



Milan, 18th January, 2024

RE: Public consultation on the Guidelines 2/2023 on Technical Scope of Art. 5(3) of ePrivacy Directive

a. Auditel S.r.l. (“Auditel”) hereby submits to the European Data Protection Board (the “EDPB”) its feedback on the *Guidelines 2/2023 on Technical Scope of Art. 5(3) of ePrivacy Directive* (the “Guidelines”) in response to the EDPB’s public consultation launched on 14th November, 2023.

Auditel welcomes the intention of the EDPB to provide clarifications on the technical operations covered by Article 5(3) of the ePrivacy Directive.

However, Auditel is of the view that, in defining the technical scope of Article 5(3) of the ePrivacy Directive, the EDPB missed the opportunity to clarify certain aspects of the matter, as it did not specifically take into account the particular situation of operators, such as Auditel, that perform objective and independent audience measurement in the public interest and in a regulated framework.

b. Auditel is the company that, since 1986, measures television audiences in Italy. As is the case for the other companies that provide similar services to Auditel’s in other sectors (e.g., press/digital press and radio/digital radio) and/or in other countries, Auditel’s audience measurement has a key public function: particularly, the data on the audiences of Italian TV broadcasters that Auditel produces constitutes an essential trading and performance currency for the TV audience and advertising industry, in addition to being used for institutional purposes.¹

Auditel was incorporated precisely, as a unique entity in the relevant sector, to be responsible for the collection and dissemination, in an objective and impartial manner, of television audience data in Italy, under the supervision and control of the Italian Communications Authority (“AGCOM”). Indeed, pursuant to Article 1(6)(b)(11) of Italian Law No. 249/1997, as amended by Legislative Decree No. 208/21, AGCOM “*guarantees [...] that the measurement of audience and reading indexes of the various communication media, on any distribution and broadcasting platform, conforms to criteria of methodological correctness, transparency, and verifiability by independent parties*”.²

¹ For example, the audience data that Auditel produces constitutes a parameter in the context of television broadcasting regulation: Auditel’s audience data has been used, among other things, as a parameter for the granting of economic subsidies to local television broadcasters, for the allocation of frequencies to local audio-visual media service providers, and for the allocation of digital terrestrial channel numbering. Auditel’s audience data is, in addition, provided to authorities, such as the Italian Communications Authority, as part of surveys or sector studies.

² In this framework, Auditel complies, inter alia, with AGCOM Resolution No. 85/06/CSP on the organisation of companies carrying out surveys, including as regards the principle of maximum representativeness in the company’s management bodies to guarantee the objectivity of the research already through the ownership and organisational structure as well as the separation of administrative bodies and technical-scientific committees aimed at ensuring the latter’s autonomy.



For this purpose, Auditel's governance includes all the different components of the Italian television market. In particular, as it is the case for other companies that provide independent third-party audience measurement services in other sectors and/or in other countries, Auditel has adopted the so-called JIC (Joint Industry Committee) corporate and organisational model.³

In Auditel's case, the JIC model has been adopted in accordance with the requirements set by AGCOM, as per its Resolutions Nos. 85/06/CSP and 194/21/CONS, in order to ensure that all the stakeholders of the sector are represented in Auditel's corporate composition and management bodies.⁴

In this context, Auditel "*performs an essential systemic function*" closely connected to the "*character of general interest*" and the "*public purpose of the activity of measurement of audience indexes*".⁵

Collecting information on the use of video content that is representative of the actual audience is essential to the performance of the activity of entities, such as Auditel, that perform independent third-party audience measurement. Please also consider that these entities only use this information to carry out their typical and institutional activity (producing official audience measurement), not for any other purposes.

c. Within the scope of its audience measurement activity, Auditel has implemented digital measurement solutions for the collection of statistical information relating to the viewing of online content through devices such as computers, smart TVs, tablets and smartphones.⁶

Consistently with the typical features of audience measurement, Auditel collects this information on various publishers' websites and applications. The tracking technologies that Auditel uses for this purpose collect information on users' activity in an anonymised and aggregated form and opt-out mechanisms are in place. Auditel has implemented adequate mechanisms to preclude any identification (so-called single out) of users. Moreover, no third parties combine the information collected through the mechanism at issue with other information, and Auditel keeps the data collected through the SDK technology in a segregated manner, without enriching/cross-referencing it with other data available to Auditel.

³ Indeed, at the European level the prevailing corporate and organizational model of the entities that provide audience measurement services such as Auditel's is that of the JIC.

⁴ Auditel's shareholders include the following three groups: (a) television companies (public and private broadcasters); (b) advertising investors; and (c) agencies and trade associations (represented in particular by UPA - Utenti Pubblicità Associati and Assap Servizi, which are recognised as having a *super partes* role). The Italian Federation of Newspaper Publishers (FIEG) also participates in the Company with a 1% share.

⁵ AGCOM Resolution Nos. 194/21/CONS and 236/17/CONS.

⁶ Auditel's research is composed, in particular, of (i) a "census" measurement of viewing of online content, which is carried out through a digital measurement solution (the SDK technology) implemented on digital platforms, and (ii) a "sample" measurement, which is carried out on a panel of families participating in the research. Auditel also integrates traditional TV audience measurement with that concerning digital devices. This feedback specifically concerns audience measurement activities relating to the "census" tracking of streaming activity.



Additionally, within the scope of the mentioned audience measurement activities, Auditel (as is common for companies that provide similar services to Auditel's) does not carry out any profiling activity of identified users with a purpose of making available to them services conforming to their profiles. Indeed, Auditel's classification is made on the basis of common characteristics of users (such as age range or city) to acquire an aggregate overview for statistical purposes, without making predictions or drawing conclusions about specific persons.

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The Guidelines could be an opportunity to state at the EDPB level that the consent requirement under Article 5(3) of the ePrivacy Directive must not be deemed applicable to entities, such as Auditel, that provide independent third-party audience measurement services adopting adequate mechanisms to address privacy risks.

In this respect, Auditel notes that, to be able to produce reliable statistics, these entities need to collect information on a number of accesses by users to the content concerned that is representative of the actual audience. If that is not the case (i.e., an insufficient number of accesses is measured):

- (i) reliable statistics cannot be produced, it being impossible to estimate the data loss (which is very dependent on the platform, users' socio-demographic category and the content itself); and
- (ii) the relevant audience measurement needs to depend on first party data that the publishers themselves collect, which is not consistent with the typical features of the objective and independent measurement that a JIC such as Auditel, in the pursuit of a public interest, needs to provide.

Auditel hopes that, in the context of the revision and finalisation of the Guidelines, the EDPB will take into account the above.

Please do not hesitate to contact us if you have any questions or would like any further information.

Sincerely,

Auditel S.r.l.