



## **ERGA proposals for amendments to EMFA article 23**

Following the adoption of its [position on the EMFA proposal](#) in November 2022, ERGA has issued its [proposals for amendments regarding articles 7 to 16 of the EMFA](#) in February, and then [proposals for amendments regarding articles 17 and 18 of EMFA](#) in April. The present document focuses on article 23 of EMFA related to audience measurement. These proposed amendments are the concrete translation of the ERGA position on the relevant sections of the EMFA proposal.

May 2023

EMFA proposal	ERGA proposals for amendments	Comments / rationale
<p align="center"><i>Article 23</i> Audience measurement</p>		
<p>1. Audience measurement systems and methodologies shall comply with principles of transparency, impartiality, inclusiveness, proportionality, non-discrimination and verifiability.</p>		
<p>2. Without prejudice to the protection of undertakings' business secrets, providers of proprietary audience measurement systems shall provide, without undue delay and free of costs, to media service providers and advertisers, as well as to third parties authorised by media service providers and advertisers, accurate, detailed, comprehensive, intelligible and up-to-date information on the methodology used by their audience measurement systems. This provision shall not affect the Union's data protection and privacy rules.</p>	<p>2. Without prejudice to the protection of undertakings' business secrets, providers of proprietary audience measurement systems <b>which do not abide by European or national industry standards agreed by the relevant national self-regulatory organizations</b> shall provide, without undue delay and free of costs, to media service providers, advertisers, and <b>national regulatory authorities or bodies</b> as well as to third parties authorised by media service providers and advertisers, accurate, detailed, comprehensive, intelligible and up-to-date information on the methodology used by their audience measurement systems. This provision shall not affect the Union's data protection and privacy rules.</p>	<p>ERGA position: RR. <i>The list of actors entitled to access audience measurement methodologies (media service providers, advertisers as well as 3rd parties authorised by media services providers) should be extended to media regulators, who may also, as suggested above, be granted access to audience measurement data.</i></p>
	<p><b>2a. Without prejudice to the protection of undertakings' business secrets, providers of proprietary audience measurement systems referred to in paragraph 2, upon request and, if applicable, against remuneration, shall also provide media service providers, advertisers, authorised third parties as well as national regulatory authorities or bodies with relevant aggregated audience measurement data related to content and services This provision shall not affect the Union's data protection and privacy rules.</b></p>	<p>ERGA position: QQ. <i>This article, complementing the rules in the DMA, introduces an obligation to share methodologies, not actual data, which might be considered as not ambitious and impactful enough. It may therefore be considered to go further and make it clear, in the article itself, that relevant players are granted access to both audience measurement methodologies and relevant data.</i></p>
	<p><b>2b. The methodologies referred to in paragraph 2 shall be annually audited by an independent body at the expense of the providers of the audience measurement. The reports from the audits shall be published. This shall not apply to providers that are micro or small enterprises as defined in Commission Recommendation 2003/361/EC.</b></p>	<p>ERGA position: SS. <i>As suggested by ERGA in its response to the EMFA public consultation, a general obligation of regular audience measurement audit or certification by an independent (private or public) body should be introduced as well, along with the obligation for this body to publish its reports/audits/certifications.</i></p>

		<i>This audit obligation could however be overburdensome for small and micro enterprises, and therefore ERGA suggests they should be exempt from this provision.</i>
3. National regulatory authorities or bodies shall encourage the drawing up of codes of conduct by providers of audience measurement systems, together with media service providers, their representative organisations and any other interested parties, that are intended to contribute to compliance with the principles referred to in paragraph 1, including by promoting independent and transparent audits.	3. National regulatory authorities or bodies shall encourage the drawing up of codes of conduct <b>and/or compliance with existing codes of conduct</b> by providers of audience measurement systems, <b>including proprietary ones such as online platforms and certain on demand media service providers</b> , together with media service providers, their representative organisations and any other interested parties, that are intended to contribute to compliance with the principles referred to in paragraph 1, including by promoting independent and transparent audits.	ERGA position:  PP. <i>Although the ‘audience measurement’ definition is broad and encompasses also online players, it is not explicitly clarified that online platforms or on-demand services are meant to be covered by the proposal. The provision should be amended accordingly, by mentioning explicitly online platforms and on-demand services as being covered under article 23(2).</i>
4. The Commission, assisted by the Board, may issue guidelines on the practical application of paragraphs 1, 2 and 3 of this Article.	4. The Commission, assisted by the Board, <del>may</del> <b>shall</b> issue guidelines on the practical application of paragraphs 1, 2, <b>2a</b> , <b>2b</b> and 3 of this Article.	Given the importance of technicalities in the field of audience measurement, ERGA believes it is necessary and will be of great added value to have the Commission develop guidelines with additional specifications for the implementation of this provision.
5. The Board shall foster the exchange of best practices related to the deployment of audience measurement systems through a regular dialogue between representatives of the national regulatory authorities or bodies, representatives of providers of audience measurement systems and other interested parties.	5. The Board shall foster the exchange of best practices related to the deployment of audience measurement systems, <b>including on their comparability</b> , through a regular dialogue between representatives of the national regulatory authorities or bodies, representatives of providers of audience measurement systems, <b>media services providers, online platforms providers</b> and other interested parties.	ERGA position:  PP. <i>Although the ‘audience measurement’ definition is broad and encompasses also online players, it is not explicitly clarified that online platforms or on-demand services are meant to be covered by the proposal. The provision should be amended accordingly, by mentioning explicitly online platforms and on-demand services as being covered under article 23(2).</i>  Given the divergence between the various existing audience measurement methodologies and in order to avoid distortions in the media market, it seems relevant to ensure that those methodologies are comparable in order to properly inform the relevant stakeholders both for content and advertising-related decisions.
<b>RECITALS</b>		
(45) Audience measurement has a direct impact on the allocation and the prices of advertising, which represents a key revenue source for the media sector. It is a crucial tool to evaluate the performance of media content and understand the preferences of audiences in order to plan the future production of content. Accordingly, media market players, in particular media service providers and advertisers, should be able to rely on objective audience data stemming from transparent, unbiased and verifiable audience measurement solutions. However, certain new players that have emerged in the media ecosystem	(45) Audience measurement has a direct impact on the allocation and the prices of advertising, which represents a key revenue source for the media sector. It is a crucial tool to evaluate the performance of media content and understand the preferences of audiences in order to plan the future production of content. Accordingly, media market players, in particular media service providers and advertisers, should be able to rely on objective audience data stemming from transparent, unbiased and verifiable audience measurement solutions. However, certain new players that have emerged in the media ecosystem	See comments above

<p>provide their own measurement services without making available information on their methodologies. This could result in information asymmetries among media market players and in potential market distortions, to the detriment of equality of opportunities for media service providers in the market.</p>	<p>provide their own measurement services without making available information on their methodologies. This could result in information asymmetries among media market players, <b>including because of audience measurement data resulting from diverging methodologies</b>, and in potential market distortions, to the detriment of equality of opportunities for media service providers in the market.</p>	
<p>(46) In order to enhance the verifiability and reliability of audience measurement methodologies, in particular online, transparency obligations should be laid down for providers of audience measurement systems that do not abide by the industry benchmarks agreed within the relevant self-regulatory bodies. Under these obligations, such actors, when requested and to the extent possible, should provide advertisers and media service providers or parties acting on their behalf, with information describing the methodologies employed for the measurement of the audience. Such information could consist in providing elements, such as the size of the sample measured, the definition of the indicators that are measured, the metrics, the measurement methods and the margin of error as well as the measurement period. The obligations imposed under this Regulation are without prejudice to any obligations that apply to providers of audience measurement services under Regulation 2019/1150 or Regulation (EU) 2022/XX [Digital Markets Act], including those concerning ranking or self-preferencing.</p>	<p>(46) In order to enhance the verifiability and reliability of audience measurement methodologies, in particular online, transparency obligations should be laid down for providers of audience measurement systems that do not abide by the industry benchmarks agreed within the relevant self-regulatory bodies, <b>such as the audience measurement provided by certain online platforms or certain on-demand media services, which are referred to as providers of proprietary audience measurement systems in the present Regulation</b>. Under these obligations, such actors, when requested, <del>and to the extent possible</del>, should provide advertisers and media service providers or parties acting on their behalf, <b>as well as national regulatory authorities or bodies, on a free of charge basis</b> with information describing the methodologies employed for the measurement of the audience. Such information could consist in providing elements, such as the size of the sample measured, the definition of the indicators that are measured, the metrics, the measurement methods and the margin of error as well as the measurement period. <b>Moreover, audience measurement methodologies developed outside of industry standards should be regularly audited, at the expense of the provider, by an independent body whose reports should be public, except if they developed by providers that are micro or small enterprises. Providers of proprietary audience measurement systems should also provide relevant aggregated audience measurement data, if applicable against remuneration and at the request of advertisers and media service providers or parties acting on their behalf, as well as national regulatory authorities or bodies.</b> The obligations imposed under this Regulation are without prejudice to any obligations that apply to providers of audience measurement services under Regulation 2019/1150 or Regulation (EU) 2022/XX [Digital Markets Act], including those concerning ranking or self-preferencing. <b>The Commission, assisted by the Board, should issue guidelines on the practical application of paragraphs 1, 2, 2a, 2b, and 3 of this Article, especially on the requirements</b></p>	<p>See comments above</p>

	<p><b><i>for sharing the methodology and data, as well as the independent audit.</i></b></p>	
<p>(47) Codes of conduct, drawn up either by the providers of audience measurement systems or by organisations or associations representing them, can contribute to the effective application of this Regulation and should, therefore, be encouraged. Self-regulation has already been used to foster high quality standards in the area of audience measurement. Its further development could be seen as an effective tool for the industry to agree on the practical solutions needed for ensuring compliance of audience measurement systems and their methodologies with the principles of transparency, impartiality, inclusiveness, proportionality, non-discrimination and verifiability. When drawing up such codes of conduct, in consultation with all relevant stakeholders and notably media service providers, account could be taken in particular of the increasing digitalisation of the media sector and the objective of achieving a level playing field among media market players.</p>	<p>(47) Codes of conduct, drawn up either by the providers of audience measurement systems or by organisations or associations representing them, can contribute to the effective application of this Regulation and should, therefore, be encouraged. Self-regulation has already been used to foster high quality standards in the area of audience measurement. <b><i>Compliance with existing best practice standards such as the ICC/ESOMAR International Code on Market, Opinion and Social Research and Data Analytics shall be encouraged.</i></b> Its further development could be seen as an effective tool for the industry to agree on the practical solutions needed for ensuring compliance of audience measurement systems and their methodologies with the principles of transparency, impartiality, inclusiveness, proportionality, non-discrimination and verifiability. <b><i>It should therefore be encouraged by national regulatory authorities or bodies, including where relevant through active participation in the development of codes of conduct.</i></b> When drawing up such codes of conduct, in consultation with all relevant stakeholders and notably media service providers <b><i>but also providers of online platforms and independent third-party audience measurement providers,</i></b> account could be taken in particular of the increasing digitalisation of the media sector and the objective of achieving a level playing field among media market players, <b><i>including through the possibility to effectively compare audience measurement results issued from potentially diverging methodologies.</i></b></p>	<p>See comments above</p>