



Code for Effective Open Voluntarism: Good design principles for self- and co-regulation and other multi-stakeholder actions

October 2012

Public consultation

1. Please comment on the draft code

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ISFE, the Interactive Software Federation of Europe represents the European videogame industry which produces entertainment and educational software for use on personal computers, game consoles, portable devices and mobile phones. Video games are increasingly a cross-generation phenomenon, played by children and parents alike. The average age of European gamers has increased and more adults are now playing video games with adult themes. It is therefore increasingly important to control minors' access to games which may have unsuitable content for their corresponding age group.

As a result ISFE engaged in self-regulatory initiatives to empower parents and to strengthen minor protection in this field. In 2003 the pan-European Age rating system PEGI was founded in close consultation with industry and civil society (parental and consumer associations, religious groups, etc...). PEGI is a Code of Conduct based rating system which aims to provide parents with intelligible, objective information and advice about the suitability of video game content for their children. In 2009, ISFE also launched PEGI Online, a European Commission funded labelling system that indicates if PEGI rated online gaming services ensure protection of minors against unsuitable online content.

ISFE has entrusted the day-to-day management, supervision and development of the PEGI system to PEGI SA whose organizational structure is underpinned by multi-stakeholder input in various independent committees. PEGI SA is managed by a mixed industry-non-industry Management Board with advisory support from a council of representatives of the national member states (PEGI Council) and independent experts on issues in child protection, psychology, technology and legal developments (Experts Group, Developer Group and Legal Committee). A complaints mechanism is steered by an independent Complaints Board and Enforcement Committee.

General observations:

ISFE welcomes this initiative as an excellent opportunity to improve and optimize the output of self- and co-regulatory initiatives in line with the core principles of the 2001 Better Regulation Strategy. We agree that proper identification of the core propositions of successful and effective multi-stakeholder actions could help organizations to improve their practices in order to boost respect, confidence and credibility. We want to caution, however, that the use of the word "voluntary" may be misleading. Many of these self- and co-regulatory initiatives are based on a code of which non-compliance would trigger consequences under the terms of the Unfair Commercial Practices Directive (art 10-11). We would appreciate if the Commission could state this point in the text.

Further, we are concerned with the use of the word “code” in the title and the text. The PEGI system already operates on basis of a Code of Conduct with detailed commitments for each of the stakeholders involved. A secondary code with generally defined principles would generate substantial confusion in terms of legal liabilities of the parties involved. We will not be able to endorse or sign such a document. We suggest instead that the title ‘Standards for Effective Open Voluntarism’ be used instead.

We see the text rather as a set of best practice design principles that can only apply in general terms to various multi-stakeholder actions. Many self- or co-regulatory codes in sectors are spearheaded by best practices. They form an integral part of a multi-stakeholder societal dialogue. We would, therefore, suggest that this is taken into account in the overall goal of advancing public policy goals.

Specific comments:

- The performance of PEGI members in accordance with the PEGI Code of Conduct is monitored by an independent Administrator on the basis of detailed, transparent and objective criteria. In addition, PEGI has a formal program in place to monitor members’ compliance with PEGI Labelling and Advertising guidelines across media in multiple EU countries. However, in some digital environments that produce a multitude of smaller gaming products a systematic check of all products is impossible and compliance is usually randomly monitored. Under such conditions it is impossible for us to guarantee that each actor’s performance is monitored, as indicated in 2.3 and would suggest replacing the word “each” with “an” (an actor’s performance...).

Article 2.3 further indicates that the monitoring should make use of “affordable, clear and reliable indicators”. It is, however, unclear how such qualifications can be made in the context of the many different sectors that this document wishes to address. There is, for instance, a substantial difference between codes that regulate specific actions or non-actions of a sector (e.g. companies commit not to advertise in media addressed to children) and codes that aim to provide (technical) tools to users to help them improve others’ behavior (e.g. tools to monitor children’s usage of the Internet). In the latter case, reliable indicators are potentially difficult to establish, may change over time and need in itself dialogue to be set and agreed upon. These types of “self”-regulatory efforts may not at all be suited to fall within a “code” scheme that triggers liability under the Unfair Commercial Practice Directive. In these cases we would suggest that the Commission puts more emphasis on the dialogue than the formulized drafting of a code, which may otherwise be unattractive for industry to join.

- Article 2.4 states that “reports of performance monitoring results are submitted by each actor for discussion by the participants as a whole, and are made public”. PEGI regularly publishes a collective compliance report on its labelling and advertising guidelines, but reports on individual rating performances are always strictly confidential and never made public unless certain infractions requiring sanction are identified. We therefore strongly recommend deleting completely this sentence. Generally, and increasingly, the areas that could be covered by societal dialogue and self-regulatory schemes are potentially sensitive for companies. Again, this needs to be taken care of in an appropriate manner.

2a. Are you interested to take part in a network of excellence and community of practice of effective open voluntarism? Yes/no

2b. Please indicate in the text box below any existing reference material or experience you consider useful to share within this network of excellence and community of practice, in terms of website, reports or events. Feel free to upload any relevant material.

We would be interested in principle to join a network of excellence and share our knowledge with other associations in order to build a community of best practices. Our ability to join will depend on the format and outcome of the revision of the proposed text, as outlined above.

3. Please share your knowledge, ideas and opinions about how best to ensure that voluntarism receives its appropriate share of attention in the policy-making toolbox. How best can we address the grey area of self-regulation that are not quite as purely autonomous as the wording in the on better lawmaking implies, **2003 Inter-institutional Agreement** and yet has none of the characteristics required in that Agreement for a system to qualify as co-regulation, and how best to give a new momentum to self- and co-regulation and open voluntarism to ensure that they are duly considered and practiced when they appear to be the most efficient route to the societal benefits in point. This does NOT mean voluntarism should substitute for lawmaking and regulation in any systematic manner, rather making the best possible use of voluntarism is critical to a highly effective policy approach. Please use the text box below or upload any additional relevant material.

The PEGI and PEGI Online systems were established as a self-regulatory initiative to address public concerns on the suitability of game products for differently aged players. Currently, PEGI is the standard videogame rating system throughout most of Europe and has achieved nearly complete pan-European acceptance. Due to its success, more and more member states have extended their support for PEGI by recognizing it in their national laws.

PEGI has achieved different levels of integration in national legislation across Europe. Some countries make it mandatory to publish games with a PEGI label. In the UK, for instance, PEGI has been designated as the exclusive age rating system for video games and the retail sale of a game with a rating of 12, 16 and 18 to someone below that age is now illegal. In some countries PEGI has achieved de facto co-regulatory status. In others discussions to provide legislative recognition are still ongoing. In a limited number of countries where legislation does not yet deal with the issue of age classification PEGI is used on the market solely as a parental advice tool.

In its day to day operations PEGI benefits from the support of many European countries via their national representatives on the PEGI Council. Good dialogue and fruitful cooperation with national authorities is of paramount importance in order to achieve PEGI's objectives of strengthening the protection of minors in the off- and online environment and empowering parents to do so. Such cooperation can, but does not have to, lead to further integration of PEGI into national legal structures.

Relations with national member states are built upon the high level of trust and credibility that PEGI SA offers as a multi-stakeholder organization. Involvement of many different stakeholders in the decision making processes can make things complicated and cumbersome, in particular as civil society interests are not always homogenous, but contributes considerably to the level of representation. In PEGI, independent verification of the ratings by an established national institute, involvement of independent experts (from the academic communities, civil society, etc...) and the support from European institutions have certainly been instrumental in establishing a high level of confidence.

The PEGI system, which was inaugurated by Commissioner Reding, has always enjoyed strong support from the European Commission who considers it a good example of European integration in the field of minor protection. Similarly, the European Parliament displayed strong support for PEGI and issued concrete recommendations for improvements of the PEGI system in a report that was published in 2009 (see 2008/2173(INI)). Both Community institutions now actively participate as members of the PEGI Council.

The lack of any Community rule whereby participations in self-regulatory initiatives becomes mandated by a legislative authority should not restrain European institutions from getting actively involved on a less formal basis in any such initiatives that serve the attainment of Community objectives. Direct involvement and explicit support from the European Institutions will help to improve the representation and sectoral cover of self-regulatory initiatives and provide added value to such undertakings as a whole.