



Dutch Media Authority Policy Rule of 26 February 2019 on European, independent, recent, programming in the Dutch or Frisian language and original programming in the Dutch or Frisian language provided with subtitles for the hearing impaired (Programme Quota Policy Rule)

The Dutch Media Authority,

Having regard to Articles 2.115–2.123, 3.20–3.25 and 7.11 of the 2008 Media Act and Article 4:81 of the General Administrative Law Act;

Decrees:

Article 1. Definitions

The following terms employed in this Programme Quota Policy Rule shall have the following meaning:

Act: The 2008 Media Act;

Decree: The 2008 Media Decree;

on-demand commercial media service: An on-demand commercial media service as referred to in Article 3.29a of the Act;

European work: Programming as referred to in Article 1(1)(n) and Articles 1(2), 1(3) and 1(4) of the European Directive;

European Directive: Directive 2010/13/EU of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services;

production in Dutch or Frisian: Programming in either the Dutch or Frisian language;

independent production: Programming as referred to in Article 2.120(1) of the Act, or Article 3.22(1) of the Act;

independent producer: The producer of an independent production;

producer: The maker of programming;

recent production: An independent production not older than five years;

subtitling percentage: The percentage of original programming content in the Dutch or Frisian language that is provided with Dutch subtitles;

Regulation: The 2008 Media Regulation.

Article 2. European Works

1. A *producer* will be deemed established in a European state if his enterprise is a permanent one, with permanently employed staff at its disposal and if it is involved both with production as well as commercial activities.
2. In the event that the producer of a production cannot be identified, a *producer* will be understood to also include the production's distributor. In such instances, the state where the distributor is established will be deemed the state where the producer is established.
3. Paragraph 2 will only apply if the Authority feels sufficiently satisfied that the media institution which distributed the production sufficiently endeavoured to obtain the relevant information on the production's producer.

Article 3. Independent Productions

1. Productions deemed *independent productions* are, *inter alia*:
 - a. programme components produced by an institution producing a programme in conjunction with an independent producer;
 - b. an acquired independent production.
2. Productions not deemed *independent productions* are:
 - a. programme components produced by an institution providing a programme;

- b. programme components produced by a producer who in the three preceding financial years supplied more than 90 percent of the programming he produced to the same institution providing a programme, and who during this period produced more than one programming component, or one series of programming components.

Article 4. Calculation Method

1. The attained percentage of European works, and independent and recent productions referred to in Articles 2.115–2.121 and Articles 3.20–3.2. of the Act, is calculated on the basis of the total programming per television programming channel per calendar year.
2. Repeats of previous programmes count towards the attained share of European works, and independent and recent productions.

Article 5. Exemptions

1. Special circumstances may warrant certain television programming channels to be issued a partial exemption to the percentage of European works referred to in Article 3.20(1) of the Act.
2. If indeed the Authority is sufficiently satisfied that special circumstances are in existence rendering it no longer warranted that a television programming channel would be required to meet the percentage of European works, it may elect to lower that percentage for a period of three calendar years.
3. The determination of the existence of special circumstances as referred to in paragraph 1 of this Article will also take into account the nature of the programming channel, the scheduling, the target audience, the inability to acquire sufficient rights to European works and special economic circumstances.
4. If indeed the Authority is sufficiently satisfied that given the circumstances referred to in paragraph 3, special circumstances are in existence rendering it no longer warranted that a television programming channel be required to meet the percentage of European works, it may elect to lower the percentage referred to in Article 3.20(1) of the Act for the duration of the licence term, provided that the programme channel's format remains unchanged.
5. Commercial media institutions are required to submit all requests for exemptions to the Authority beforehand.

Article 6. Commercial Media Institutions' Coverage

For the application of Article 3.23(2) of the Act programming will be considered *programming which can only be received in a single municipality or in a limited number of adjacent municipalities* if such programming is intended for that municipality or for those municipalities, and if it is not also disseminated via any other part of the national broadcasting network, or via a programming channel in one or more other municipalities.

Article 7. Best Efforts Obligation for On-Demand Commercial Media Services

Article 3.29a of the Act obligates providers of on-demand commercial media services to put in their best efforts to promote the production of and access to European works as referred to in Article 2 of this Programme Quota Policy Rule.

Article 8. Original Productions in Dutch or Frisian

Original productions in Dutch or Frisian, referred to in Articles 2.122(1) and 3.24(1) of the Act include, *inter alia*:

- a. programming that is voice-recorded in either Dutch or Frisian;
- b. programming containing components that were not original productions in Dutch or Frisian, but that have received a voice-over in either Dutch or Frisian.

Article 9. Calculation Method

1. The attained percentage of original productions in Dutch or Frisian, as referred to in Articles 2.122 and 3.24 of the Act, is calculated pursuant to the total programming per television programming channel per calendar year.
2. Repeats of previous programmes count towards the attained share of original productions in Dutch or Frisian.

Article 10. Exemption

1. In special circumstances and pursuant to Articles 2.122(3) and 3.24(2) of the Act, it is possible that for a certain television programming channel the share of original productions in Dutch or Frisian can be lowered or set to zero, upon request, and when meeting certain conditions.
2. If indeed the Authority is sufficiently satisfied that special circumstances are in existence rendering it no longer warranted that a television programming channel would be required to meet the percentage of original productions in Dutch or Frisian, it may elect to lower that percentage for a period of three calendar years.
3. The determination of the existence of the special circumstances referred to in paragraph 1 of this Article will also take into account the nature of the programming channel, the scheduling, the target audience and the geographical coverage of the programme channel.
4. If indeed the Authority is sufficiently satisfied that given the circumstances referred to in paragraph 3, special circumstances are in existence rendering it no longer warranted that a television programming channel be asked to meet the percentage of original productions in Dutch or Frisian, it may elect to lower or set to zero the percentage referred to in Article 3.24(1) of the Act for the duration of the licence term, provided that the programme channel's format remains unchanged.
5. In the event that a programme channel is almost exclusively focussed on a broadcasting area outside of the Netherlands, the percentage referred to in Article 3.24(1) of the Act. may be reduced in full for the duration of the licence term, provided that the programme channel's format remains unchanged.
6. Commercial media institutions are required to submit all requests for exemptions to the Authority beforehand.

Article 11. Subtitling

The following original productions in Dutch that are subtitled for the hearing impaired, as referred to in Articles 15 and 17 of the Decree, will be considered original productions in Dutch:

- a. productions voice-recorded in Dutch;
- b. productions containing components of productions not originally in Dutch, but which have subsequently been dubbed in either Dutch or Frisian, or were originally voice-recorded in Dutch or Frisian and have since been subtitled in accordance with Article 18a of the Regulation.

Article 12. Coverage of Commercial Media Institutions

For the application of Article 17 of the Decree commercial media institutions are required to immediately notify the Authority if they have a minimum coverage of 75% of all households in the Netherlands.

Article 13. Calculation Method

1. The subtitling percentage as referred to in Articles 15 and 17 of the Decree, is calculated on the basis of total programming per television programming channel per calendar year allocated to productions that can be considered original productions in Dutch subtitled for the hearing impaired, as referred to in Article 11 of this Programme Quota Policy Rule.
2. Repeats of previous programmes count towards the attained subtitling percentage.

3. The total amount of programming referred to in paragraph 1 is calculated excluding the number of productions recorded in Dutch *and* specifically aimed at children below the age of 8.
4. The total amount of programming referred to in paragraph 1 is calculated excluding separate music videos.

Article 14. Exemptions

Special circumstances may, subject to conditions, warrant that a programme channel be issued a lowering, or even a full reduction, of the subtitling percentage.

Article 15. Reporting

1. Once annually, before 1 May of that year, the NPO will submit a report to the Authority on the level of compliance with Articles 2.115, 2.116 and 2.119–2.123 of the Act, and Articles 14b and 15 of the Decree in the previous year on the television programming channels operated by the national public media service, with the exclusion of the NPO's themed channels.
2. Once annually, before 1 May of that year, the NPO will submit a report to the Authority on the level of compliance with Articles 2.115, 2.116 and 2.119–2.123 of the Act, and Articles 14b and 15 of the Decree in the previous year on the NPO's themed channels.
3. Once every two years, before 1 May, the regional public media institutions will submit a report to the Authority on the level of compliance with Articles 2.115, 2.117, 2.119–2.122 of the Act in the previous two years on the television programming channels.
4. Once every two years, before 1 May, commercial media institutions with a national market share equal to or in excess of 0.3% in at least one EU Member State will submit a report to the Authority on the level of compliance with Articles 3.20–3.25 of the Act, and Article 17 of the Decree.
5. Commercial media institutions broadcasting television programming channels with a national market share equal to or below 0.3% will, at the Authority's request, submit a report to the Authority on the level of compliance with Articles 3.20–3.25 of the Act.
6. Providers of on-demand commercial media services shall periodically report to the Authority on the level of compliance with Article 7 of this Programme Quota Policy Rule.

Article 16. Reporting on the National Public Media Service's Television Programming Channels

The reports referred to in Article 15(1) contain data expressed both in absolute numbers and in percentages for each television programming channel, as well for as the national public media institutions as a whole, on the following topics:

- a. the total duration of programming;
- b. the duration of programming to be taken into account in the calculation referred to in Article 4(1) of this Programme Quota Policy Rule;
- c. the percentage of European works;
- d. the percentage of independent European works;
- e. the percentage of recent productions;
- f. the percentage of original productions in Dutch or Frisian;
- g. the subtitling percentage;
- h. commissioned productions produced by independent Dutch producers;
- i. co-productions produced in collaboration with independent Dutch producers;
- j. acquisition of independent European works where the producer is based outside of the Netherlands;
- k. co-productions with independent European producers based outside of the Netherlands;
- l. home-grown productions;
- m. other productions;
- n. repeats;
- o. a statistical overview of the level of compliance with the obligations by the various television programme channels;
- p. for each production produced it is necessary to at least indicate whether:
 - (1) the production is taken into account in the calculation of the programming duration referred to in Article 4 of this Programme Quota Policy Rule;
 - (2) language,
 - (3) country of origin,

- (4) year of production,
- (5) name of the producer,
- (6) if an original production in Dutch, whether it has been subtitled, and
- (7) if an original production in Dutch without subtitles, whether it is specifically aimed at children below the age of 8.

Article 17. Reporting on Other Television Programming Channels

1. The reports referred to in Articles 15(2)–15(5) contain data gathered using a one-week sample taken every quarter of the year reported.
2. The reports referred to in Articles 15(2)–15(5) indicate for each production distributed:
 - a. the date and time of the distribution;
 - b. the name of the production;
 - c. the duration of the production;
 - d. whether the production is taken into account in the calculation of the programming duration referred to in Article 4 of this Programme Quota Policy Rule;
 - e. whether it is a European work;
 - f. the country of origin;
 - g. whether it is an independent European work;
 - h. the name of the producer;
 - i. the name of the distributor;
 - j. whether it is a recent European work;
 - k. the year of production;
 - l. whether it is an original production in Dutch or Frisian;
 - m. whether the production has been dubbed, and/or voice-recorded in Dutch;
 - n. if it is an original production in Dutch, whether it has been subtitled;
 - o. if it is an original production in Dutch without subtitles, whether it is specifically aimed at children below the age of 8.
3. The media institutions shall report to the Authority in the manner prescribed by the Authority.
4. The Authority reserves the right to allow a media institution to report to it in a manner different to the one referred to in paragraph 2.
5. The Authority will designate which weeks are to be used in the sample referred to in the first paragraph of this article. The Authority shall notify the media institution of this during the course of the calendar year in question.
6. Paragraph 2, at *n.* and *o.*, does not apply to regional public media institutions, or commercial media institutions with television programming channels that have a technical coverage of less than 75% of Dutch households.

Article 18. Repealed Policy Rules

The following policy rules are herewith repealed:

The *Regeling Programmaquota* of 18 December 2007 [Programme Quota Regulation] is herewith repealed.

The *Wijziging van de Regeling Programmaquota* of April 2013 [Amendment to the Programme Quota Regulation] is herewith repealed.

Article 19. Entry into Force

This Policy Rule shall enter into force on the day following the date of publication of the Government Gazette in which this amendment is published.

Article 20. Final provisions

This policy rule is referred to as: The 2019 Programme Quota Policy Rule.



This policy rule shall be made public by its publication both in the Government Gazette and on the Authority's website.

*Dutch Media Authority,
M. de Cock Buning,
President*

*E. Eljon,
Commissioner*



EXPLANATORY MEMORANDUM

1. General

The Dutch Media Authority monitors compliance with the Dutch Media Act. In protecting the independence, diversity and accessibility of media content, the Authority contributes to ensuring the principle of freedom of information, one of the pillars beneath our democracy.

Accessibility of media content requires that all inhabitants of the Netherlands are able to access information at a reasonable cost and with as few limitations as possible. Accessibility also requires the availability of subtitled media content for the hearing impaired. The requirements regarding mandatory subtitling of original productions in Dutch ensure the accessibility to media content for the hearing impaired.

A diverse society requires diversity of media content, i.e. offering all sorts of (target) groups, opinions and stories room to feature. Diversity of media content is, for example, ensured by the prescribed shares allocated to both European and independent works and productions in Dutch or Frisian.

This, in turn, requires the programming of commercial and public media institutions to, in principle, contain at least a certain percentage of European and independent works, contain at least a certain percentage of productions in Dutch or Frisian and that at least a certain percentage of original productions in Dutch has to be subtitled for the hearing impaired.

The Authority monitors the level of compliance for these various programme quota in accordance with Articles 2.115–2.123 and 3.20–3.25 of the 2008 Act, and Articles 15 and 17 of the Decree. These policy rules constitute the Authority's more detailed interpretation of these legislative requirements.

2. Explanatory Notes by Article

Article 1 (Definitions)

The terms employed in this Programme Quota Policy Rule that also feature in the Act, have the same meaning as defined in Article 1 of that Act. Any terms employed in this Programme Quota Policy Rule not defined in Article 1 of the Act, can be found defined in this Programme Quota Policy Rule.

1. Mandatory Share of European Works and Independent Productions

Article 2 (European Works)

Article 2(1) of this Programme Quota Policy Rule directly follows from the guidelines developed by the European Commission for the monitoring of the implementation of the European "*Television without Frontiers*" (TVWF) Directive.

Media institutions have been proven to sometimes struggle with identifying the producer of some of their programme components. This is a problem which surfaces in older programming, in particular. In those limited number of cases, the country where the distributor is established can count as the country of origin of the programme component. This does not, however, excuse the media institution of its obligation to put in its best efforts to uncover the identity of the producer. If only the name of the distributor is indicated, the media institution has to indicate why the producer cannot be found.

Article 3 (Independent Productions)

For the definition of the term independent producer it is necessary to take into account criteria such as the ownership of the production company and the number of programmes it supplies to the same media institution.

Programming produced by an institution producing a programme in conjunction with an independent producer (a so-called co-production) will be considered an independent

production. The Authority will consider a production a co-production if the media institution and the independent producer have notified SEKAM of the fact that there is a co-production. The media institution shall on request deliver proof for this.

Programmes produced by media institutions, will not be considered independent productions. Productions produced by a foreign or other Dutch media institution that are acquired by Dutch media institutions, will also not be considered independent productions. Irrespective of whether the Dutch media institution acquired said production from the independent producer or from a media institution, productions acquired by Dutch media institutions produced by a foreign independent producer can be considered independent productions.

The Authority will base its determination as to the existence of an independent production as referred to in Article 3(2)(b) of this Programme Quota Policy Rule, on the data logged at SEKAM. The media institution shall on request demonstrate that it does not supply more than 90% of its productions to one media institution. Pursuant to Article 3(2)(b) of this Programme Quota Policy Rule a programme produced by a producer who produced no more than one production is also to be considered an independent production.

Article 4 (Calculation Method)

In accordance with Articles 2.121 and 3.23 of the Act the percentage of European works, and independent and recent productions is to be calculated on the basis of the total programming minus the programming consisting of, *inter alia*, news, sports, games (not including educational media content with a game component), advertising and teleshopping announcements and teletext. Media content of a religious or spiritual nature and media content provided by political parties are also excluded in respect of public media institutions. Repeats of programmes count towards the total percentages.

The following terms shall have the following meanings:

1.a Programming consisting of news

News is content aimed at the Dutch public, edited by professionals and of a current and universal nature. The term *current* refers to almost daily news, i.e. news that is updated (nearly) every day.

The term *universal* means that all topics are eligible for selection. This does not include content aimed at a particular subject, e.g. art, sports or music.

Content *edited by professionals* is content which has been selected and/or edited by journalists.

Content *aimed at the Dutch public* is content which is not specifically aimed at a particular target group, e.g. Children's News. News aimed at ethnic groups, in particular, is also excluded.

1.b Programming related to sports

Programming containing results, match flashes, match highlights, match analyses and interviews (so-called current sports news), as well as (full or partial) live and comprehensive match or event coverages (so-called sports coverage).

1.c Programming of a game-related nature

Game shows, run by a game show host, or otherwise, featuring contestants or (recurring) panel members participating in a game.

1.d Programming consisting of advertising or teleshopping announcements

Programming mainly aimed at selling a particular product or service, or programming featuring product demonstrations of products which may be purchased by the viewer. As related to teleshopping announcements, this pertains to both individual teleshopping announcements, as well as teleshopping announcement segments.

1.e Programming consisting of still images

Programming restricted to using letters, digits and symbols only.

Article 5 (Exemption for European Works)

The European Commission has determined that the calculation of the percentage of European works may take into account a programme channel's technical limitations, the requirements of

economic balance, as well as the circumstance of a programme channel being new.

In special circumstances, the Authority can issue an exemption. Such special circumstances may relate to the nature of the programming channel (e.g. channels aimed at a very specific target group, like children or a very specific type of programming, such as US sitcoms), the inability of acquiring sufficient rights to European works, or special economic circumstances, such as start-up issues experienced by a new programme channel. This does not include a commercial media institution's potential losses or profits. The Authority could therefore grant commercial media institutions an exemption in respect of the percentage of European works. Media institutions looking to apply for an exemption must do so by submitting a reasoned request to that effect prior to the commencement of the period for which they are seeking an exemption.

Circumstances may arise precluding new programme channels from being able to meet the required percentage of European works due to e.g. start-up issues. In special circumstances new programme channels could receive a three-year exemption. During that period, the programme channel will need to grow towards attaining that mandatory percentage. In the event that the media institution were to demonstrate or make plausible that special circumstances exist, the percentage that programme channel will be required to meet during the period starting from the date of the channel's launch through to the first full calendar year, will be set at 10%, with the percentage for the second calendar year set at 15%, and at 25% for the third calendar year.

Article 6 (Commercial Media Institutions' Coverage)

Commercial media institutions providing programming which can only be received in a limited number of adjacent municipalities will not be required to meet the requirements of Articles 3.20–3.22 of the Act. The determining criterion is whether the media institution is providing programming to a local audience. European guidelines provide that any determination of whether a media institution is providing programming to a local audience will not only have to take into account the coverage enjoyed, but also the content of the programming concerned. The content of the programming concerned will also have to be aimed at the local audience in question. This would consequently mean that programming consisting exclusively of films that can only be received in a limited number of adjacent municipalities does not meet the exemption requirements of Article 3.23(2) of the Act, as the content of the programming concerned cannot be considered of a local nature.

Article 7 (Best Efforts Obligation for On-Demand Media Services)

As a consequence of the 2010 EU Directive, media institutions providing on-demand commercial media services are required to promote the production of and access to European works. Contrary to what is required of broadcasting services, on-demand media services are not required to satisfy any mandatory minimum percentages. The AMSD adopted in November 2018 did introduce a minimum percentage and requires on-demand media services providers to include a minimum of 30% of European works in their catalogues, the prominence of which they are required to promote.¹ Member States have until September 2020 to transpose the new provisions into their national laws. These policy rules will adhere to the regime of the old EU Directive until such time as the new provisions have been implemented into the Act.

II. Productions in Dutch and Frisian

Article 8 (Original Productions in Dutch or Frisian)

Articles 2.122(1) and 3.24(1) of the Act are aimed at promoting the Dutch and Frisian languages.

The voice-recording as referred to in Article 8(b) of this Programme Quota Policy Rule includes, *inter alia*, commentating, using a narrator, or the voice-recording of animations. Any programming that is subtitled or dubbed in Dutch or Frisian will not be considered original programming in Dutch or Frisian. The list of examples of original productions in Dutch or Frisian included in Article 8 is not exhaustive. Any programming evidently Dutch or Frisian in nature will, for example, also be considered original programming in Dutch or Frisian.

¹ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities.

Teletext will always be considered programming of an evidently Dutch or Frisian nature.

Article 10 (Exemption for Productions in Dutch or Frisian)

Parliamentary history shows that the reason for the introduction of the programme quota for commercial media institutions, was to compel these institutions to make a minimum contribution to Dutch culture.² As far as special circumstances are concerned, the legislator has named a programme channel specifically aimed at minorities in Dutch society or one which only broadcasts films as examples.³ The legislator did not feel that programme channels which, though licensed by the Authority, are almost exclusively aimed at foreign viewers, but can also be received within Dutch borders can realistically be required to observe the mandatory percentage.⁴

The burden of proof in showing that special circumstances warranting the issue of an exemption exist lies with the media institution. Media institutions looking to apply for an exemption, must do so by submitting a reasoned request prior to the commencement of the period for which they are seeking an exemption. Circumstances may arise precluding new programme channels from being able to meet the required percentage of original productions in Dutch or Frisian due to, for example, start-up issues. In special circumstances new programme channels could receive a three-year exemption. During that period, the programme channel will need to grow towards attaining that mandatory percentage. In the event that the media institution were to demonstrate or make plausible that special circumstances exist, the percentage that programme channel will be required to meet during the period starting from the date of the channel's launch through to the first full calendar year, will be set at 0%, with the percentage for the second calendar year set at 15%, and at 25% for the third calendar year. The percentage will be set at 0% for the year in which the programme channel was issued a licence.

For the determination of the existence of special circumstances warranting the issue of an exemption for the term of the licence period, the Authority will take the following circumstances into account: the nature of the programming channel and of the programming, the programming channel's target audience and the geographical coverage it enjoys (e.g. if certain specific programming were to be distributed that is also (or mainly) aimed to a broadcasting area outside of the Netherlands). The aforementioned circumstances should by no means be understood as constituting an exhaustive list. Special circumstances may also be deemed to exist if only one of these circumstances, or perhaps a combination thereof, is found to exist. In the event that the media institution were to demonstrate that the programming is almost fully focussed on other countries than the Netherlands, the Authority will on request set the mandatory percentage of productions in Dutch or Frisian to 0% for the term of the licence period. The Authority feels that insisting on observance of the 40% mandatory requirement would not be realistic in such a situation. Programming will be considered as almost fully focussed on countries other than the Netherlands if, for example, it has an interactive character, with audiences in the Netherlands precluded from participating in such interactive features. Other circumstances may also prove programming as almost fully focussed on foreign countries. Such circumstances may, for example, prove in existence in case of programming which cannot be received in an unencrypted manner in the Netherlands, or programming which is being disseminated in a language other than Dutch (spoken, subtitled, or dubbed). The circumstance that programming is being disseminated to the Netherlands via satellite (with a large footprint), or via the open internet, may still mean it is almost fully focussed on foreign countries.

Furthermore, the mandatory percentage may be set to 0% for the term of the licence period, if the media institution were to be able to demonstrate that - having regard to the nature of the programming, the scheduling and the target audience - the programme channel is focussed on all of Europe, or at least a substantial part thereof. Such a specific case will require the media institution to demonstrate - having regard to the nature of the programming, the scheduling and the target audience - that observance of the required mandatory percentage of original productions in Dutch or Frisian would constitute a disproportional hindrance to the programme channel's business model.

Finally, for programme channels designated as 'special broadcasters' before the entry into force of the Act, the mandatory percentage of productions in Dutch or Frisian could be set to 0% for the term of their licence period. Up until 1 January 2009 programmes for special broadcasters would be exempted from the mandatory percentage of programme components in Dutch or Frisian. The old Act considered the following to

² The programme quota for commercial institutions in respect of programmes in Dutch or Frisian was in 1992 included in the Media Act in effect at the time by way of an amendment of Article 71g, at the third 3.

³ Programme components either dubbed or subtitled in Dutch or Frisian will not be considered original programming in Dutch or Frisian. So-called 'mixed' programme components, such as daily news bulletins, will be counted in full towards the percentage, unless the Dutch or Frisian language has an extremely subordinate position in the programme. See Stb. 1992, 334.

⁴ Kamerstukken I, 2008/09, 31 356, D (Memorie van Antwoord).

constitute a special broadcaster programme: "[...] a programme which is disseminated in encrypted form and which is aimed at a section of the general public consisting of those individuals who have concluded a contract for the receipt of the programme with the broadcaster providing the programme." The term *special broadcaster programme* and its commensurate exemption provision were repealed with the new Act entering into force on 1 January 2009. The Act's Explanatory Memorandum shows that the exemption provision could be repealed, as an accommodation for such exemptions had now been included in the exemption provision of Article 3.24(1) of the Act.⁵

III. Subtitling of Television Programming

Article 11 (Subtitling)

The subtitling requirement makes no distinction between programming in Dutch featuring subtitles engrained in the picture or subtitles which may be called up via a (built-in) decoder.

Article 12 (Commercial Media Institutions' Coverage)

Pursuant to Article 17 of the Decree, commercial media institutions enjoying a minimum coverage of 75% of all households in the Netherlands are required to subtitle at least 50% of their total original programming in Dutch.

To enable the Authority to determine a media institution's coverage, this media institution will have to immediately notify the Authority when it enjoys a minimum coverage of 75% of all households in the Netherlands.

Article 13 (Calculation Method)

The subtitling percentage is calculated based on the television programming share of original productions in Dutch. When it comes to public media institutions, programming of a religious or spiritual nature and programming of political parties and of the government is excluded from the calculation of the percentage of productions in Dutch or Frisian referred to in Articles 2.122(1) and 2.122(2) of the Act. Article 15 of the Decree, however, stipulates that this type of programming does count towards the subtitling percentage. The application of Articles 15 and 17 of the Decree requires programming consisting of advertising and teleshopping announcements, television programming aimed at Dutch speakers living abroad, and visual radio content to be excluded from consideration. Programming voice-recorded in Dutch and also specifically aimed at children below the age of 8, is also excluded from the calculation. If the subtitling requirement were to also apply to this type of programming, this could have the unintended effect of media institutions disseminating such voice-recorded content to elect to fall back on using originally foreign-language spoken content provided with subtitles in Dutch instead, in an attempt to reduce costs. This would leave young children who are yet unable to read adversely affected. The national public broadcaster considers children of approximately 8 years old as able to read subtitles. Individual music videos, as well as programme components solely consisting of music videos are excluded from the application of Articles 15 and 17 of the Decree. Individual Dutch language music videos consequently do not count towards the calculation of the total programming share enjoyed by original productions in Dutch. If the Dutch language music videos are part of an original production in Dutch, they do not require subtitling. The production does, however, count towards the calculation of the total amount of television programming.

IV. Reporting

Article 15

To ensure that the Authority can properly monitor compliance with the legislation on the various quota, the legislator decided to have the NPO submit reports once a year. The NPO reports on the television programming channels, with the exclusion of the NPO's themed channels, for the total television programming in a year. The NPO is required to report on its themed channels based on data gathered using a four-week sample (one week for every quarter of the year reported on).

Regional public media institutions and commercial media institutions with television programming

⁵ Kamerstukken II, 2007/08, 31 356, no. 3, p. 70.

channels enjoying a technical coverage of equal to or more than 75%, or a national market share equal to, or in excess of, 0.3% in at least one EU Member State, are required to bi-annually submit a report based on data gathered using a four-week sample (one week for every quarter of the year reported on). Commercial media institutions with television programming channels enjoying a technical coverage of less than 75% of Dutch households, or with a national market share below 0.3%, will submit a report at the request of the Authority. The media institution concerned will be notified of such a request to report prior to the first sample week. The request will reveal which weeks the sample is to pertain to.

Article 15(6) of this Programme Quota Policy Rule stipulates that a commercial media institution providing on-demand media services is required to periodically clarify the share of European works in their total programming and to subsequently notify the Authority thereof. This can be done by filling out a series of questions the Authority has included in a reporting form. Institutions are also expected to calculate the share of European works within the total programming. The reporting form comes with a detailed set of explanatory notes to allow the institution to be exact in making its calculation. Mandatory reporting is not required for footage consisting of news, sports, games, advertising and teleshopping announcements and/or containing so-called *user generated content*. In respect of these types of footage, institutions are only asked to indicate on their forms which type of footage is concerned. Institutions are expected to calculate the share of European works for any programming that is not included in the aforementioned categories.

Article 16

Article 16 of this Programme Quota Policy Rule stipulates which data in respect of the national television programming channels, with the exclusion of the NPO's themed channels, the NPO is required to report on.

Article 17

Article 17 of this Programme Quota Policy Rule stipulates which data the NPO (in respect of its themed channels), the commercial media institutions and the regional public media institutions are required to report on. Reporting is to be done using a spreadsheet the Authority has developed and which media institutions are required to fill out. In the event that the media institution does not report in the manner prescribed by the Authority and in doing so would be providing incomplete and/or insufficient information, the Authority may elect to issue to that media institution an incremental penalty or an administrative fine for violation of Article 5:20 of the *Algemene wet bestuursrecht* [General Administrative Law Act, Awb]. The name of the distributor (paragraph 2(i)) will only be listed in the event that the identity of the producer is unknown and provided that the requirements of Article 2(3) of this Programme Quota Policy Rule have been met.

The Authority would like to point out the following in respect of Article 17(4): Circumstances may arise precluding a commercial media institution from reporting in the manner prescribed in paragraph 2. The programming on music programme channels may, for example, mostly consist of non-stop music videos. In that case, it would be logical to report at the level of the music video on the percentage of European works, and independent and recent productions it airs. In those cases where it is clear that there is a programme, e.g. a programme consisting of music videos, such as a hit list, these data have to be reported on for the programme as a whole.

Sample-based monitoring was elected the method of choice in respect of commercial media institutions enjoying a relatively limited coverage, for reasons of reducing their effective administrative burden.