

EGTA POSITION PAPER ON THE EMFA PROPOSAL

We note with interest the European Commission's work on the proposal for a European Media Freedom Act (EMFA), in particular the principle-based approach to the audience measurement article and the transparency rules on State advertising. We observe that the text limits itself to already regulated media actors thus maintaining the existing regulatory imbalance; discouraging fair competition and hindering consumer protection.

As a matter of principle, throughout the negotiations, we believe that the co-legislators should first and foremost consider how the EMFA would benefit the media landscape as opposed to introducing new provisions and/or restrictions that would place an additional burden on media actors. Each article should be assessed on the direct or indirect impact that it would have on a diverse and democratic media.

STATE OF PLAY ON AUDIENCE MEASUREMENT FOR TV AND RADIO

Sales houses' primary objective in TV/video and radio/audio audience measurement is to know who and how many people are watching their programmes and their ads including for the purpose of then monetising their advertising inventory at a competitive and fair price that is reflective of market realities. As such, a lack of transparent and accountable audience measurement leads to distorted competition across media service providers and content providers or distributors alike.

The measurement itself is in practice done by third parties, often joint industry committees (JICs) who act as independent and trusted partners on behalf of media owners, advertisers and agencies. Independently verified audience figures are therefore at the core of audience measurement as they inform and support buying and planning decisions.

As rightly described in recitals 9 and 46 of the proposal, this is not the case for certain 'online players' who 'self-measure' or do not abide by 'industry benchmarks' agreed within the relevant self-regulatory bodies such as Joint Industry Committees (JICs) or Media Owner Committees (MOCs). This situation is particularly problematic because there is often no way to independently verify how these online players' audiences are calculated making it difficult if not impossible to have trusted and reliable audience measurement, to ensure effective campaign planning and its subsequent success.

Although some of the concerns expressed above have been partially addressed in the Digital Markets Act (DMA), the underlying problems will persist. We believe the EMFA has the capacity to further alleviate anticompetitive behaviour thanks to its focus on the methodology used for audience measurement.

We invite policy makers to focus their efforts on raising the bar so that all actors involved in audience measurement follow the fundamental principles of transparency and fairness while encouraging adherence to common industry standards.

HOW CAN THE EMFA IMPROVE AUDIENCE MEASUREMENT FOR ALL

- **The definition should encompass more than users of media services**

While the definition of media service providers adequately encompasses audiovisual and audio media, whether linear or non-linear (e.g., on-demand, podcasts), the narrow meaning of users of media services in the audience measurement definition does not necessarily reflect the intention of the legislators stressed in recitals 3 and 45.

We believe that the future regulation should ensure that online platforms such as video-sharing platforms (VSPs) or social networks adhere to the highest standards of audience measurement. Accordingly, referral to users of online platforms in the definition of audience measurement would allow for the measures to apply to a wider range of actors.

- **Acknowledge the existing framework based on industry-wide committees**

Audience measurement functions best when third-party actors are involved in the process, acting independently to foster the agreement, among their members, of common industry standards.

For these reasons, we suggest to emphasise that providers of audience measurement systems are considered as proprietary because they self-measure, sit outside the European or national industry standards agreed by the relevant national self-regulatory bodies and do not abide by principles that are developed through market governance.

- **Maintain a fully-fledged definition of audience measurement**

Broadly speaking, audience measurement used for providing audience ratings to the market for the purpose of monetising advertising space relies on **trust throughout the value chain**, in particular methodology on how the audience is measured. This is achieved, thanks to the intervention of an independent third-party chosen by advertising buyers and sellers and the use of established methodologies.

We strongly believe that trust will not be facilitated by a rigid piece of legislation that is bound to be outdated by ever evolving industry developments. The EMFA and its provisions on audience measurement should not go beyond what has been foreseen in the proposal: namely principles and giving information on methodologies when these are not transparent to start with.

STATE ADVERTISING

State advertising, like any other type of advertising, remains a viable source of funding for media service providers as long as it follows general principles of transparency and trustworthiness. Due to its specific nature, however, it should abide by higher standards, clear criteria and transparency procedures for the allocation and spending of state sponsored messages.

While the proposed rules in the EMFA are a positive step towards more transparency in state advertising, a few shortcomings must be addressed by:

- Expanding the scope of the provisions to online platforms providers to reflect the fact that advertising budgets, including the State's, increasingly shift online;
- Avoiding loopholes in EU Member States for local governments with less than 1 million inhabitants by revising the current quantitative threshold;
- Identifying the meaning of 'state-owned enterprises' or 'state-controlled entities' so it does not include commercial clients that do not convey politically motivated state messages but rather captures instances where a strong operational link exists between the State and the latter. Either way, it should not contradict existing definitions in national law;
- Placing the reporting burden on the State or entity buying the advertising space rather than on the national regulatory authorities (NRAs) to ensure effective enforcement of the provisions while maintaining the NRAs' capacity to request information and investigate when they see fit.

THE EUROPEAN BOARD FOR MEDIA SERVICES

We believe that the role the National Media Regulators and the European Regulators Group for Audiovisual Media Services (ERGA) – *or the European Board for Media Services* – is key to coordinate the enforcement of rules and act as referees of pluralistic and free broadcasters. This is particularly true as long as they maintain their independence, from a structural and political stand point, competence and accountability. While we support the growing European role of ERGA, we recommend the future European Board for Media Services abide by similar principles than those national regulatory authorities must adhere to.