

A FRAMEWORK FOR EFFECTIVE CO-REGULATION OF VIDEO SHARING PLATFORMS



ERGA has studied the following principles in its work on Self- and Co-regulation, which NRAs may find helpful when designing co-regulatory regimes in which the NRA “assesses the appropriateness” of measures taken by Video-Sharing Platforms (VSPs) in relation to the requirements in Article 28a, AVMSD¹. These are not intended as an exhaustive list, or a prescriptive solution. Alongside the principles below are a series of questions that NRAs may wish to consider. ERGA has no recommended answer to these questions, but they may be useful to structure continuing discussions within ERGA on models of VSP co-regulation.

Openness/ transparency to users

The user of a VSP should have clear visibility of its content policies and processes and should be able to understand how those affect the content and functionality of the platform.

Questions to consider:

- ★ What Codes apply?
- ★ What measures should a VSP take to raise awareness?
- ★ What high level visibility should users have of how Codes are applied? (e.g. with what requirement for timeliness; with what outcomes)
- ★ Should the transparency of content processes consider the potential for “bad actors” to abuse the platform?

Accountability to the NRA

The NRA should routinely have visibility of the VSPs’ measures taken, and the outcomes of those measures. This may be through a regular reporting pattern.

It may also be necessary for the NRA to have some visibility of the content on the platform, to understand the potential risks to users.

Questions to consider:

- ★ What metrics does the NRA need to assess appropriateness of the VSPs’ measures?
- ★ How are Codes formulated and reviewed?
- ★ What detailed visibility should NRAs have of how Codes are applied (e.g. access to internal processes of the VSP)?
- ★ What reporting periods?
- ★ What visibility should the NRA have of the platform’s resourcing and operational deployment of regulatory measures?

The VSP should also retain for a period of time all records of complaints handling and consequent actions and should provide sufficient information for the NRA to audit if this is necessary, and/or to investigate in specific cases of concern.

Questions to consider:

- ★ What powers may be necessary to ensure the NRA has the ability to obtain sufficient information? (e.g. information-gathering powers and potential sanctions)
- ★ What information should be available in real time to NRAs?
- ★ How do the NRA’s investigatory processes relate to its backstop powers?

¹ These principles may be applied equally in assessing individual VSPs’ measures, or measures taken by some industry body or institution, on behalf of VSPs broadly.

Accessibility of complaints procedures

The overall system for dealing with complaints should be promoted widely so that users are aware of it, including making the complaints procedures readily available to users.

Making a complaint about content potentially in violation of a VSP's policies should be an option easily and readily available to all users.

Questions to consider:

- ★ How does the VSP explain to its users how they might complain?
- ★ Are complaints processes accessible to all users, including those with disabilities?
- ★ Does the VSP promote the regulatory framework that applies to it and how it meets its obligations?

Effective handling and resolution

In the application of a complaints-driven approach to content regulation by VSPs, two types of users will be affected: complainants and the posters of user-generated content which is complained about. Both types of individual should be treated fairly, and their rights respected. Complaints should be considered and resolved appropriately under the VSPs published procedures.

Questions to consider:

- ★ How should complainants and content-posters be treated in the complaints process?
- ★ What outcomes are available in the complaints process?
- ★ Will decisions be published/made available to users?
- ★ What route is available to complainants and content-posters, if they are dissatisfied with the outcome of the complaints process?

Iterative improvements

The VSPs' measures should be characterised by an iterative process of 'learning by doing', refining the measures in light of changes in technology; user behaviour, experience and expectations; and assessment against the objectives in the Directive.

Questions to consider:

- ★ What specific expectations should an NRA have in terms of iterative improvements? For example, on what timescales should measures be regularly reviewed?
- ★ What evaluation is required of the efficacy of actions taken, to enable iterative improvements?

Backstop

The NRA may ultimately need to "step in", if the measures taken by VSPs themselves are found to be inappropriate or inadequate.

Questions to consider:

- ★ What does sufficiency/adequacy of the VSPs' measures look like? How can this be articulated by an NRA to allow for regulatory certainty for the VSP?
- ★ What is the process for the NRA "stepping in"?
- ★ How can the NRA effect change in the VSPs' regulation, to ensure it meets an adequate/appropriate standard?