
2022 Commercial Media Institutions Quota Policy Rule

Dutch Media Authority policy rule on recent independent European media content, originally Dutch or Frisian language programming, and programming subtitled for the hearing impaired (2022 Commercial Media Institutions Quota Policy Rule)

The Dutch Media Authority,

Having regard to Articles 3.20 - 3.25 and Article 3.29c of the 2008 Media Act and Article 4:81 of the General Administrative Law Act (Awb),

decrees:

I. Definitions & Scope

Article 1. Definitions

The following terms employed in this policy rule shall have the following meaning:

- a. Act*: The 2008 Media Act;
- b. Decree*: The 2008 Media Decree;
- c. Regulation*: The 2008 Media Regulation;
- d. catalogue*: The organisation of the audiovisual media content in a database that enables the user to access the audiovisual media content;
- e. European works*: Works as referred to in Article 1, paragraph 1, point n, and Article 1, paragraphs 2, 3, and 4 of the Directive;
- f. 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;
- g. independent producer*: The producer of an independent work as referred to in Article 3.22, paragraph 1, of the Act;
- h. subtitling*: Dutch or Frisian language programming subtitled in Dutch;
- i. producer*: The person creating programming;
- j. programming*: Television programming;
- k. programme channel*: Television programme channel;
- l. recent work*: An independent work that is less than five years old.

Article 2. European Works

1. A *producer* as referred to in Article 1, paragraphs 3 and 4, of the Directive will be deemed to have been incorporated in a Member State if their enterprise is permanently established there and if they employ a number of tenured staff working on both production and commercial activities within the European Union.
2. In the event that the producer of a work cannot be identified, a *producer* will be understood as to also include that work's distributor. In such instances, the member state where the distributor is established will be deemed the member state where the producer is established.
3. Paragraph 2 will only apply if the Authority feels sufficiently satisfied that the media institution that distributed the work, sufficiently endeavoured to obtain the relevant information on the producer of the work.

Article 3. Independent Works

1. Further to Article 3.22, paragraph 1, of the Act, the following works shall be deemed *independent works*:
 - a. Any programming produced by an independent producer working together with a media institution, when the media institution is not designated as the producer of that content;
 - b. Any independent work acquired by a media institution.
2. The following works shall not be deemed *independent works*:
 - a. Programming exclusively produced by a media institution;
 - b. Programming produced by a producer who in the three preceding financial years supplied more than ninety percent of the programming he produced to the same media institution.

II. European works

Article 4. Calculating the share of European, independent and recent works aired on programme channels

1. The attained share of European, independent and recent works referred to in Articles 3.20-3.22 of the Act, is calculated by taking the total programming per television programme channel per calendar year, with the exclusion of the media content referred to in Article 3.23 of the Act.
2. Repeats of programmes count towards the attained share of European, independent and recent works.

Article 5. Calculating the share of European works of audiovisual media content aired on on-demand commercial media services

1. To determine the attained share of European works of an on-demand commercial media service as referred to in Article 3.29c, paragraph 1, of the Act, the total number of European titles listed in the catalogue in question will be used and compared against all titles listed in that catalogue.
2. Feature films and full seasons of television series will always be deemed *titles* in this respect. Individual episodes of television series can be deemed *titles* in this respect if they are similar to feature films.

Article 6. Programming Coverage

For the application of Article 3.23, paragraph 2, of the Act programming shall be identified as *programming which can only be received in a single municipality, or in a limited number of adjacent municipalities*, provided that such programming is aimed at that municipality, or at those municipalities, and as long as it is not disseminated via any other part of the national broadcasting network, or in any other municipality via a programme channel.

Article 7. Prominence of European works aired on on-demand commercial media services

The sufficient prominence of European works aired on on-demand commercial media services as referred to in Article 3.29c, paragraph 2, of the Act can be ensured *inter alia* through:

- a. a dedicated section for European works that is accessible from the service's homepage;
- b. the possibility to search for European works in the search tool available as part of that service;
- c. the use of European works in campaigns of that service or a minimum percentage of European works recommended in that service's catalogue, for example by using banners or similar tools.

Article 8. European works share exemption for providers with a low turnover or low audience

1. The obligation to attain a particular share of European works and relating to the promotion of European works referred to in Article 3.29c, paragraphs 1 and 2, of the Act do not apply to providers of on-demand commercial media services with a *low turnover* or *low audience*.
2. A *low turnover* means an annual turnover of up to two million Euros, including the annual turnover of partner companies and linked companies.
3. A *low audience* means a user share of less than 1 % of the assumed number of potential users of on-demand commercial media services of the Member State targeted by that provider of on-demand commercial media services. Calculation of the assumed number of potential users of on-demand commercial media services is conducted based on an assumed audience of 80 % of the total population of the Member State targeted by that provider of on-demand commercial media services.
4. Providers of on-demand commercial media services wishing to apply for an exemption as referred to in paragraph 1 of this Article will have to file an exemption request with the Authority. Exemption request applications must be filed along with any and all information as may be relevant in allowing the Authority to make its determination on the request filed.

Article 9. European Works Exemption for Programme Channels

1. Subject to the existence of special circumstances, exemptions to the obligations related to the share of European works as referred to in Article 3.20, paragraph 1, of the Act may be granted, however, this percentage cannot be set any lower than 10 %.
2. The determination of the existence of special circumstances as referred to in paragraph 1 will at all times take into account the nature of the programme channel, the programming, the target audience, the inability of acquiring sufficient rights to European works and any special economic circumstances.
3. If indeed the Authority is sufficiently satisfied that special circumstances are in existence rendering it not warranted that a television programme channel would be required to immediately meet the share

of European works, it may elect to lower that share for a period of no more than three calendar years.

4. If indeed the Authority is sufficiently satisfied that given the circumstances referred to in paragraph 2, special circumstances are in existence rendering it not warranted that a television programme channel be required to meet the share of European works, it may elect to lower the share referred to in Article 3.20, paragraph 1, of the Act for the duration of the licence term to provide the programme channel, provided that the programme channel's programme format remains unchanged.

5. Exemption request applications must be filed with the Authority along with any arguments that would substantiate it being granted.

Article 10. European Works Exemption for audiovisual media content aired on on-demand commercial media services

1. The Authority could grant an exemption if it were to feel sufficiently satisfied that either the nature or the subject of the on-demand commercial media service were to render compliance with the obligations related to the share of European works for audiovisual media content aired on on-demand commercial media services as referred to in Article 3.29c of the Act, either practically impossible or unjust.

2. In determining whether any circumstances warranting the granting of an exemption as referred to in paragraph 1 exist, the Authority will at all times take into account the nature of the on-demand commercial media service, the nature of the audiovisual media content, the target audience, the inability of acquiring sufficient rights to European works and any special economic circumstances.

3. If indeed the Authority is sufficiently satisfied that circumstances are found to exist, rendering it not warranted that an on-demand commercial media service would be required to immediately meet the share of European works, it may elect to lower that share for a period of no more than three calendar years.

4. If indeed the Authority is sufficiently satisfied that given the circumstances referred to in paragraph 2, circumstances are found to exist, rendering it not warranted that an on-demand commercial media service is required to meet the share of European works, it may elect to lower the percentage referred to in Article 3.29c of the Act, provided that the on-demand commercial media service's format remains unchanged.

5. Exemption request applications must be filed with the Authority along with any arguments that would substantiate it being granted.

III. Dutch and Frisian Language Works

Article 11. Originally Dutch or Frisian language works

Originally Dutch or Frisian language works referred to in Article 3.24, paragraph 1, of the Act shall *inter alia* include:

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

Article 12. Calculating the share of originally Dutch or Frisian language works aired on programme channels

To determine the attained share of originally Dutch or Frisian language works referred to in Article 3.24 of the Act, the total programming per programme channel per calendar year is used. Repeats of programmes count towards the attained share.

Article 13. Originally Dutch or Frisian Language Works Exemption for Programme Channels

1. Special circumstances may warrant certain programme channels to be issued a partial, or full, exemption to the share of originally Dutch or Frisian language works referred to in Article 3.24, paragraph 2 of the Act.

2. The determination of the existence of special circumstances as referred to in paragraph 1 could at all times take into account the nature of the programme channel, the programming, the target audience, the geographical coverage of the programme channel and any special economic circumstances.

3. If indeed the Authority is sufficiently satisfied that special circumstances are in existence rendering it not warranted that a programme channel would be required to immediately meet the share of Dutch or Frisian language works, it may elect to lower that share for a period of no more than three calendar years.

4. If indeed the Authority is sufficiently satisfied that given the circumstances referred to in paragraph 2, special circumstances are in existence, rendering it not warranted that a programme channel be asked to meet the share of originally Dutch or Frisian language works, it may elect to either lower this share or set it to zero for the duration of the licence term for providing the programme channel, provided that the programme channel's programming 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, paragraph 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. Exemption request applications must be filed with the Authority along with any arguments that would substantiate it being granted.

Article 14. Subtitling of originally Dutch language works on programme channels

The following originally Dutch language works will be deemed originally Dutch language works subtitled for the hearing impaired, as referred to in Article 17 of the Decree:

- a. those voice-recorded in Dutch;
- b. works containing components of works 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 15. Calculating the Subtitling Percentage for Programme Channels

1. To determine the subtitling percentage as referred to in Article 17 of the Decree, the total programming per programme channel per calendar year enjoyed by works that may be deemed originally Dutch language works, as referred to in Article 14 of this policy rule, will be used.
2. Repeats of 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 16. Subtitling Percentage Exemption for Programme Channels

1. Special circumstances may warrant certain programme channels to be issued a partial, or full, exemption to the subtitling percentage of their programming referred to in Article 3.25, paragraph 2 of the Act.
2. The determination of the existence of special circumstances as referred to in paragraph 1 can at all times take into account the nature of the programme channel or any special economic circumstances.
3. Provided that the Authority is sufficiently satisfied that special circumstances exist rendering it not warranted that a programme channel would be required to immediately meet the subtitling percentage, it may elect to lower that share for a period of no more than three calendar years.
4. Provided that the Authority is sufficiently satisfied that given the circumstances referred to in paragraph 2, special circumstances exist rendering it not warranted that a programme channel be asked to meet the subtitling percentage, it may elect to either lower this share or set it to zero for the duration of the licence term for providing the programme channel, provided that the programme channel's programming format remains unchanged.
5. Exemption request applications must be filed with the Authority along with any arguments that would substantiate it being granted.

Article 17. Programme Channel Coverage

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

IV. Reporting Obligation and Content of the Report

Article 18. Reporting Obligation Regarding Quota

1. Once every two years, before 1 May, commercial media institutions with programme channels enjoying a national market share equal to or greater than 0.3% in at least one Member State, will submit a report to the Authority on the level of compliance with Articles 3.20, paragraph 1, 3.21, 3.24, paragraph 1, and 3.25 of the Act, and Article 17 of the Decree in the preceding two years.
2. Commercial media institutions with programme channels enjoying a national market share of less

than 0.3% will, at the Authority's request, submit a report to the Authority on the level of compliance with Articles 3.20, paragraph 1, 3.24, paragraph 1, and 3.25 of the Act.

3. Providers of on-demand commercial media services shall, once every two years, in odd years, and before 1 May, report to the Authority on the level of compliance with Article 3.29c, paragraph 1, of the Act in the two preceding years.

4. Providers of on-demand commercial media services shall, in addition to their reporting as referred to in paragraph 3, simultaneously report on the level of compliance with Article 3.29c, paragraph 2, of the Act, stipulating their obligation to give prominence to European works on their on-demand commercial media service (Article 7 of the policy rule).

Article 19. Reporting - Programme Channels

1. The reports referred to in Article 18, paragraphs 1 and 2, of this policy rule contain, both in absolute numbers and in percentages, data gathered using a one-week sample taken every quarter for each reported year.

2. The reports referred to in Article 18, paragraphs 1 and 2, of this policy rule shall contain the components listed in the reporting schedules available on the Authority's website for each individual work distributed.

3. The media institutions shall report to the Authority in the manner prescribed by the Authority.

4. After a prior request, the Authority can allow a media institution to report to it in a manner different to the one referred to in paragraph 3.

5. The Authority will determine 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 does not apply to commercial media institutions with programme channels enjoying a technical coverage of less than 75 % of Dutch households, where the subtitling section of the report form is concerned.

Article 20. Reporting - Providers of on-demand commercial media services

1. The reports referred to in Article 18, paragraph 3, of this policy rule list either annual data, or data gathered by using a sample taken on the first day of the four sample weeks for every year reported, as referred to in Article 19, paragraph 1.

2. The reports referred to in Article 18, paragraph 3, of this policy rule shall contain the components listed in the report forms available on the Authority's website for each individual work distributed.

3. Providers of on-demand commercial media services shall report to the Authority in the manner prescribed by the Authority.

4. After a prior request, the Authority can allow a provider of on-demand media services to report to it in a manner different to the one referred to in paragraph 3.

5. If it has been established that the audiovisual media content (on a channel) of a provider of on-demand commercial media services consists for 100 % of European works, the provider may elect to meet its reporting obligation by filling out and signing the *European Works Declaration*, as made available on the Authority's website.

6. The Authority will determine 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.

V. FINAL PROVISION

Article 21. Official Title and Entry into Force

1. This policy rule shall be referred to as the 2022 Commercial Media Institutions Quota Policy Rule.

2. The 2019 Programme Quota Policy Rule is herewith repealed.

3. This policy rule shall be made public by its publication both in the Government Gazette [*Staatscourant*] and on the Dutch Media Authority's website (www.cvdm.nl).

4. This policy rule shall enter into force on the day following the date of its publication in the Government Gazette and shall have retroactive effect from 1 January 2022 onwards.

5. Any exemptions granted prior to the entry into force of this policy rule will, barring its provisions on the reporting obligation, remain governed by the provisions of the 2019 Programme Quota Policy Rule as in force at the time they were granted.

Dutch Media Authority,

*drs. Renate Eringa-Wensing
President*

*mr. Peter Eijssvoogel
Supervisory Board Member*

EXPLANATORY NOTES TO THE 2022 COMMERCIAL MEDIA INSTITUTIONS QUOTA POLICY RULE

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 supporting 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 works 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) audiences, 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 media content to, in principle, contain at least a certain share of European and independent works, contain at least a certain share of works in Dutch or Frisian and contain at least a certain share of original works in Dutch that is subtitled for the hearing impaired.

The 2008 Media Act was amended on 1 November 2020 in connection with the implementation of Directive (EU) 2018/1808 of 14 November 2018 amending Directive 2010/13/EU (Audiovisual Media Services Directive). This amendment, in turn, called for the enactment of the 2022 Commercial Media Institutions Quota Policy Rule. Simultaneously, the 2019 Programme Quota Policy Rule is repealed.

The Directive was revised in 2018, as a swiftly and significantly changing European media landscape called for an updating of its legal framework. Technical developments have in recent years allowed for new types of services and user experiences. While traditional TV content still accounts for a major share of the average daily viewing time, many viewers have moved, and are increasingly moving, to new ways of viewing media content. Furthermore, new types of media content have gained an increasing importance and providers of on-demand commercial media services and video-sharing platforms are now well-established. These developments called for an update of the Directive. The 2018 revision of the Directive aimed to create a more level playing field for the European media industry, thereby improving competitiveness among its actors. At the same time, media users, minors in particular, will be able to rely on better protection from illegal and harmful content.

Both the Act and the Directive make a distinction between broadcasting services (also referred to as linear media services) and on-demand media services (also referred to as non-linear media services). Providers of broadcasting services offer media content based on a predetermined chronological schedule, distributed for simultaneous receipt by the general public or a section thereof (programming). Providers of on-demand media services, on the other hand, offer media content upon an individual requesting such and at a time of that individual's choosing (audiovisual media content). The 2018 revision of the Directive tried to uniformise, as much as possible, the regulation of on-demand media services and the regulation of broadcasting services. This means *inter alia* that on-demand commercial media services have to include a minimum of 30 % of European works in their catalogues.

This policy rule constitutes the Authority's practical implementation of the manner in which it will monitor compliance with the quota set. This policy rule applies to on-demand commercial media institutions only. Public media institutions will for certain parts be governed by a different legal regime. This can be found in the 2022 Public Media Institutions Quota Policy Rule.

2. Explanatory Notes by Article

I. Definitions & Scope

Article 1 (Definitions)

The terms employed in this policy rule that also feature in the 2008 Media Act, have the same meaning as defined in Article 1 of the Act. Any terms employed in this policy rule not defined in Article 1 of the Act, can be found defined in this policy rule.

Article 2 (European Works)

Article 2, paragraph 1, of this policy rule is based on the July 2011 European Commission guidelines drafted to enable the monitoring of compliance with Articles 16 and 17 of the Directive (Doc CC AVMSD (2011) 2).

Commercial media institutions have been found to sometimes struggle with identifying the producer of some of their works. This is a problem which is particularly prevalent among older works. In those limited number of cases, the country where the distributor is established can count as the country of origin of the work. This does not, however, excuse the commercial media institution of upholding its best-efforts obligation to determine the identity of the producer. If only the name of the distributor is indicated, the commercial media institution has to indicate why the producer cannot be found. A distributor should also be understood as to include the individual who originally marketed the work in question for distribution via e.g. programme channels and on-demand platforms.

Article 3 (Independent Works)

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 commercial media institution. These criteria can also be derived from the European Commission guidelines drafted to enable the monitoring of compliance with Articles 16 and 17 of the Directive (Doc CC AVMSD (2011) 2).

Any programming produced by a commercial media institution working in conjunction with an independent producer (a so-called co-production) will be deemed an independent work, as long as the commercial media institution concerned is not designated as producer of the content in question. In those cases the commercial media institution is required to indicate whether and why their efforts would qualify as a co-production. Upon request, the commercial media institution will provide the Authority more detailed information on such a matter.

Programmes produced by commercial media institutions, will not be considered independent productions. Programmes produced by a Dutch, or foreign, media institution and acquired by a Dutch media institution, will not be deemed independent productions either. Irrespective of whether the Dutch commercial media institution acquired said production from the independent producer or from a media institution, productions acquired by Dutch commercial 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, paragraph 2, point b, of this policy rule, on the data it is furnished by the commercial media institution. The commercial media institution shall on request demonstrate that it does not supply more than 90 % of its productions to one commercial media institution. Pursuant to Article 3, paragraph 2, point b, of the policy rule a programme produced by a producer who produced no more than one production is also to be considered an independent production.

II. European Works

Article 4 (Calculating the share of European, independent and recent works aired on programme channels)

With regard to programme channels referred to in paragraph 1, the percentage of European, independent and recent works has to be calculated by using the total programming minus the programming consisting of news, sports, games (excluding educational media content with a game component), advertising and teleshopping announcements, and teletext. Repeats of programmes count towards the total percentages.

The following terms shall have the following meanings:

Programming consisting of news

Programming that is frequently aired - at least once a week - and reports on events no less than seven

days old. This will not be understood as to include:

- a. programming consisting of a weather forecast;
- b. programming consisting of traffic reporting.

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).

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.

Programming consisting of advertising or teleshopping announcements

Programming mainly aimed at getting the audience to buy a particular product or to use a particular service, or at getting them to look favourably upon a particular company, industry or institution, for the purpose of increasing sales of products or services, or programming featuring product and service demonstrations that can be purchased by the viewer. With regard to teleshopping announcements, this applies to both individual teleshopping announcements, as well as teleshopping announcement segments.

Programming consisting of still images

Programming restricted to using letters, digits and symbols only.

Article 5 (Calculating the share of European works of audiovisual media content aired on on-demand commercial media services)

The method employed for calculating the share of European works of audiovisual media content aired on on-demand commercial media services follows the *Guidelines pursuant to Article 13(7) of the Audiovisual Media Services Directive on the calculation of the share of European works in on-demand catalogues and on the definition of low audience and low turnover* (2020/C 223/03). The total number of European works in a catalogue should be set off against the total number of titles contained in a catalogue. Cross-border providers of on-demand commercial media services offering different catalogues from one Member State to another, also have to meet the prescribed European works share requirement and will need to report on their European works shares for each of the individual Member States concerned. This will ensure that the 30 % European works share requirement is effectively achieved in every Member State.

Feature films and full seasons of television series will always be deemed *titles* in this respect.

Providers of on-demand commercial media services may request to have a television series episode deemed a *title*. This will require them to show the production or acquisition costs involved in the episode in question. If the production or acquisition costs for any one episode were to be found to exceed 2 million Euros, then that episode may be equated to a feature film, consequently deemed as such, and therefore count towards the prescribed European works share.

Article 6 (Programming 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. An assessment has to be carried out to determine whether the media institution is providing programming to a local audience. Such an assessment 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 concerned. 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, paragraph 2, of the Act, as the content of the programming concerned cannot be considered of a local nature.

Article 7 (Prominence of European works aired on on-demand commercial media services)

Contrary to viewers watching programming on programme channels, users of on-demand commercial media services themselves decide what it is they would like to watch and when they would like to watch it. If not properly brought to the attention of the viewer, the number of titles contained in a

catalogue may cause a European work as referred to in the Directive to become less easy to notice and find. In order to encourage the distribution and promotion of European works, the Act implementing the 2018 amendments to the Directive has made bringing these works to the attention of the public a mandatory requirement. Such attention may be awarded in the manner described in the provision, but this is not an exhaustive overview. A further reason for the Authority electing not to opt for an exhaustive description of measures available can in part be found in the swift manner in which digital techniques are currently evolving, e.g. the automated recommendation systems platforms are currently able to employ in bringing titles to the viewer's attention. Providers of on-demand commercial media services are free to employ other measures for furthering the prominence of European works in whatever manner they see fit and effective. As the body entrusted with monitoring compliance with this provision, the Authority will, where needed, seek additional information allowing it to assess whether such measures do indeed serve their purpose. Article 17, paragraph 4, of this policy rule requires providers of on-demand commercial media services to report on the level of compliance observed with this provision, irrespective of them having been granted a European works share exemption as referred to in Articles 8 and 10 of this policy rule.

Article 8 (European works share exemption for providers with a low turnover or low audience)

Article 13 of the Directive provides that the 30 % European works share requirement does not apply to providers of on-demand commercial media services with a *low turnover* or a *low audience*. This provision was implemented into Dutch law by way of Article 3.29c, paragraph 3, of the Act. The provision was included in the Directive in order to ensure that obligations relating to the promotion of European works do not undermine market development and to allow for the entry of new players on the market. This is why providers with no significant presence on the market are exempted from the prescribed European works share requirement.

Low Turnover

The Authority has adopted a 2 million Euros threshold in line with the Commission's 7 July 2020 *Guidelines pursuant to Article 13(7) of the Audiovisual Media Services Directive on the calculation of the share of European works in on-demand catalogues and on the definition of low audience and low turnover* (2020/C 223/03). Providers of on-demand commercial media services with an annual turnover that does not exceed this threshold are eligible to apply for this exemption. The annual turnover used to determine their eligibility will be the annual turnover figure stated on their (most recent) annual accounts, or their (most recent) profit & loss account. The determination of the enterprise's annual turnover also takes into account the turnover of partner and linked enterprises. The concepts *partner enterprises* and *linked enterprises* are regarded in line with the definitions employed in *Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises*.

Low Audience

Providers of on-demand commercial media services with an annual turnover of more than the 2 million Euros threshold, and consequently ineligible to apply for the *low turnover* exemption, may nevertheless serve only a low audience and therefore lack a significant presence in the market. Those providers would, under such circumstances be eligible to apply for the exemption for reasons of having a *low audience*. Providers of on-demand commercial media services may elect to limit their application for an exemption to them having a *low audience*. Applications relying on either criterion (either a low turnover, or a low audience) alone may prove equally sufficient to obtain an exemption in their own right.

Calculation of the user share enjoyed by an on-demand commercial media service is done based on the total user share for the particular week of the year the media service has elected to use as its representative sample. The user share enjoyed by an on-demand commercial media service, should in principle, be understood as to constitute the total number of paying subscribers, the total number of unique accounts, or the total number of unique visitors to the platform, depending on the specific on-demand commercial media service concerned. It will be up to the provider of on-demand commercial media services requesting the exemption to identify the total number of users and to substantiate that figure. He will also have to show why the week he chose to use as his representative sample is indeed representative of the total number of individuals using his media service.

The user share enjoyed by that particular on-demand commercial media service is then set off against the assumed total number of potential users of on-demand commercial media services in the Member

State targeted by that provider of on-demand commercial media services. Based on research and insights, the Authority has set the assumed number of potential users at 80 % of the total population of the Member State targeted by the provider of on-demand commercial media services concerned. If the user share enjoyed by the on-demand commercial media service in question were to remain below 1 % of the assumed number of potential users, said provider of on-demand commercial media services would then be eligible to apply for the exemption on the basis of having a *low audience*.

Here are three examples of situations illustrating how a *low audience* can be calculated.

1. Content exclusively distributed within the Netherlands

Should the provider of on-demand commercial media services only target audiences in the Netherlands, the figure used in the calculation of the total population of the Netherlands will be the one estimated by the *Centraal Bureau voor de Statistiek* (CBS). The figure used will be the total population of the Netherlands on 1 January of the year of application.

Example: In January 2020, the total population of the Netherlands amounted to 17,407,585. As not every inhabitant of the Netherlands will either be able, or want, to use on-demand commercial media services, the amount of people designated as potential users will be 80 % of that figure. Based on the total population of the Netherlands estimated by the CBS in January 2020, the assumed share of potential users would then be calculated based on a total population of 13,931,054. If the user share enjoyed by the on-demand commercial media service in question were to remain below 139,310 (or 1 % of the national share) in the on-demand commercial media service's chosen representative week, the on-demand commercial media service would then be eligible to apply for an exemption.

2. Content distributed in more than one Member State

If the provider of on-demand commercial media services were to use the same catalogue to target audiences in more than one Member State, the assumed share of potential users would then be calculated based on 80 % of the total population of the Member State where the provider enjoys its greatest user share. This adheres to the reasons for offering this exemption, as it can only be granted to those providers of on-demand commercial media services who do not enjoy a significant market presence. The user share enjoyed by the on-demand commercial media service in its chosen representative week will then need to be set off against the total share of the population of the Member State considered users of on-demand commercial media services. Population totals for each Member State can be found at: <https://europa.eu/webtools/rest/charts/export/html/>.

For example: Suppose we have a provider of on-demand commercial media services targeting the Netherlands, Belgium and Luxembourg, the assumed share of potential users would then be calculated based on the total population of the Member State where that provider enjoys the greatest user share. 80 % of the total population of that country would then be designated as potential users of on-demand commercial media services. If the user share enjoyed by the media service in question in that Member State in the media service's chosen representative week were to remain below 1 % of this figure, that media service would then be eligible to apply for an exemption. As this example features an on-demand commercial media service employing the same catalogue in all of the countries it is distributing to, the exemption will then subsequently also apply to all other Member States. This means that once the provider of on-demand commercial media services in question is granted an exemption, it will no longer be obligated to meet the prescribed 30 % European works share requirement in the other Member States for which it did not submit a calculation. The provider of on-demand commercial media services will have to state which Member States it would like its exemption to be granted for. The applicant will also have to include the various user share ratios in his request application, so as to allow the Authority to determine whether the calculation conducted was done for the country with the greatest user share.

3. Programming of varying content distributed in more than one Member State

Providers of on-demand commercial media services distributing content through catalogues that differ from one country to the next, will have to file a separate exemption request application for each of the countries they distribute to. That means that the user share enjoyed by the on-demand commercial media service in its chosen representative week will need to be set off against the assumed total number of potential users of on-demand commercial media services in that particular country. This

would again mean that 80 % of the total population of that country will be assumed as potential users of on-demand commercial media services for calculation purposes. If the user share enjoyed by the on-demand commercial media service in question were to remain below 1 % of the assumed total number of potential users of on-demand commercial media services in that particular country, an exemption could be granted.

Example: A provider of on-demand commercial media services distributing media content in both Lithuania and Slovenia, employing a different catalogue in each country, would have to file exemption request applications for both Lithuania and Slovenia. The exemption request application would have to demonstrate that the user share enjoyed by the applicant does not exceed 1 % of the assumed total number of potential users of on-demand commercial media services in that particular country on 1 January of the year of application. Please refer to the calculation employed illustrated in the example above at 1. pertaining to providers of on-demand commercial media services exclusively targeting audiences in the Netherlands.

Exemption

The burden of proof in showing that circumstances such as a low turnover or a low audience, warranting the granting of an exemption, exist lies with the provider of on-demand commercial media services. To that end, the applicant will have to furnish the Authority with verifiable data. Once the low-turnover or low-audience criterion has been met, an exemption will, in principle, be granted for as long as the on-demand commercial media service's annual turnover remains below the 2 million Euros threshold (*low turnover*); or for as long as the user share enjoyed by the applicant does not exceed 1 % of the assumed total number of potential users in the Member State or States in question (*low audience*). During that period, the provider of on-demand commercial media services will not be obligated to meet either the prescribed 30 % European works share requirement, nor will it be held to promote European works among its users. This will render any need for exemptions pursuant to Article 3.29c, paragraph 4, of the Act, moot. The provider of on-demand commercial media services shall report any changes to either annual turnover, or its number of users (audience) to the Authority at the earliest opportunity. The Authority reserves the right to request the provider of on-demand commercial media services to provide the Authority current information on its annual turnover and its number of users.

Article 9 (European Works Exemption for Programme Channels)

Special circumstances may lead the Authority to decide to grant a partial exemption to the European works share requirement for programme channels of commercial media institutions, as Article 3.20, paragraph 2, of the Act stipulates that the percentage cannot be set any lower than 10 %. The programming should therefore at all times consist for at least 10 % of European works.

The special circumstances referred to in paragraph 2 may relate to the target audience of the programme channel (aimed at a very specific target audience, e.g. children), or the nature of the programme channel, (e.g. channels with a very specific type of programming, such as US crime series, or Asian anime, currently not produced anywhere within the EU), its inability to acquire a sufficient number of (rights to) European works or any special economic circumstances (e.g. start-up issues for new programme channels). Special circumstances shall be deemed to exist if at least one of these circumstances, or a combination thereof, is found to exist. The Authority may take circumstances other than those listed here into account.

Paragraph 3 provides an exemption option for new programme channels unable to meet the required percentage of European works right from their beginning, for example due to start-up issues. Exemptions as referred to in paragraph 3 may also be granted in cases where a programme channel already exists, but where its commercial media institution was incorporated in another country. When assessing such an exemption request, the Authority will take into consideration whether the commercial media institution providing the programme channel had been incorporated in another Member State and whether the channel had already been granted an exemption to the European works share requirement.

Such an exemption may not be granted for more than three calendar years. During that period, the programme channel will need to grow towards attaining the prescribed 50 % share. In the event that the commercial media institution were to demonstrate or make plausible that special circumstances

exist which justify an exemption, 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 in principle be set at 10 %, with the percentage for the second calendar year set at 15 %, and at 25 % for the third calendar year. Channels launched on 1 January of any one year, will have that year deemed their first full calendar year for exemption purposes. Commercial media institutions may request to have the percentages listed in this ambition model adjusted due to the specific circumstances applicable to the programme channel concerned. This would require the commercial media institution to motivate why it was unable to meet the percentages it had been asked to meet as well as to state what percentages it would be able to meet.

Paragraph 4 provides an exemption option for the duration of the licence period. Applicants seeking such an exemption will also be required to motivate the existence of special circumstances precluding them from being expected to meet the European works share requirement. They are free to include the circumstances referred to in paragraph 2 in arguing this.

Commercial media institutions looking to apply for an exemption, must do so by submitting a motivated request to the Authority prior to commencement of the period for which they are seeking an exemption. The burden of proof in showing that circumstances warranting the issue of an exemption exist lies with the commercial media institution. The Authority reserves the right to either replace any exemption granted pursuant to paragraph 3, or convert it into an exemption as referred to in paragraph 4, at any time during, or immediately following, the period for which the exemption has been granted. Commercial media institutions providing programme channels that have different editions from one country to the next, will have to file separate exemption request applications for each of the countries concerned.

A commercial media institution granted an exemption pursuant to paragraph 3 or 4, will nevertheless still be required to report to the Authority on the level of compliance observed on the European works share requirement as referred to in Article 17 of this policy rule, so as to allow the Authority to determine whether the percentage listed in the exemption was met.

Article 10 (European Works Exemption for audiovisual media content aired on on-demand commercial media services)

The Authority may grant an exemption if considering the nature or the subject of this on-demand commercial media service it were to determine that compliance with the obligations related to the share of European works for audiovisual media content aired on on-demand commercial media services would be either practically impossible, or unjust.

In assessing whether this is indeed the case, the Authority may take the circumstances referred to in paragraph 2 into account, i.e. the on-demand commercial media service's target audience (a very specific target audience, e.g. children), or its nature (e.g. a service dedicated solely to horse racing content, baseball, or opera music, and which is currently not produced anywhere within the EU), its inability to acquire a sufficient number of (rights to) European works and any special economic circumstances (e.g. start-up issues for new on-demand commercial media services). Special circumstances shall be deemed to exist if at least one of these circumstances, or a combination thereof, is found to exist. The Authority may take circumstances other than those listed here into account.

Paragraph 3 provides an exemption option for providers of on-demand commercial media services unable to meet the prescribed percentage of European works right from their beginning, for example due to start-up issues. Such an exemption may not be granted for more than three calendar years. During that period, the programme channel will need to grow towards attaining the prescribed 30 % share. In the event that the provider of the on-demand commercial media service were to make plausible that special circumstances justifying that exemption exist, the percentage the on-demand commercial media services will be asked to meet during the period starting from the date of notification to the Authority, through to the first full subsequent calendar year, will, in principle, be set at 10 %, at 15 % for the second calendar year, and at 25 % for the third calendar year. If the provider of the on-demand commercial media service is launched on 1 January, and registered with the Authority as such, that year will be considered as their first calendar year for exemption purposes. Exemptions as referred to in paragraph 3 may also be granted in cases where an on-demand commercial media

service already exists, but where its provider was incorporated in another country. When assessing such an exemption request, the Authority will take into consideration whether the provider of on-demand commercial media services had been incorporated in another Member State and whether the provider had already been granted an exemption to the European works share requirement. Providers of on-demand commercial media services may request to have the percentages listed in this ambition model adjusted due to the specific circumstances applicable to the media service. This would require the provider of on-demand commercial media services to motivate why it was unable to meet the percentages it had been asked to meet as well as to state what percentages it would be able to meet.

Paragraph 4 provides for the option to grant an exemption for as long as the provider of an on-demand commercial media service continues to provide the content concerned. Applicants seeking such an exemption will also be required to motivate the existence of a situation referred to in paragraph 1 precluding the provider of the on-demand commercial media service from being expected to meet the European works share requirement. They are free to include the circumstances referred to in paragraph 2 in arguing this.

Providers of on-demand commercial media services looking to apply for an exemption, must do so by submitting a motivated request to the Authority prior to commencement of the period for which they are seeking an exemption. The burden of proof in demonstrating that special circumstances warranting the issue of an exemption may exist, lies with the provider of on-demand commercial media services. The Authority reserves the right to either replace any exemption granted pursuant to paragraph 3, or convert it into an exemption as referred to in paragraph 4, at any time during, or immediately following, the period for which the exemption has been granted. Providers of on-demand commercial media services distributing media content in more than one Member State, whilst employing different catalogues from one country to the next, will have to file separate exemption request applications for each of the countries concerned.

Providers of on-demand commercial media services granted an exemption pursuant to paragraph 3 or 4, will nevertheless still be required to report to the Authority on the level of compliance observed on the European works share requirement as referred to in Article 17 of this policy rule.

III. Dutch and Frisian Language Works

Article 11 (Originally Dutch or Frisian Language Works)

Article 3.24, paragraph 1, of the Act is aimed at promoting the Dutch and Frisian languages.

The voicing as referred to in Article 11, point a, of the policy rule includes *inter alia* commentating, using a narrator, or dubbing of animations. Any programming subtitled or dubbed in the Dutch or Frisian language shall not be considered originally Dutch or Frisian language programming. The list of examples of originally Dutch or Frisian language works included in Article 11 is not an exhaustive list. Any programming evidently of Dutch or Frisian origin, for example, will also be considered as originally Dutch or Frisian language programming. Evidently originally Dutch or Frisian language programming should in any event be understood as to always include cable news tickers, i.e. the frequent and continuous repetition of programming exclusively, or almost exclusively, consisting of still images.

Article 12 (Calculating the share of originally Dutch or Frisian language works)

Contrary to the method used in the calculation of the attained share of European, independent and recent works, the Act does not provide for excluding any particular programming in the calculation of the share of originally Dutch or Frisian language works.

Article 13 (Originally Dutch or Frisian Language Works Exemption for Programme Channels)

Legislative history learns that the ratio of this programme quota aims to have commercial media institutions make a minimum contribution to Dutch culture.

In assessing whether there are special circumstances justifying an exemption, *inter alia* the following circumstances can be taken into account: The programme channel's target audience (a very specific target audience, e.g. children), the nature of the programme channel and of its programming, the geographical coverage it enjoys (e.g. if certain specific programming were to be found to be almost fully targeted on a broadcasting area outside of the Netherlands). Special circumstances shall be deemed to exist if at least one of these circumstances, or a combination thereof, is found to exist. The Authority may take circumstances other than those listed here into account.

Circumstances may arise precluding new programme channels from being able to meet the required percentage of original Dutch or Frisian language works due to, for example, start-up issues. In special cases these new programme channels will be granted an exemption for no more than three calendar years. During that period, the programme channel will need to grow towards attaining the prescribed 40 % share. In the event that the commercial media institution were to make plausible that special circumstances exist which justify an exemption, 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 in principle be set at 0 %, with the percentage for the second calendar year set at 15 %, and at 25 % for the third calendar year. Channels launched on 1 January of any one year, will have that year deemed their first full calendar year for exemption purposes. Commercial media institutions may request to have the percentages listed in this ambition model adjusted due to the specific circumstances applicable to the case concerned. This would require the commercial media institution to motivate why it was unable to meet the aforementioned percentages it had been asked to meet as well as to state what percentages it would be able to meet.

Paragraph 4 provides an exemption option for the duration of the licence period. Applicants seeking such an exemption will also be required to motivate the existence of special circumstances precluding them from being expected to meet the Dutch or Frisian language works share requirement. They are free to include the circumstances referred to in paragraph 2 in arguing this.

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, following a request made to that effect, set the mandatory share of originally Dutch or Frisian language works to 0 % for the term of the licence period. The Authority is of the opinion that insisting on observance of the 40 % mandatory share 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 to be almost fully focussed on foreign countries. Such circumstances may, for example, arise in situations involving programming which cannot be received in the Netherlands in an unencrypted manner, 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 share may be set to 0 % for the term of the licence period, if the commercial 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 commercial media institution to make plausible - having regard to the nature of the programming, the scheduling and the target audience - that observance of the required mandatory share of originally Dutch or Frisian language works would constitute a disproportional hindrance to the programme channel's business model.

Commercial media institutions looking to apply for an exemption, must do so by submitting a motivated

request to the Authority prior to commencement of the period for which they are seeking an exemption. The burden of proof in showing that circumstances warranting the issue of an exemption exist lies with the commercial media institution.

The Authority reserves the right to either replace any exemption granted pursuant to paragraph 3, or convert it into an exemption as referred to in paragraph 4, at any time during, or immediately following, the period for which the exemption has been granted. Dutch or Frisian language works exemptions do not automatically come with a subtitling exemption. Once a programme channel has reached a minimum coverage of 75 % of households in the Netherlands, it will then need to file a separate exemption request application as referred to in Article 16 of this policy rule.

Article 14 (Subtitling of originally Dutch language works)

Accessibility of media content is an important constituent component of the Media Act. The hearing impaired rely on subtitling or a signer in order for them to be able to follow TV programmes. Article 7 of the Directive provides that Member States shall ensure that services provided by media service providers under their jurisdiction are made continuously and progressively more accessible to persons with disabilities through proportionate measures. The mandatory subtitling share requirement is one of those measures.

The mandatory subtitling share requirement makes no distinction between Dutch language programming featuring subtitles engrained in the picture, or subtitles which may be called up via teletext, a set-top box, or via other supporting (digital) techniques or equipment.

Article 15 (Calculating the Subtitling Share)

The subtitling percentage is calculated based on the programming used for originally Dutch language works. The application of Article 17 of the Decree requires programming consisting of advertising and teleshopping announcements, 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 (the national public broadcasters consider children of approximately 8 years old as 'able' to read subtitling. The same threshold is applied in the calculation employed for commercial media institutions). If the subtitling requirement were to also apply to this type of programming, this could have the unintended effect of commercial 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 subtitling adversely affected. Individual music videos, as well as programme components solely consisting of music videos are excluded from the application of Article 17 of the Decree. Individual Dutch language music videos consequently do not count towards the calculation of the total programming share enjoyed by original Dutch language works. If the Dutch language music video is part of an originally Dutch language work, it does not require subtitling. The work will, however, count towards the calculation of the total amount of television programming.

Article 16 (Subtitling Share Exemption for Programme Channels)

When the total programming on a programme channel with a minimum coverage of 75 % of the households in the Netherlands consists of originally Dutch language programming, commercial media institutions are required to subtitle at least 50 % of their programming. However, the number of commercial media institutions with programme channels with original Dutch language programming able to reach 75 % of the households in the Netherlands (e.g. as part of TV packages offered by TV package providers) is increasing, despite them only enjoying a limited market share. The relatively high costs of subtitling preclude them from being able to always meet the 50 % subtitling share requirement. Article 3.25, paragraph 2, of the Act provides that special circumstances may warrant certain television programme channels to be granted a partial, or full, exemption to the 50 % subtitling share requirement.

When assessing whether special circumstances warranting the issue of an exemption apply, this assessment can include the nature of the programme channel or any special economic circumstances, such as a new channel having start-up issues. The Authority may take circumstances other than those listed here into account.

Circumstances may arise precluding commercial media institutions from being able to meet the

required subtitling percentage of originally Dutch or Frisian language works for their programme channels right from the beginning, for example due to start-up issues. In special cases these new programme channels will be granted an exemption for no more than three calendar years. During that period, the programme channel will need to grow towards attaining the prescribed 50 % share. In the event that the commercial media institution were to demonstrate or make plausible that special circumstances exist which justify an exemption, 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 in principle be set at 10 %, with the percentage for the second calendar year set at 15 %, and at 25 % for the third calendar year. Channels launched on 1 January of any one year, will have that year deemed their first full calendar year for exemption purposes. Commercial media institutions may request to have the percentages listed in this ambition model adjusted due to the specific circumstances applicable to case concerned. This would require the commercial media institution to motivate why it was unable to meet the aforementioned percentages it had been asked to meet as well as to state what percentages it would be able to meet.

Paragraph 4 provides an exemption option for the duration of the licence period. Applicants seeking such an exemption will also be required to motivate the existence of special circumstances precluding them from being expected to meet the Dutch or Frisian language works subtitling share requirement. They are free to include the circumstances referred to in paragraph 2 in arguing this.

Commercial media institutions looking to apply for an exemption, must do so by submitting a motivated request to the Authority prior to commencement of the period for which they are seeking an exemption. The burden of proof in showing that circumstances warranting the issue of an exemption exist lies with the commercial media institution. The Authority reserves the right to either replace any exemption granted pursuant to paragraph 3, or convert it into an exemption as referred to in paragraph 4, at any time during, or immediately following, the period for which the exemption has been granted.

Article 17 (Programme Channel 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.

Article 18 (Reporting Obligation Quota)

Commercial media institutions providing programme channels enjoying technical coverage in the Netherlands equal to, or greater than, 75 %, or a national market share equal to, or greater than, 0.3 % in at least one Member State have to report to the Authority on the level of compliance in observing the share requirements for European independent works, originally Dutch or Frisian language works and subtitling once every two years.

Commercial media institutions providing programme channels enjoying a technical coverage smaller than 75 % of Dutch households and a national market smaller than 0.3% will report to the Authority at the latter's request only on the level of compliance in observing the share requirements for European independent works, originally Dutch and Frisian language works and subtitling. The commercial media institutions concerned will be notified of such a request to report prior to the first sample week and in this notification the weeks the sample is to pertain to will be indicated.

Paragraph 3 provides that providers of on-demand commercial media services have to report to the Authority on the level of compliance in observing the European works share requirements once every two years.

Paragraph 4 provides that providers of on-demand commercial media services shall, along with their reporting as referred to in paragraph 3, simultaneously report on the level of compliance observed with their obligation to give prominence to European works in their catalogue as referred to in Article 7 of the policy rule. Commercial media institutions are asked to submit their reports using the Authority's prescribed report form.

Irrespective of whether a commercial media institution has been granted an exemption for a programme channel or an on-demand commercial media service to (temporarily) deviate from the European works share requirement (Articles 9 and 10), they will still be obligated to report to the

Authority on their level of compliance in observing the European works share requirement and in observing their obligation to bringing these works to the attention of the public. This will allow the Authority to determine whether the share requirement to which the exemption pertains is indeed met. Such reporting on the level of compliance observed with the European works share requirement will also have to be submitted to the Authority in the manner described in this provision. Providers of on-demand commercial media services granted an exemption pursuant to Article 8 of this policy rule (low turnover or low audience) will not be required to submit such reports.

Article 19 (Reporting - Programme Channels)

Article 19 of the policy rule stipulates which period and which data the commercial media institutions are required to report on.

Paragraph 1 provides that commercial media institutions are to report using a one-week sample taken every quarter of the year, for each reported year. The Authority will inform the commercial media institutions which weeks have been designated as sample weeks during the course of the calendar year in question.

Reporting is to be done using a report form the Authority has developed and which commercial media institutions are required to fill out. The reporting entity will need to include all programmes aired, along with all commercial breaks and promotions in its report if it is to be successful in diligently filling out the report form. Explanatory notes are provided to explain how the report form is to be filled out. Entities granted an exemption containing a reduced European, or originally Dutch or Frisian language works share requirement will also have to fill out the report form. In the event that the commercial media institution does not report in the manner prescribed by the Authority and in doing so would be providing it incomplete and/or insufficient information, the Authority may elect to move to issue that media institution an incremental penalty or an administrative fine.

Paragraph 4 offers an exemption to the mandatory reporting requirement as stipulated in paragraph 2. Circumstances may arise precluding a commercial media institution from reporting in the manner prescribed by the Authority. The programming on music 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. Reporting entities may only deviate from reporting in the manner prescribed with prior consent to that effect from the Authority.

Article 20 (Reporting - Providers of on-demand commercial media services)

Article 20 of the policy rule stipulates which period and which data the providers of on-demand commercial media services are required to report on.

Paragraph 1 provides that providers of on-demand commercial media services have a choice: They can elect to either report on the attained share of European works for the full calendar year, or alternatively report on the first day of each of the four sample weeks, i.e. a total of four days per year. Reports submitted on the attained share of European works for the full calendar year will offer the most detailed overview, but could at the same time lead to a significant administrative burden, especially for smaller providers of on-demand commercial media services. This is why providers of on-demand commercial media services have the option of reporting during the same sample weeks for which programme channels are asked to report. The reporting obligation applies in odd years and must pertain to the two preceding calendar years. This means that in view of the amended act entering into force on 1 November 2020, providers of on-demand commercial media services will have to report on the 2021 and 2022 calendar years before 1 May 2023.

Reporting is to be done using the report form similar to the one employed for programme channels developed by the Authority and which providers of on-demand commercial media services are asked to fill out. Explanatory notes are provided to explain how the report form is to be filled out. In the event that the provider of an on-demand commercial media service does not report in the manner prescribed by the Authority and in doing so would be providing it incomplete and/or insufficient information, the Authority may elect to move to issue an incremental penalty or an administrative fine.

Paragraph 4 offers an exemption to the mandatory reporting requirement as stipulated in paragraph 2. Circumstances may arise precluding a provider of on-demand commercial media services from reporting in the manner prescribed by the Authority. The media content on music 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 it airs. In those cases where it is clear that there is a work, e.g. a work consisting of music videos, such as a hit list, these data have to be reported on for the work as a whole. Reporting entities may only deviate from reporting in the manner prescribed with prior consent to that effect from the Authority.

IV. FINAL PROVISION

Article 21 (Official Title and Entry into Force)

The 2019 Programme Quota Policy Rule is herewith repealed and replaced by the 2022 Commercial Media Institutions Quota Policy Rule and the 2022 Public Media Institutions Quota Policy Rule.