundamental norm for communication ethics in all cultures, though within

\(^78\) I Nenadić, ‘Unpacking the “European approach” to tackling challenges of disinformation and political manipulation’ (2019) 8:4 Internet Policy Review.

\(^79\) T Pavleska et al., ‘Performance analysis of fact-checking organizations and initiatives in Europe: a critical overview of online platforms fighting fake news’, in Terzis (n 77) 217.


different culture-specific exceptions; an international survey of media ethics literature identified three universal concerns such as the research of truth, the need of responsibility and accountability, and the value of freedom of expression. Comparative studies have also suggested that ‘the search for truth and objectivity is a universal feature of global media ethics.’

In the context of modern journalism, the emphasis on accuracy originated in the 1930s as a response to World War I propaganda: until that time, journalistic objectivity was considered as synonymous with neutrality; however, as it became clear that absolute neutrality was an unattainable goal, a ‘gradual evolution of the norm of objectivity in journalism has involved a shifting away from the focus on “neutrality” and toward a foregrounding of “accuracy,” “balance,” and “fairness”.’

Scholarly literature in the fields of media and journalism studies as well as sociology consistently refers to the notion of accuracy as a process, rather than a quality of the final product of journalistic activities. On the one hand, the notions of accuracy and objectivity have been used in a discursive manner to define and protect the boundaries of a professional space and identity; a claim of objectivity, it has been argued, ‘acts as both a solidarity enhancing and distinction-creating norm and as a group claim to possess a unique kind of professional knowledge’; in other words, it creates a sense of professional kinship and defines the boundaries of the professional community. On the other hand, the same notions have been used in a normative manner to regulate the profession and protect those who exercise it from external claims of untrustworthiness. Proposed views of objectivity such as ‘an operational definition ... which presumably tells us [journalists] what we must do in order to justify an assertion that some particular finding is objective’ reveal that the notion has been instrumentally adapted to describe both a set of professional practices and their normative value.

Journalism studies have captured this shift from discursive to normative value by coining the definition of objectivity as a ‘strategic ritual’, meaning that at one point objectivity has become perceived as compliance with ‘a set of procedures discernible to the news consumer’, and, by demonstrating such compliance, journalists could shield themselves from external criticism. Objectivity became a routine to adhere to as it would provide at the same time both professional legitimisation and protection, to the point that the two objectives become almost indiscernible. A crucial way for institutionalised rituals to provide authoritativeness and protection was to legitimise the establishment of professional jurisdiction over the news industry, as it typically happens when professional associations build internal mechanisms and reclaim for themselves the authority to oversee the respect of dictated conducts from their own members.

86 Ibid., 119.
88 G Tuchman, ‘Objectivity as Strategic Ritual: An Examination of Newsmen’s Notions of Objectivity’ (1972) 77 American Journal of Sociology 660, 677.
89 Ibid., 661.
As the press gradually increased its institutional role in society, the principles of accuracy and completeness of information, prerequisites to the rational formation of public opinion, became central objectives for public authorities governing the media industry, although with a new and different focus. Human rights mechanisms for the protection of freedom of expression (both at the international, e.g. the International Covenant on Civil and Political Rights, and regional level, e.g. the European Convention on Human Rights) have developed, since after World War II, with a distinct aim to inform and educate the public; then, as media freedom gradually emerged as an autonomous notion, the protection of information as an essential public good became increasingly central throughout the 1970s (through the global recognition of political human rights) and even more so from the 1990s with the emergence of digital information technologies.

Media freedom today maintains a dual nature, and it is widely understood to protect both an active side (the media’s right to impart information) and a passive side (the right of the public to be informed on issues of social relevance). This duality has led to a further divide between self- and external regulatory frameworks, in that external regulation, especially the international layer, appears less neutral about the role of the press in society and more preoccupied with its accountability to the public. It has been observed that human rights mechanisms for the protection of media freedom are skewed towards a specific libertarian notion of press freedom that envisages a media sphere able to stand up to government (the idea of the watchdog press) and a set of safeguards to enable it. While the active side of freedom of expression is tendentially indifferent to the nature of the speaker and, within limits, to the content conveyed, the passive side is more susceptible to qualifications and conditions. A fundamental distinction between the two is that, while they are both nominally concerned with the value of accuracy, from the perspective of the right to impart information accuracy counts as a set of procedures to abide by (procedural truth) in the interest of giving journalists legitimation and protection; from the perspective of the right to receive information, accuracy counts as a characteristic of news stories (objective truth) in the interest of providing the public with valuable information. Whether both these interests can be adjudicated by the same standards, is a question that lawmakers have traditionally answered by demanding that journalistic ethical standards cater for both and trying to strike a difficult balance between self- and external regulation.

**Ethical standards between self- and external regulatory frameworks**

The role of ethical standards within the regulatory framework of journalism is complex. On a principled level, media’s ethical and legal obligations ought to be considered as different domains, the former belonging to the realm of self-regulation and the latter enforceable in courts. In practice (and not without criticism from prominent academic voices), the two domains often overlap, both at the national level and in the European Court of Human Rights’ practice.

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96 Perkins (n 82) 203-205.
97 Oster (n 67) 47.
Academic research over the last couple of decades has mapped the specific conducts prescribed by ethical codes in European Countries with significantly consistent results. The large majority of existing professional codes for journalists makes aspirational references to the values of freedom of expression, the right to impart information and the watchdog role of the press; the principles of truth and accuracy are amongst the most common in a comparative perspective, typically consisting of the duties of verification, separation of facts and opinions, and to correct mistakes. Codes generally confirm the principle that procedural truth does not equate objective truth and it suffices for journalists to establish a core ‘foundation of widely agreed upon facts in [their] stories’ to be viewed as credible. Accountability mechanisms for journalism are, however, rarely entirely internal: comparative analyses have shown they can have lower and higher levels of institutionalisation, and originate from within or outside the journalistic profession to varying degrees. Earlier research from the mid-1990s found that the level of institutionalisation of governance bodies does not impact to a significant extent on the content of the rules, with the partial but significant exception of codes adopted by press councils (rather than journalist unions or media outlets) generally paying more attention to promoting accountability towards the public.

The dynamic between self- and statutory regulation has proven a challenging phenomenon to capture: on the one hand, a tendency for self-regulatory codes of practice, stemming from the tradition of the print industry, to become the preferred arrangement for Internet content and to impose more stringent requirements than ordinary law has been observed since at least the early-2000s. On the other hand, a trend towards the institutionalisation of media self-regulation through state recognition by law has been noted, raising concerns that, while possibly improving the efficiency of the system, it could lead to political interests taking back control and to media outlets’ self-censorship in the longer run, especially in more fragile democracies. The two trends can be explained in terms of new hybrid forms of media accountability, where self-regulation is encouraged, recognised or overseen by public authorities, emerging at least in part as a response to widely discussed instances of self-regulatory mechanisms failing to prevent journalistic malpractice, such as the News of the World scandal leading to the Leveson Inquiry in 2012. Recent comparative research demonstrated a widespread scepticism surrounding the effectiveness of self-regulatory institutions in general and press councils in particular, even amongst journalists themselves, whereas media laws were perceived as more compelling mechanisms.

**Latest developments in professional codes**

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99 Ibid.


The most recent developments in journalistic codes of practice in Europe seem to largely confirm these tendencies. In a few cases, new governance structures have moved in the direction of incentivised self-regulation, with a stronger degree of institutionalisation than before. Austria, Ireland and the UK set up new press councils with a significant degree of involvement from state authorities: in Ireland the Press Council was set up by in close contact with the Minister for Justice and approved a Code of Practice in 2008; similarly, in the UK the Independent Monitor of the Press (IMPRESS) was approved by the Press Recognition Panel, a voluntary auditor created by the Royal Charter on Self-Regulation of the Press in 2013, and approved its own standards code in 2017. Finally, the new Austrian Press Council established in 2010 is funded by state authorities, which has been interpreted by commentators as a partial response to pressing calls for co-regulation; the national Code of Conduct for the Press was last revised in 2013.

In other countries, instead, ethical codes have been updated within the pre-existing framework characterised by less (the Guidelines for Journalists developed by the Union of Journalists in Finland were updated in 2013; the Dutch press council, another purely self-regulatory body, updated its guidance in 2018 or more institutionalisation: in Denmark, even in the context of a well-established culture of self-regulation, the ethical guidelines were revised in 2013 in the aftermath of a series of controversies regarding poor journalistic practices which led to increasing political pressure for external accountability; in Italy, a country with a prevalent culture of statutory regulation, the national journalist union passed a new Code of Ethics in 2016; the national journalist union passed a new Code of Ethics in 2016; the Lithuanian Code of Ethics was last updated in 2016 in a joint effort by representatives of professional journalists and the Ethics Commission of Journalists and Publishers, a statutory body which includes both journalists and media owners.

The provisions from these latest codes largely confirm the findings from the existing literature. Amongst the most common obligations are procedural requirements such as the

duties to verify the correctness of information,\textsuperscript{120} keep facts distinct from opinions,\textsuperscript{121} ensure the consistency of all accessory elements (e.g. headlines or images) with the main substance of a story,\textsuperscript{122} and rectify mistakes.\textsuperscript{123} In line with the trend noted in the mid-1990s already,\textsuperscript{124} at least two more codes of ethics (the Finnish Guidelines and the Lithuanian Code of Ethics\textsuperscript{125}) have acknowledged, in recent amendments, the public right to receive information as one of their rationales: in both cases, this newer commitment can be found in codes with a higher degree of institutionalisation. More generic references to the role of the press in a democracy can also be found in the Austrian, Dutch and IMPRESS codes.\textsuperscript{126} The Finnish Guidelines for Journalists even provide a specific requirement that information provided to the audience be objectively truthful,\textsuperscript{127} in stark contrast with the other codes that focus instead on the process, rather than the outcome. The process-focused approach remains the most common, as best exemplified in the IMPRESS Code which requires publishers to ‘take all reasonable steps to ensure accuracy’.\textsuperscript{128} The official Guidance published by IMPRESS clarifies that the requirement of accuracy does not ‘create an absolute duty to publish only incontrovertibly true facts [but rather] means that publishers must take such steps as are reasonable in the circumstances to verify the truth of the information presented.’\textsuperscript{129}

\textbf{Ethical standards before the European Convention on Human Rights}

As discussed above, ethical codes across Europe display a good degree of consistency concerning the obligations they prescribe, even within the context of a notable variety of institutional frameworks underpinning them. The standards of ethical journalism have a long history of being used by the European Court of Human Rights, which in turn has resulted in a further convergence of national standards, as Court’s rulings obliged member states to bring their jurisdictions in line with the ECHR’s threshold of freedom of expression and information.\textsuperscript{130}

On a theoretical level, the European legal system, both at the national and the regional level, has long accepted the idea that media freedom entails some enhanced protections compared to ordinary individuals’ freedom of expression, because of the special role that media play within the public sphere and in facilitating public discussion. The incorporation of professional standards into the Court’s practice has provided the Court with a strong rationale to justify this enhanced protection of media freedom; the special recognition granted to journalistic practices has been defined as a case of ‘occupation-specific freedoms that are derived from a more generic right to freedom of expression’.\textsuperscript{131} Other commentators have

\begin{thebibliography}{99}
\bibitem{120} Austrian Code Art 2.1; Danish Ethical Rules Sec A.1; Dutch Guidelines Sec A; Finnish Guidelines Art 10; IMPRESS Code Clause 1.1; Irish Code Principles 1.1 and 3.1; Italian Code Art 9.d; Lithuanian Code Art 6.
\bibitem{121} Austrian Code Art 3.1; Dutch Guidelines Sec C; Finnish Guidelines Art 11; IMPRESS Code Clause 1.3; Irish Code Principle 2.2; Danish Ethical Rules A.5; Lithuanian Code Art 4.
\bibitem{122} Danish Ethical Rules Sec A.6; Dutch Guidelines Sec C; Finnish Guidelines Art 15; Lithuanian Code Art 8.
\bibitem{123} Austrian Code Art 2.4; Danish Ethical Rules Sec A.7; Dutch Guidelines Sec D; Finnish Guidelines Art 20; IMPRESS Code Clause 1.2; Irish Code Principle 1.2; Italian Code Art 9.a; Lithuanian Code Art 17.
\bibitem{124} Laitila (n 119) 201.
\bibitem{125} Finnish Guidelines, Preamble; Lithuanian Code, Preamble.
\bibitem{126} Austrian Code, Preamble; Dutch Guidelines, Preface; IMPRESS Code, Preamble.
\bibitem{127} Finnish Guidelines Art 8.
\bibitem{128} IMPRESS Code Clause 1.1.
\end{thebibliography}
suggested that journalistic freedom is a ‘distinct branch of freedom of expression’ where journalists avoid state regulation by accepting voluntary restraints.132

On a practical level, the notion of special privileges begs the question of how to assign them in practice. The Council of Europe’s traditional position has been to let the media industry determine its own ethical standards, while at the same time reaffirming the principle that the legitimacy of legal protections rests on the effective respect for the citizens’ right to information and is limited to the provision of truthful and honest information.133 A later Recommendation stressed that the enhanced protection for media operators, even in the context of reporting on issues prima facie of general interest, should be ‘subject to the proviso that they are acting in good faith and in order to provide accurate and reliable information in accordance with the ethics of journalism’.134

Following on this line, the European Court of Human Rights has recognised that the respect of the ‘duties and responsibilities’ mentioned in Article 10 is a necessary condition for the media to enjoy the corresponding safeguards.135 However, legal protection is not strictly conditional on the respect of professional standards: on occasions, the Court found that a lack of respect of such standards would not be, itself alone, enough to justify an interference.136 By contrast, the Court has incorporated existing professional standards in its balancing exercise when media freedom comes into conflict with competing rights,137 avoiding the burden to develop an autonomous system of additional limitations138 while also keeping its own practice abreast of the ever-changing reality of the media industry.139 The Court has made its position explicit by acknowledging that ‘methods of objective and balanced reporting may vary considerably’ and therefore it is not for judges (either at national or supranational level) to ‘substitute their own views for those of the press as to what technique of reporting should be adopted by journalists’.140

Despite a general expectation regarding the ‘essential nature of the veracity of the disseminated information’,141 the Court has emphasised procedural aspects over objective truth, such as acting ‘in good faith and on an accurate factual basis’,142 abiding by the ‘obligation to verify factual statements that are defamatory of private individuals’143 and making efforts to obtain ‘“reliable and precise” information in accordance with the ethics of journalism’.144

Whenever an assessment of truthfulness is included as part of a test to determine the admissibility of a restriction to media freedom, a reference to professional ethics usually

134 Council of Europe, ‘Declaration of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors’, adopted by the Committee of Ministers on 30 April 2014 at the 1198th meeting of the Ministers’ Deputies, par. 6.
136 Krone Verlag GmbH & Co v. Austria (No. 5), App. no 9605/03 (ECtHR, 14 November 2008) 44; Standard Verlags GmbH v. Austria (No. 3), App. no 34702/07 (ECtHR, 10 January 2012) 42-45.
138 D Voorhoof, ‘Freedom of journalistic news-gathering, access to information and protection of whistleblowers under Article 10 ECHR and the standards of the Council of Europe’ in Journalism at Risk (n 130) 105, 110.
139 McGonagle (n 131) 13.
141 Couderc and Hachette Filipacchi Associés v. France App no 40454/07 (ECtHR 10 November 2015) 134.
142 Ibid., 50.
143 Ibid.
144 Halldórsson v. Iceland App no 44322/13 (ECtHR 4 July 2017), 40.
follows straight away. Most relevantly, when the Court looks at the veracity of media statements, it almost automatically equates it with the respect of professional ethics, rather than focusing on objective truth. When the assessment of ‘veracity’ fails, it is normally because of a lack of respect of professional or ethical duties: examples of this kind can be found in Fressoz and Roire where the Court was satisfied that the applicant had verified the authenticity of the documents available.

Similarly to professional codes of conduct, the European Court has acknowledged the distinction between facts and opinions, stressing that the latter cannot be expected to be ‘proven true’ and any such obligation would constitute an infringement on media freedom.

The Court also clarified that media freedom stretches its protection across the whole process of gathering and delivering information, including the early stages of research and investigation and the form in which information and ideas are expressed.

In Stoll, the Court observed several ‘shortcomings’ in how the information was conveyed, including the ‘reductive and truncated’ presentation of the circumstances of the case, an unfitting ‘sensationalist style’, the ‘inaccurate and misleading’ writing. In Halldórsson, the Court acknowledged that the applicant journalist only sought confirmation from the public prosecutor about an ongoing investigation after being sued before a domestic court; in Bédat, the Court blamed the ‘almost mocking tone’ used in a story covering a road incident. A similar line of reasoning has also led the Court, in other cases, to decide against the limitations despite the statements being objectively untrue: in Fuchsmann, the Court was satisfied that the journalists had based their articles on ‘sufficiently credible sources’ such as an official report; in Frisk and Jensen, the Court was convinced that the applicants had met their ethical duties by acting in good faith and conducting ‘substantive and significant journalistic research ... over a period of approximately one year’. In Ólafsson, the Court remarked that the journalists had interviewed ‘several relevant persons’ and presented the (nonetheless incorrect and defamatory) allegations ‘with certain counter-balancing elements’.

The Court’s experience shows an inherent contradiction in repurposing professional standards as legal ones. As discussed above, professional rules of accuracy were originally developed as a way to demarcate reliable speakers from others, whereas the right to freedom of expression is ambivalent in this respect. As opposed to the passive side, the active layer of freedom of expression by definition shuns the very idea of discriminating among different

145 Fressoz and Roire v. France App no 29183/95 (ECtHR 21 January 1999) 54; Pedersen and Baadsgaard v. Denmark App no 49017/99 (ECtHR 17 December 2004) 78; Stoll v. Switzerland App no 69698/01 (ECtHR 10 December 2007) 103; Bédat v. Switzerland App no 56925/08 (ECtHR 29 March 2016) 58; Halldórsson v. Iceland, App no 44322/13 (ECtHR 4 July 2017) 30; Fuchsmann v. Germany App no 71233/13 (ECtHR 19 October 2017) 42; Frisk and Jensen v. Denmark App no 19657/12 (ECtHR 5 December 2017) 70.
146 Stoll v. Switzerland (n 145), 55.
147 Lingens v. Austria App no 9815/82 (ECtHR 8 July 1986) 46; Oberschlick v. Austria (no. 1) App no 11662/85 (ECtHR 23 May 1991) 63.
149 Oberschlick v. Austria, App. no 11662/85 (ECtHR, 23 May 1991) 57.
150 Ibid., 147.
151 Ibid.
152 Ibid., 149.
153 Ibid., 150.
154 Halldórsson v. Iceland (n 144), 52.
155 Bédat v. Switzerland (n 145), 60.
156 Fuchsmann v. Germany (n 145), 44-45.
157 Frisk and Jensen (n 145), 74. An almost identical argument was made in the earlier case Prager and Oberschlick v. Austria App no 15974/90 (ECtHR 26 April 1995), 37.
158 Ólafsson v. Iceland App no 58493/13 (ECtHR 16 March 2017) 54.
159 Ibid., 55.
classes of speakers. Legal and professional standards are at cross purposes or, as it has been suggested, are respectively inclusive and exclusive. The suitability of professional standards to demarcate the boundaries of media privilege without imposing undue constraints on the active side of freedom of expression has been questioned oftentimes. Criticism was raised in particular at those decisions where a lack of compliance with professional standards contributed to rulings against journalists, for the conflation of ethical and legal arguments would result in undue emphasis on journalistic integrity over the public’s right to receive information, overall lowering the level of protection of press freedom.

The experience of professional standards of accuracy applied as indicators of news’ accuracy has produced mixed results until today. On the one hand, the long-standing consolidation of professional practices has allowed for a decent degree of consistency at the European level and their use in external scrutiny over media’s conduct has spared the need for alternative standards imposed by regulators and adjudicators. However, through the years criticalities and doubts have emerged concerning the tension between the original aims of these standards and their suitability in the context of passive rights to receive information. The next section will illustrate the shift marked by fact-checkers’ standards applied by fact-checkers, in respect of both their historical development and practical applications.

**The notion of accuracy in fact-checking practices**

*Background and origins*

In the field of mass media studies, fact-checking is most often described as stemming from the practice of investigative journalism and its separation between facts and opinions, while at the same time representing a point of departure from this tradition, as a reaction to evolving technologies and communications tactics in the political realm which have led fact-checkers to embrace increasingly sophisticated methods borrowed from social sciences.

The departure from journalistic ethos can be traced back to the very early inception of fact-checking practices. A close precedent has been identified in the advent of ad-watching in the late 1980s, in the form of ‘specially denoted sections of the newspaper that analyse[d] political ads to inform the public about claims that are exaggerated or false … designed to educate voters by raising their awareness about the accuracy of the claims in political advertisements’.

From its very beginning, this practice displayed a dual nature, partially in continuity with its journalistic roots, partially entrenched with political communication and therefore ‘expected to improve democratic decision making either by directly helping voters make better decisions or indirectly by affecting the strategic decisions of candidates and their advertising consultants’. This specific aim has contributed to shape the methodological approach, with early ad-watches revealing a ‘tendency to evaluate ads in terms of political strategy’ rather than focusing on accuracy in journalistic terms: a difference so striking as to

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162 L Graves, Deciding What’s True: The Rise of Political Fact-Checking in American Journalism (Columbia UP, 2016), 62-64.


165 Ibid., 51.
being described, from the perspective of traditional media operators, as the ‘wrong substantive focus’.\textsuperscript{166}

Today, a first self-evident distinction between fact-checking and traditional journalism lies in their ‘primary focus’,\textsuperscript{167} which for fact-checking is ultimately outward-looking, as it aims to assess the veracity of reported political claims, whereas the traditional notion of accuracy results in inward-looking procedures aimed to help journalists check for mistakes in their own reporting. Although the success and ever-growing popularity of ad-watches paved the way for the rise of fact-checking in its current form, other broader shifts taking place over the last decade have contributed to its popularity and shaped its current aims, logics and, crucially, methods. Fact-checking is, in the first place, a response to new features of the digital media environment such as user-generated content, social media, and data journalism which have all, in different ways, led to rethink consolidated standards in the field of journalism. Specialised research has identified three major dynamics that are contributing to moving the goalposts of accuracy in the online era. Firstly, the pressure from the ever-greater speed and virality of Internet communications has brought over-stretched newsrooms to rely on external fact-checking services to optimise scarce resources.\textsuperscript{168} Secondly, as lines have become increasingly blurred between new types of content, media outlets have struggled to develop clear and recognisable standards specific to each type, consequently losing credibility in the eyes of the public.\textsuperscript{169} Thirdly, the pervasive use of big data in digital journalism requires media personnel to develop new skillsets to ensure quality and accuracy of data – particularly the way it is selected, interpreted and analysed.\textsuperscript{170}

Broader dynamics in the political arena have raised further challenges: commentators have suggested that the weakening of democratic institutions and a decline in the quality of journalism have led the industry to seek new norms and practices, in an attempt to regain legitimacy.\textsuperscript{171} Some of these practices underly a new form of network logic (such as crowdsourcing information through digital networks), others focus on making declarative metric judgements.\textsuperscript{172} Empirical studies have confirmed the perception of the rise of fact-checking as a challenge to traditional journalism amongst professional reporters, because of a perceived lack of transparency in its processes.\textsuperscript{173}

Fundamentally, fact-checking and traditional journalism are underpinned by different epistemological understandings of the separation between facts and opinions. The style of today’s political communication makes it impossible for fact-checkers to fulfil their role without assessing whether a politician communicates their message to the audience in a way that is, other than just factually correct, also fair and not misleading; this, inevitably, brings fact-checkers to muddle together facts and values, clashing with the opposite approach that traditionally underpins journalism.\textsuperscript{174} This particular concept of objectivity embraced by fact-checkers has been interpreted as based on the scientific method of comparing hypotheses and

\begin{itemize}
    \item \textsuperscript{166} Ibid., 38.
    \item \textsuperscript{167} MA Amazeen, ‘Journalistic interventions: The structural factors affecting the global emergence of fact-checking’ (2020) 21\textit{ Journalism} 95, 97.
    \item \textsuperscript{169} Ibid., 22-27.
    \item \textsuperscript{170} Ibid., 14-16.
    \item \textsuperscript{171} See Amazeen (n 167).
    \item \textsuperscript{172} W Lowrey, ‘The Emergence and Development of News Factchecking Sites’ (2017) 18\textit{ Journalism Studies} 376, 381-382.
    \item \textsuperscript{173} PB Brandtzæg, A Følstad and MÁ Chaparro Domínguez, ‘How Journalists and Social Media Users Perceive Online Fact-Checking and Verification Services’ (2018) 12\textit{ Journalism Practice} 1109.
    \item \textsuperscript{174} Graves (n 162) 77.
\end{itemize}
weighing evidence to adjudicate factual disputes: not the same as, but rather an alternative to mainstream journalistic practices.\textsuperscript{175}

\textbf{Current fact-checking practices}

In light of this theoretical background, it is not surprising if fact-checking practices are internally scattered. The global phenomenon of fact-checking has been described, in the field of journalism studies, as a ‘rare example of a genuinely transnational movement’, while at the same time acknowledging that national practices differ significantly one from another.\textsuperscript{176}

A comprehensive survey on ‘The Rise of Fact-Checking Sites in Europe’ described the landscape as ‘diverse and fast-changing’.\textsuperscript{177} The study sheds light on the complex relationship between fact-checking and journalism across European countries. While the majority of respondents identified as journalists,\textsuperscript{178} the survey found that most permanent fact-checking outlets developed independently outside media companies and operate, especially in Southern and Eastern Europe, as NGOs.\textsuperscript{179} The aims pursued by fact-checkers range from the traditional remit of media outlets such as informing the public and holding politicians to account,\textsuperscript{180} to different pursuits such as promoting ‘specific policy changes’,\textsuperscript{181} resulting in distinct methodologies of work. Some seem to diverge from traditional journalistic practices, for instance developing rating systems to assess political claims or assigning labels to indicate different kinds of factual errors.\textsuperscript{182} Others instead fall squarely into practices from other professional circles such as blind peer review, borrowed from academic research.\textsuperscript{183} Another key finding from the study concerns the scope and objects of fact-checking: in most cases, claims made by politicians are scrutinised, although not infrequently statements made by pundits, journalists and media outlets in general are also checked, seemingly all by the same standards.\textsuperscript{184}

These results are quite in stark contrast with another survey\textsuperscript{185} among professional fact-checkers in the United States, which displayed a more uniform understanding of normative and ethical ideals. The respondents revealed a perception of fact-checking as an activity organic to the core principles of journalism\textsuperscript{186} and distinct from endeavours such as activism and the advancement of social causes.\textsuperscript{187}

From the literature, fact-checking emerges as a global movement with a high degree of internal fragmentation, variedly performed by different actors, including but not limited to professional journalists, political campaigns and party organisations, and third sector organisations; each of these conceives the role in different manners and performs it by different standards and methods.

\begin{footnotes}
\textsuperscript{175} M Coddington, L Molyneux and R Lawrence, ‘Fact Checking the Campaign: How Political Reporters Use Twitter to Set the Record Straight (or Not)’ (2014) 19 \textit{Press/Politics} 391.
\textsuperscript{178} Ibid., 12-13.
\textsuperscript{179} Ibid., 10.
\textsuperscript{180} Ibid., 12.
\textsuperscript{181} Ibid., 14.
\textsuperscript{182} Ibid., 18.
\textsuperscript{183} Ibid., 17.
\textsuperscript{184} Ibid., 19-20.
\textsuperscript{185} P Mena, ‘Principles and Boundaries of Fact-checking: Journalists’ Perceptions’ 13 (2019) \textit{Journalism Practice} 657.
\textsuperscript{186} Ibid., 659-660.
\textsuperscript{187} Ibid., 668.
\end{footnotes}
On the occasion of the 2019 European Parliament election, both Google and Facebook joined a networked initiative called FactCheck EU, which brought together about 20 organisations from different European countries to provide fact checks. The network comprises a range of traditional news companies (e.g. France’s Le Monde) and independent fact-checkers (e.g. Italy’s Pagella Politica, US’s Lead Stories) and is led by the IFCN. IFCN member organisations sign up to a Code of Principles, which requires them to abide by principles of non-partisanship; fairness; transparency of sources, funding and methodology; and openness of their corrections policy.

Some fact-checkers limit their remit to some specific topics, among which politics is by far the most common: Italy’s Pagella Politica, Lithuania’s 15min and Spain’s Newtral only check statements made by politicians. Ireland’s TheJournal.ie similarly reviews statements made by public figures, although its working definition is broad enough to include, alongside elected politicians, anyone ‘in the public eye with an influence over society, economics, politics, sport, culture, and so on’ such as union leaders, academic and activists. France’s Les Décodeurs has a broader approach, as it covers both ‘[s]tatenments from personalities and public bodies’ and ‘[r]umors circulating online, in particular on social networks’. Similarly, Croatia’s Faktograf looks primarily at claims made by politicians, with special attention to whether electoral promises are fulfilled, although it also verifies general stories running on social media. Greece’s Ellinika Hoaxes appears to have a much broader remit comprising a wide range of different topics such as ‘politics, science, technology, social networking phenomena, xenophobia, anti-Semitism’ and even draft laws; Northern Ireland’s FactCheckNI lists topics such as ‘economy, education, elections, Europe (and Brexit), health, immigration, law, and the outworkings of the peace process’. Other outlets base their selection on the qualitative nature of a claim instead of the topic it pertains to from whom it originates: UK’s Full Fact checks stories which display ‘some combination of important, influential and interesting’ features and have a potential to prove harmful or spread widely; Germany’s Correctiv looks at indicators such as a claim’s virality, newsworthiness, dangerousness and potential to spread hatred; Lead Stories focuses on claims that are

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188 See Google Report, 18.
193 15min, ‘„Patikrinta 15min“ taisykles’, https://www.15min.lt/patikrinta-15min/taisykles.
197 Faktograf, ‘Što je i čemu služi Faktograf.hr’, https://faktograf.hr/metodologija/.
200 Full Fact (n 28) 37.
‘somewhat trending’ and ‘likely to have an emotional impact on readers’; 202 Denmark’s TjekDet investigates claims coming from individuals or organisations with ‘some weight in the public debate’. 203 France’s Les Observateurs has a rather different remit, as it focuses on stories and images collected by amateur or citizen journalists, for whose trustworthiness the organisation can then vouch.

Working methods are also varied. Some, but not all, of the fact-checkers with direct ties with media newsrooms, such as France24’s Les Observateurs and Le Monde’s Les Décodeurs, make explicit claims to use ‘traditional journalistic methods’ 204 or to adhere to the ‘fundamentals of the journalistic profession’ 205 respectively. Yet notwithstanding such declarations of intent, practical differences from one case to another seem quite striking: TheJournal.ie makes a point of relying on public sources, 206 while Correctiv does not distinguish between official and unofficial sources but rather prioritises ‘primary’ sources, a comprehensive notion defined as to include ‘statistics, studies, experts, authorities or data subjects and companies’. 207 Les Observateurs relies on external expertise to crosscheck the information, including published reports, local journalists, experts, governmental or non-governmental agencies and ‘other concerned parties’ in general. 208 Similarly, TjekDet, which verifies each claim with at least two ‘researchers who have in-depth knowledge of the subject of the claim and who can present factual scientific evidence’. 209 France’s Factuel regularly contacts expert journalists in specific fields and relies on a network of international fact-checkers to gather a better understanding of specialist topics, 210 and while asking for expert advice is common practice for TheJournal.ie 211 and Ellinika Hoaxes, 212 other outlets do not make explicit mentions of it. Similarly, contacting the author of the claim in question for clarifications is part of Newtral’s, 213 TheJournal.ie’s 214 and FactCheckNI’s 215 routines, while other organisations like Pagella Politica 216 and Lavoce.info 217 do not mention it. Newtral simply claims to use ‘three different filters’ 218 in their verification process, without providing further details on what they entail.

For some organisations technology plays a greater role than others: Factuel goes in great detail about how it traces back the source of the claims, such as ‘reverse searching’ images and videos, and using automated archiving and claim review tools. 219 Lead Stories also offers another example of using automated technology, such as the Trendolizer search engine to detect viral stories online. 220

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205 Le Monde (n 196).
206 TheJournal.ie (n 195).
207 Correctiv (n 201).
208 Les Observateurs (n 204).
209 TjekDet (n 203).
211 TheJournal.ie (n 195).
212 Ellinika Hoaxes (n 198).
213 Newtral (n 194).
214 TheJournal.ie (n 195).
215 FactCheckNI (n 199).
216 Pagella Politica (n 192).
218 Newtral (n 194).
219 AFP Factuel (n 210).
220 Lead Stories (n 202).
Other outlets favour instead a less structured, more flexible approach: Full Fact states that its ‘[s]tandards of evidence will … vary depending on the nature of the claim’.\textsuperscript{221} Ellinika Hoaxes changes its approach depending on the nature of the investigation, for instance resorting to audiovisual research in case of graphic content, or surveying published scientific literature in case of scientific claims.\textsuperscript{222} Lead Stories lists a combination of possible approaches depending on the nature of the claim, variably check the originality of the claim, of its source, whether it is based on any scientific studies, whether any accompanying pictures or videos are original or can be verified, whether it is possible to contact any of the individuals quoted in the story.\textsuperscript{223} FactCheckNI declares to factor in the ‘variable standards of quality’ of the different claims checked.\textsuperscript{224} A final difference resides in how the results are presented to the public. TheJournal.ie uses a rating system that comprises seven tiers (True, Mostly True, Mixture, Mostly False, False, Nonsense, Unproven),\textsuperscript{225} and so does Correctiv, although with different categories (Correct, Unclear, Mostly Correct, Partly Wrong, Mostly Wrong, Not Correct, False);\textsuperscript{226} Les Décodeurs has six tiers (True, Rather True, Questionable, Exaggerated, More Complicated, False),\textsuperscript{227} Pagella Politica uses a five-tier system that goes from True to Insane Whopper,\textsuperscript{228} Lavoce.info\textsuperscript{229} and Newtral\textsuperscript{230} only use four. Faktograf deploys two different rating systems, both comprising five tiers, one of which dedicated to assessing the fulfillment of electoral promises (Not Rated, Started, Broken, Partially Fulfilled and Fulfilled) – the only fact-checker to have a separate and dedicated rating for this purpose\textsuperscript{231} (15min has a separate section where it tracks the Government’s compliance with electoral promises, but does not provide a dedicated rating system\textsuperscript{232}). While the respective metric systems seem difficult to compare one with another, however, this approach is in stark contrast with Full Fact’s intent to let readers ‘make up their own minds and reach their own conclusions’:\textsuperscript{233}

As this overview shows, compared to journalistic standards and practices, fact-checkers tend to have a broader remit (as many of them do not just review news stories) and their methods are more varied, with recourse to expert advice, technologies, scientific evidence, quantitative metrics and so on, and present their results in different ways than traditional journalistic outputs.

The consolidation of professional fact-checking standards seems to be happening on two different levels. On a regional perspective, Europe and the US are on different paths: the European approach is more internally diverse and comprises aims and working methods from different professional circles, while the US approach is characterised by a drive for professionalisation and adherence to the ethos of journalistic independence and objectivity, with efforts from journalist fact-checkers to ‘aggressively police the boundaries of legitimate fact-checking, [while welcoming] outside influences which can help to build their movement’ such as those from academics and non-profit organisations.\textsuperscript{234}

\textsuperscript{221} Full Fact (n 28) 40.
\textsuperscript{222} Ellinika Hoaxes (n 198).
\textsuperscript{223} Lead Stories (n 202).
\textsuperscript{224} FactCheckNI (n 199).
\textsuperscript{225} TheJournal.ie (n 195).
\textsuperscript{227} Le Monde (n 196).
\textsuperscript{228} Pagella Politica (n 192).
\textsuperscript{229} Lavoce.info (n 217).
\textsuperscript{230} Newtral (n 193).
\textsuperscript{231} Faktograf, ‘Koje su ocjene?’, https://faktograf.hr/sto-su-ocjene/.
\textsuperscript{233} Full Fact (n 28) 39-40.
\textsuperscript{234} Graves (n 176) 616.
From a comparative perspective, the experience developed in the US seems to be proving influential on other fact-checking communities from different countries. However, it has been noted that the "influence flows both ways"235 and the US fact-checking community is also proving permeable to perspectives from overseas, such as the idea that fact-checking may include political activism among its legitimate aims. For example, the experience of human rights NGOs appears to be adding new values to the ethos of fact-checking, although the mission and practices of those organisations "depart from dominant journalistic norms".236

The process of consolidation is at the stage where embryonal professional norms are starting to emerge and form a strategic ritual, in a way that closely reminds the trajectory of professional journalism. Embracing the values and practices of objective journalism has become, especially for US fact-checkers, part of a legitimising discourse to mark their independence from political and economic interests.237

Greater convergence in the long run has been considered ‘likely’238 to happen, but the process is far from completed yet and it is unclear, at this point, whether converging around a legitimising discourse centred on the model of objective journalism would effectively result in a standardisation of working methods: as noted in the literature, global newsrooms can share the same ethical ideals and still display significant discrepancies in their methods.239

Concluding remarks

The analysis conducted in this study has shown how the different instances of curation and moderation performed by the signatories of the Code of Practice amount to a form of ‘soft control’ with a direct impact on the distribution of news content on digital platforms and ultimately on the public’s right to receive information. In light of this impact, these practices ought to comply with the principles established in the international and regional frameworks for the protection of freedom of expression and of the media, including legal certainty and transparency.

Fact-checking is, at present, a highly fragmented field; this study revealed that significant degrees of diversity exist both amongst different fact-checking services, and amongst the ways in which the signatories to the Code use these indicators to prioritise or down-rank content. Highly diversified working practices, coupled with the lack of details available from some organisations, contribute negatively to the transparency of curation.

A further element contributing to the lack of legal certainty is the difference between fact-checking practices and the principles of journalistic accuracy. In more than a way, fact-checkers seem to be moving away from the established notion of procedural truth, commonly adopted in the journalism industry, in favour of more multifaceted standards borrowed from different fields, with a distinct emphasis on the objective accuracy of the information presented. While this approach is still in an early phase of development, the journalism industry by contrast has a consolidated core of common practices, which the European Court routinely uses as standards to adjudicate on media freedom.

However, the use of professional norms to adjudicate on news media has proven controversial and often ineffective; rules developed to legitimise and protect the right to impart information are a poor fit for the public’s right to receive accurate information. Fact-checking practices originate in response to new dynamics in the digital sphere and could prove more

235 Ibid., 617.
237 Graves (n 176) 623-624.
238 Ibid., 626.
effective in fighting disinformation. A change of standards could then be welcome, if the new standards are better tuned towards audiences’ interests. To reinforce this suggestion, it should be considered that perpetuating the same journalism standards in the digital platform industry could be interpreted as an instance of functional equivalence, i.e. the regulatory approach that dictates that services with the same purpose or functionally interchangeable should be regulated alike – a most common tenet of EU regulatory authorities that traditionally resort to repurposing existing regulatory frameworks to newly emerging technologies. However, journalism and digital information services are ultimately two different industries, which operate on different business models and serve complementary, but different social functions in that the former produces and the latter distributes news content. Platforms provide an unprecedented form of access to information, and at this particular historical conjuncture an opportunity has presented itself to introduce regulatory standards for this industry that prioritise the interest of the public to receive accurate information. Given these circumstances, theory would suggest to discard the old, functionally equivalent regulatory framework and opt instead for a new one.  

However, to date, fact-checking standards have not yet consolidated in a specific form designed to expressly underpin one side of freedom of expression over the other, and the process of consolidation may take one direction or another. At present, two forces seem to be pulling in different ways: on the one hand, the US fact-checking community, led by private sector entities like the IFCN, is steering the process on the example of journalistic practices; on the other hand, the EU is following the trajectory of further institutionalization, akin to a similar trajectory followed by codes of practice in the journalism industry in recent years. If the consolidation trend circles back to a renewed prevalence of journalistic standards, continuity and foreseeability of decisions would be obvious benefits. If consolidation goes down the other path however, there would be a chance for a transition to different standards, more tuned in with the specificities of digital media and the right to receive information.

Initiatives such as the launch of EDMO, the recommendation from the European Regulators Group for Audiovisual Media Regulators that digital platforms’ involvement in the regulatory process is pursued further and the provisions of the Code become enforceable, and the forthcoming Media Services Act are all signs of the different shapes that platform governance could take in the future, from incentivised self-regulation to co-regulation, to actual statutory regulation. Institutionalisation of media self-regulation has so far achieved mixed results; despite a limited impact on the conducts prescribed in codes of conduct, nonetheless over time the trend has shown evidence of offering more prominence to the passive side of freedom of expression and public accountability than purely self-regulatory mechanisms.

If EU authorities decide to continue in this direction, compromises will need to be done; experience so far has shown that professional standards have skewed the balance in favour of a procedural notion of accuracy to the detriment of the public right to receive information. The concerns that motivated the use of self-regulatory standards are still as valid as ever and media autonomy ought to be respected. However, there may be equally relevant considerations to be taken regarding the nature of soft control compared to hard control, and whether this calls for a graduated approach that allows for a more proactive involvement of public authorities in setting up standards and procedures, and help achieve a more even balance between the two sides of freedom of expression. A thorough reflection is needed on what public interests and

rights ought to be prioritised, and if public authorities are called to participate in the process of institutionalisation, they will need to start from shedding light on this question in the first place, and then clarify the different roles and responsibilities of all parties involved, instituting a form of cooperative responsabilisation\(^{242}\) of public authorities and private actors.

The time seems to have come for a thorough and transparent reflection on the need to take a new direction in assessing the accuracy of information and adopt new standards, more in line with the challenges of these times.