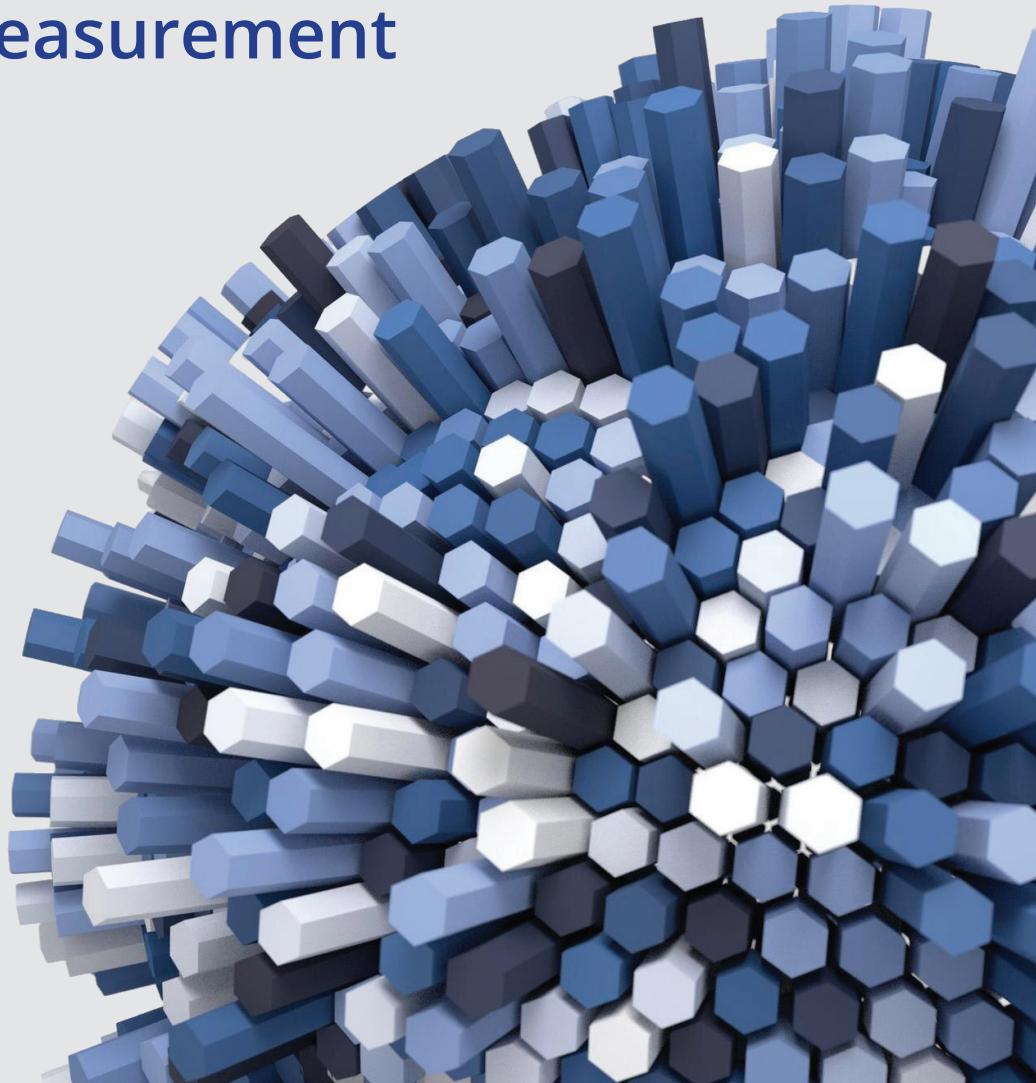


Joint Media Industry Position

Towards a tangible and effective implementation of the European Media Freedom Act (EMFA)

Audience Measurement obligations



Audience measurement is crucial for the media sector. Media service providers depend on meaningful and comprehensive measurement for several reasons. These include adequate financing through advertising, understanding their audiences, adjusting the editorial planning accordingly, demonstrating that they meet their remit by reaching all citizens (for public service media), and ultimately continuing to offer innovative and appealing services.

In Europe/the EU, the media industry has solid audience measurement systems in place. Joint Industry Committees (JICs) and Media Owner Committees (MOCs) bring together media service providers, advertisers, and agencies to oversee the development and implementation of audience measurements. They often contract third-parties (e.g. research companies) to conduct the actual measurements and regularly carry out audits. This collaborative approach ensures that methodologies and data collected are reliable, accurate, and meet relevant stakeholders' needs, in particular in linear broadcasting, while also adapting to video-on-demand and digital in certain markets. This collaborative approach has built widespread trust, credibility, and acceptance across the industry. In markets where similar initiatives do not exist, measurements are usually carried out by research companies or the relevant stakeholders themselves in line with widely accepted industry standards.

In contrast, online platforms and certain other actors in the value chain have both the means and competitive incentives to operate outside industry frameworks. They conduct their measurements in a black box, keeping their methodologies private, and often presenting inflated numbers without independent third-party oversight and/or auditing. Furthermore, these actors use their own audience measurements to directly market advertising space and provide advertisers with the necessary planning tools. This lack of transparency, independence, and verification poses serious challenges to the media sector's sustainability and viability.

The European Union has addressed this issue through two initiatives. The Digital Markets Act (DMA) introduces detailed data sharing obligations for the most powerful gatekeepers to the benefit of advertisers, publishers, and other business users, enabling them to receive and/or carry out their own measurements. The European Media Freedom Act (EMFA) establishes key principles to ensure that all measurement systems, including proprietary ones, adhere to the same high-quality standards and that media service providers can access audience measurement data from all relevant actors. However, some of the EMFA's provisions leave room for interpretation and require clarification through Commission guidelines pursuant to Article 24(4) EMFA.

We hereby wish to articulate our common understanding of the EMFA's overarching principles and encourage the European Commission to develop guidelines with a view to clarifying how the EMFA's principles should be applied in practice. The EMFA guidelines should comprehensively address audience measurement tools to support standards that uphold trusted methodologies. We stand together in the pursuit of clarity to build trust in our sector and enhance the value we deliver to our audiences.

¹ <https://www.cnbc.com/2021/02/18/facebook-knew-ad-metrics-were-inflated-but-ignored-the-problem-lawsuit-claims.html>

1 The key principles of transparency, impartiality, inclusiveness, proportionality, non-discrimination, comparability, and verifiability

In Article 24(1), the EMFA lays out seven principles that all audience measurement systems must respect. While those principles are essential for audience measurement, the EMFA does not provide any legal definitions. Commission guidelines hence provide an opportunity to make these principles more concrete by explaining how they should be understood and what they imply for stakeholders involved in audience measurement. Given the differences between established industry-based audience measurement systems and measurements carried out by providers of proprietary audience measurement systems, the guidelines should clearly set out what the principles should mean in practice for the different measurement systems.

The transparency principle requires that all methodologies, data sources, and processing techniques be fully disclosed to the relevant specialist public, while the data itself does not have to be disclosed. Detailed reports on measurement procedures and changes made to them should be regularly published. This is also in line with the more specific obligations for providers of proprietary audience measurement systems outlined in Article 24(2).

The impartiality principle implies that measurements should not favour a specific player or group of players in the market, nor a specific format or technology.

The inclusiveness principle implies the use of objective and justified criteria for allowing or excluding a media or platform from participating in an audience measurement system.

The proportionality principle implies that audience measurement systems must take into account the specificities of measured sectors.

The non-discrimination principle means not favouring certain business models or technologies in measurement methodologies.

The comparability principle requires applying consistent measurement standards across all media types and platforms. It does not, however, imply a one-size fits all approach to audience measurement. There can be objective reasons to use different methodologies in different environments.

Finally, the verifiability principle implies reliance on third-party measurement (e.g. a research company contracted by a JIC or MOC) and third-party audits of audience measurement systems, particularly the methodologies, their application, and results. The authorized third-parties should receive access to certain raw data (within constraints related to e.g. business confidentiality and security) for the purpose of the independent verification of the measurements.

2 Practical application of above-mentioned principles

Several actions are necessary to implement these principles:

> **Standardisation - relates to the principles of transparency, verifiability, impartiality, and comparability**

While avoiding over-prescription that might disrupt existing systems, a certain degree of standardisation of audience measurement systems could ensure compliance with the principles enshrined in the EMFA and be helpful to allow interoperability. This could include:

- Basic rules for the use of third-party “Software Development Kits”.
- Reliance on panels independent from the measured subject.
- Standards for panel measurement device.
- Verifying that services reach audiences across different types of media, connected or not connected devices, and platforms.²
- Rules and systems to assess invalid traffic (e.g. traffic generated by non-human activities such as bots).

> **Accreditation - relates to the principle of verifiability, inclusiveness, and impartiality**

We recommend implementing an official accreditation for audience measurement systems. Accreditation schemes should recognize existing reputable standards, such as those developed by the Media Ratings Council. These schemes may be implemented by local entities (e.g. CESP in France). This would:

- Fill the current vacuum that unregulated entities may exploit.
- Prevent the certification or accreditation of solutions promoted by unregulated players, which can disadvantage market participants who diligently adhere to existing industry standards.
- Maintain the integrity of audience measurement practices.
- Ensure compliance with established norms and create a level playing field for all stakeholders in the media ecosystem.
- Provide a clear framework for evaluating the reliability and credibility of various measurement systems.
- Enhance trust in the industry.

> **Auditing - relates to the principles of non-discrimination, impartiality, and verifiability**

To maintain the integrity of the audience measurement ecosystem and prevent any bias, auditors must be independent entities, accredited in the EU, and capable of auditing compliance with relevant standards (e.g. CESP carries out audits of audience measurement systems in France, including compliance with international standards like the ones of the MRC).

Audits should be carried out on a regular basis and for the entirety of the measured perimeter at the request of the members of non-proprietary audience measurement systems or once a year for providers of proprietary audience measurement systems, as laid down in Article 24(2) of the EMFA.

> Proper handling of data processing and transparency - refers to principles of transparency, impartiality, and verifiability

Certain online platforms combine data they collect themselves, using their proprietary audience measurement systems, with data from industry bodies. This practice can create an unfair advantage for these platforms, for instance by misleading advertisers about the true nature of audience engagement, but also because these providers have superior scale and processing capacities than media service providers. To maintain a level playing field and ensure accurate audience metrics and results, combining disparate data sources should be subject to certain basic requirements. The guidelines should explore in this regard:

- *Data mixing*: without prejudice to contractual arrangements at the level of JICs and other industry measurement bodies, the mixing of audience measurement data with external sources of data and without the intervention of an auditor should be restricted for external purposes, such as selling advertising space, and subject to strict transparency measures.
- *Transparency Obligations*: where data mixing occurs, the provider should guarantee full transparency towards all relevant parties, and in particular advertisers. Clear disclosures and explanatory notes when presenting data that do not fully adhere to established industry standards should be mandatory practice. This would ensure that data users are aware of deviations or limitations in the methodology.
- *Flagging systems*: the use of tools that are not verified or data which was not independently verified should be marked as such (e.g. labelling/warning) to flag that a measurement does not respect established standards.
- *Reciprocal Data Sharing*: implement a mutual exchange rule whereby online platforms, particularly VLOPs, requesting data from industry measurement systems must, in turn, contribute their own data to the collective pool to access media service providers' data held by a measurement body.

² Certain entities like the Media Ratings Council (MRC) have developed relevant/useful standards in this regard. The MRC uses 3 standards to measure advertising audiences across different media/online: video standard, cross-media standard, display standard. According to the cross-media standard, 100% of the "pixels" of an advertisement must be visible and the contact is weighed by the viewing time. This reflects the way advertising is measured for TV. This standard should therefore be considered as a minimum for cross-media comparisons.

CASE STUDY: WHY CERTAIN AUDIENCE MEASUREMENT SYSTEMS CURRENTLY UNDER DEVELOPMENT MAY CLASH WITH THE EMFA'S PRINCIPLES

Google and Meta have been advocating in various fora for approaches to cross-media measurement that could be very harmful to media pluralism³. Google's vision for such a system is outlined in several blogposts (see [1](#), [2](#)). Key aspects of their approach include:

- *Critique of "Premium" Content*: challenging the concept of "premium" content definitions, an area where broadcasters excel (e.g. primetime programmes and ads), and instead focusing on short-form video content and user-generated content, which is online platforms' bread and butter.
- *Impression standards*: proposing impression standards (100% of pixels visible for 2 seconds) that favour shorter-form ads typical of digital platforms over longer linear TV advertising.
- *Ad exposure linkage*: implicit preference for systems that can more easily link ad exposure to consumer actions, something more easily achievable on online platforms than in broadcasting environments.
- *Data granularity*: emphasis on highly granular measurement (at the second or minute level) which favours online platforms with easier access to such data. Broadcasters often face restrictions in accessing this level of detail.
- *Advertiser centric approach*: focus on advertiser needs and actionability would likely favour digital platforms that offer more flexible and targeted advertising options.
- *Critique of traditional methods*: implicit criticism of traditional TV measurement methods by highlighting the need for more accurate, comprehensive, and modern approaches.

This approach raises concerns for the European media landscape:

- *Potential Conflict with EMFA Principles*: should such an approach be implemented in the EU, it may clash with the principles of transparency, impartiality, inclusiveness, and non-discrimination enshrined in Article 24 of the EMFA.
- *Biased Representation*: there is a risk that this system could misrepresent the effectiveness of large digital platforms' advertising offerings compared to other "traditional" inventory (such as linear TV).
- *Impact on Advertising Budgets*: such misrepresentation could significantly influence advertisers' budgeting decisions, likely redirecting funds away from European media.
- *Threat to Media Pluralism*: the cumulative effect could be detrimental to media pluralism in Europe, further concentrating advertising revenue in the hands of a few large digital platforms.

³This is notably the case in the World Federation of Advertisers' [Halo Framework Project](#), which aims to establish a global cross-media audience measurement framework for measuring the reach, frequency, and performance of various advertising environments. Unfortunately, Meta and Google have managed to impose an approach furthering their interest. While this project is only currently active in the UK and the US, its potential rollout in the EU raises concerns about compliance with EMFA principles and its impact on the European media industry.

3 Scope of 'providers of proprietary audience measurement systems'

To ensure adherence and compliance with the principles of Article 24 EMFA, it is essential that the Commission provides guidance regarding the service providers that fall under the category of '*providers of proprietary audience measurement systems*'.

The EMFA defines *proprietary audience measurement systems* as measurements not adhering to industry standards and best practices agreed through self-regulatory mechanisms. In line with Recitals 12, 69, and 70 of the EMFA, this notion refers only to providers conducting measurements independently of recognized industry benchmarks or lacking market oversight – essentially providers operating by their own rules with opaque audience measurement systems.

While the EMFA specifically mentions online platforms (e.g. YouTube, Facebook, and Instagram), this should extend to other kinds of providers measuring audiences independently. This category should include certain internet/telecom operators which offer access to linear and/or non-linear media (retransmission) services (e.g. Orange, Deutsche Telekom), OTT services (e.g. Hisense's VIDAA, ROKU and Samsung Tizen) and connected devices and operating systems providing access to media services (e.g. Google, Android, and Apple TV).

Media service providers, on the other hand, should not in any way be considered providers of proprietary audience measurement systems, as they normally abide by commonly agreed self-regulatory mechanisms, participate in JICs or MOCs in markets where they exist, implement standard practices on their own platforms, or apply any combination thereof. In markets without self-regulatory mechanisms, media service providers, advertisers and agencies usually rely on and should be able to continue to measure with third-party measurement vendors (i.e., research companies), which apply widely recognised industry standards for audience measurement. Furthermore, where media service providers measure audiences in relation to their own content and services, including for research and innovation purposes, they should not be considered as providers of proprietary audience measurement systems.

4 Data sharing between providers of proprietary audience measurement systems and media

Article 24(2) of the EMFA mandates that providers of proprietary audience measurement systems must provide, *“without undue delay and free of charge”* to media service providers, advertisers and third parties authorised by them *“accurate, detailed, comprehensive, intelligible and up-to-date information on the methodology used by their audience measurement systems”*. Additionally, they must provide media service providers *“information on audience measurement results, including non-aggregated data, which relate to the media content and media services of that media service provider”* upon request.

Whilst the conditions related to sharing information on the methodology of audience measurement systems is explicitly laid out, the EMFA remains vague on how providers of proprietary audience measurement systems should provide access to the audience measurement results and the scope of data included in those results.

First, the Regulation does not address the potential costs *‘providers of proprietary audience measurement systems’* may charge for the audience measurement results. In our view, data sharing in this context should take place in line with standard/usual market practices (e.g. if not free of charge, at non-discriminatory and fair market prices that reflect the nature of the data/information requested). If a price is applied, it should not render the right of access to data ineffective.

Second, the EMFA does not clearly define the types of audience data that providers of proprietary audience measurement systems are required to share with media service providers. The EMFA mentions *‘information on audience measurement results, including non-aggregated data.’* Media service providers need aggregated and non-aggregated data for a comprehensive understanding of their audiences.

Third, for media service providers to effectively utilize audience measurements provided by providers of proprietary audience measurement systems, access to these measurements should not be overly complicated.

Fourth, the guidelines should clarify that providers of proprietary audience measurement systems are only required to supply media service providers with the audience metrics relevant to their own services (e.g. Orange is only obligated to provide metrics to FTV for FTV’s services, not for TF1). The obligation does not extend to competitors, partners of media service providers, unrelated entities or any other third parties. Where a third party (i.e. JICs, MOCs, or the research companies that they commission) carries out an audience measurement service on behalf of the media service provider, they should be able to make use of this provision.

Finally, the guidelines should stress that data sharing obligations do not supersede licensing agreements between media service providers (e.g. in the rare case where a media service provider may be considered a *‘provider of proprietary audience measurement systems’*) as these licensing agreements typically contain specific data sharing provisions.

5 The relationship between EMFA and the DMA

Prior to the EMFA, the EU had already recognised in the Digital Markets Act (DMA) the importance of audience data for the media to understand their audiences, assess the success of the content they offer, and adapt their offering to the needs and expectations of their audiences.

Article 6(8) of the DMA requires gatekeepers to give advertisers and publishers free of charge access to the gatekeepers' performance measurement tools and *"the data necessary [...] to carry out their own independent verification of the advertisements inventory, including aggregated and non-aggregated data"*.

Article 6(10) obliges gatekeepers to *"provide business users [...], free of charge, with effective, high-quality, continuous and real-time access to and use of aggregated and non-aggregated data, including personal data, that is provided or generated [...] by those business users and the end users engaging with the [...] services provided by those business users"*.

The Commission should clarify in its guidelines that the EMFA does not undermine the data-sharing obligations of the DMA. Where a service provider has been designated by the European Commission as a gatekeeper under the DMA but can also be considered a *'provider of proprietary audience measurement systems'* under the EMFA, the provider should not hide behind the vague obligations of the EMFA and must still fully comply with the detailed obligations of the DMA.

6 The importance of industry dialogues

As consumption habits evolve, so too must audience measurement systems. It will therefore be important for the Board and the Commission to organise regular structured dialogues between the relevant industry stakeholders, to discuss and consider evolving consumption trends and the need to adapt audience measurement systems accordingly. By fostering continuous dialogue, the industry can ensure that audience measurement remains accurate and relevant in the face of shifting consumer behaviours.