

2019 Administrative Fines Policy Rule

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Article 1. Definitions

The following terms as used in this policy rule will have the following meanings:

- *ODCMS*: an on-demand commercial media service;
- *Awb*: the [General Administrative Law Act](#);
- *the Authority*: the Dutch Media Authority.

Article 2. Scope

This policy rule will apply to all violations in respect of which, pursuant to [Article 7.12 of the 2008 Media Act](#), the Authority is authorised to impose an administrative fine.

Article 3. Amount of the fine

1. The Authority will determine the amount of an administrative fine in accordance with the provisions of [articles 4 et seq.](#) of this policy rule, unless the fine relates to a violation of [Article 2.34\(1\) of the 2008 Media Act](#).
2. In the event of a violation of [Article 2.34\(1\) of the 2008 Media Act](#), the Authority will determine the amount of an administrative fine in accordance with the provisions of in [Article 7.12\(2\) of the 2008 Media Act](#).

Article 4. Violated standard

Depending on a general assessment of the nature of the relevant standard, the standards to be enforced by the Authority can be divided into the following categories:

- a. Category A: violation of the provisions set by or pursuant to [Articles 2.1, 2.34\(2\), 2.50, 2.52, 2.58, opening lines and under d, 2.88, 2.88a, 2.89, 2.90, 2.91, 2.94, 2.95, 2.96, 2.97, 2.106, 2.107, 2.108, 2.109, 2.110, 2.111, 2.112, 2.113, 2.114, 2.132, 2.133, 2.134, 2.135, 2.136, 2.137, 2.138, 2.138a, 2.139, 2.141, 2.142, 2.142a, 2.151\(2\), 2.170\(7\), 3.1, 3.2, 3.5, 3.5a, 3.7, 3.8, 3.9, 3.10, 3.11, 3.13, 3.15, 3.16, 3.17, 3.18, 3.19, 3.19a, 3.19b, 4.1, 4.6, 5.1, 5.2, 5.3, 5.4, 6.13, 6.14, 6.15, 7.18 of the 2008 Media Act](#) and [5:20 of the Awb](#).
- b. Category B: violation of the provisions set by or pursuant to [Articles 2.35, 2.70, 2.71, 2.92, 2.93, 2.99, 2.115, 2.116, 2.117, 2.119, 2.124, 2.171, 2.172, 3.6, 3.20 up to and including 3.26, 3.29, 3.29b, 3.29c, 3.29d, 6.4, 6.6, 6.9, 6.10, 6.23, 6.24 and 6.27 of the 2008 Media Act](#).
- c. Category C: violation of any other requirement set by or pursuant to the [2008 Media Act](#) the compliance with which the Authority monitors and for which the Authority is authorised to impose an administrative fine.

Article 5. Severity of the violation

The Authority will assess the severity of the violation in the concrete situation based on the circumstances of the case. The Authority will assess whether, in the concrete situation, there are any circumstances based on which it qualifies the violation as minor (severity level I) or as very severe

(severity level III). Absent any such circumstances, the Authority will assume that the violation is severity level II.

Article 6. Basic fine

- **1**The Authority will base its determination of the amount of an administrative fine in the concrete situation on the applicable basic fine as set forth in the tables below.
- **2**The basic fine will depend on the violator's reach, the violated standard, and the severity of the violation in the concrete situation.
- **3**The Authority will set the basic fine with due observance of the provisions of [articles 4](#) (violated standard) and 5 (severity of the violation) of this policy rule.
- **4**Where the violator is a national public media institution or a commercial media institution or an ODCMS with a reach in excess of 500,000 households, the following amounts will be deemed to be the relevant basic fine:

	Category A	Category B	Category C
Severity level III	€ 180,000	€ 107,500	€ 27,500
Severity level II	€ 85,000	€ 50,000	€ 13,000
Severity level I	€ 17,500	€ 10,000	€ 3,000

- Table 1
 - **5**Where the violator is a regional public media institution or a commercial media institution or an ODCMS with a reach in excess of 25,000 households, but no more than 500,000 households, the following amounts will be deemed to be the relevant basic fine:

	Category A	Category B	Category C
Severity level III	€ 36,000	€ 21,500	€ 5,500
Severity level II	€ 17,000	€ 10,000	€ 2,600
Severity level I	€ 3,500	€ 2,000	€ 600

- Table 2
 - **6**Where the violator is a local public media institution or a commercial media institution or an ODCMS with a reach of no more than 25,000 households, the following amounts will be deemed to be the relevant basic fine:

	Category A	Category B	Category C
Severity level III	€ 9,000	€ 5,400	€ 1,400
Severity level II	€ 4,300	€ 2,500	€ 650
Severity level I	€ 900	€ 500	€ 150

- Table 3
- **7**If the circumstances referred to in paragraphs 4 up to and including 6 of this article do not apply to the violator, the amounts listed in the table in paragraph 4 of this article will be deemed to be the relevant basic fine.

Article 7. Fine increasing and mitigating circumstances

1. When determining the amount of the administrative fine, the Authority will consider any fine increasing and -mitigating circumstances. This may lead to an increase or reduction of the basic fine.
2. Fine increasing circumstances may include:
 - a situation where the Authority has previously established the same or a similar violation on the part of the violator;
 - a situation where the violator was sufficiently notified of the application of the regulations in the past;
 - a situation of gross negligence or (conditional) intent;
 - a situation where an unlawful cash advantage or advantage capable of being expressed in monetary terms has been obtained as a result of the violation.
3. Fine mitigating circumstances may include:
 - a situation where the violation took place even though the violator had taken precautions;
 - a situation where the violator has meanwhile taken adequate measures to avoid repetition of the violation.
4. In addition to the foregoing fine increasing and mitigating circumstances, the Authority may also consider other circumstances as fine increasing or mitigating circumstances.

Article 8. Derogation

If, at the Authority's discretion, the exceptional circumstances of the case give rise thereto, the Authority may derogate from the system of calculation of the amount of an administrative fine as set forth in [articles 4 up to and including 7](#) above.

Article 9. Repeal of [2011 Sanctions Policy Line](#)

The [2011 Sanctions Policy Line](#) will be repealed.

Article 10. Effective date

1. This policy rule will be made public by its publication in the Government Gazette and on the Dutch Media Authority website (www.cvdm.nl).
2. This policy rule will come into effect on the day following the date of publication of the Government Gazette in which this decree will be published.

Article 11. Short title

This policy rule will be referred to as the 2019 Administrative Fines Policy Rule.

1. In respect of this provision, Article 2.170(7) of the 2008 Media Act, the policy rule will apply as from the time at which such provision is no longer excluded in Article 7.12(1) of the 2008 Media Act; see, *inter alia*, the Legislative Proposal on 'Amendment of the 2008 Media Act for purposes of tightening the new service procedure, modernising the procedures for appointment of supervisory boards and boards, modernising the board, and clarifying the position of *Ster*, as well as technical improvements, *inter alia*, in connection with duties of the Dutch Media Authority' (Parliamentary Papers II 2018–2019, 35 042, no. 2).[^] [\[1\]](#)

EXPLANATORY NOTES

I. General section

This policy rule is intended to supersede the 2011 Policy Line on Administrative Fines. This policy rule is based on the intention, derived from the principles of legal certainty and equality, to provide an insight into the criteria that will be used when imposing an administrative fine for violation of a regulation set by or pursuant to the 2008 Media Act or Article 5:20 of the General Administrative Law Act (hereinafter: Awb).

Power to impose an administrative fine

Article 7.12 of the 2008 Media Act confers on the Dutch Media Authority (hereinafter: the Authority) the power to impose an administrative fine. Based thereon, the Authority has the power, after weighing the interests involved, to respond to a violation of regulations set by or pursuant to the 2008 Media Act by imposing a punitive sanction.

Terminology

Unless expressly provided otherwise, the terms as used in this policy rule have the same meanings as assigned to them on the basis of the provisions set by or pursuant to the 2008 Media Act and the Awb.

II. Article-by-article section

Article 2. (Scope)

For purposes of this policy rule, a violation is understood as any behaviour contrary to a regulation set by or pursuant to the 2008 Media Act or Article 5:20 of the Awb, in accordance with the provisions of Article 5:1 of the Awb.

Articles 1 up to and including 8. (System of calculation of the amount of the fine)

In the event of a violation of Article 2.34(1) of the 2008 Media Act, the Authority will determine the amount of an administrative fine in accordance with Article 7.12(2) of the 2008 Media Act and Article 5:46(3) of the Awb.

In other situations, the Authority will determine the amount of an administrative fine to be imposed on the system of calculation as set forth in Articles 4 up to and including 7 of this policy rule. The Authority will thereby have regard to Chapter 5 of the Awb (Enforcement). Having regard to Article 5:46(2) of the Awb, when determining the amount of the administrative fine, the Authority will consider the severity of the violation and the extent to which the violator is to blame for it. Where necessary, the Authority will thereby consider the circumstances under which the violation took place.

Since fault, as in culpability, does not form part of the standards to be enforced by the Authority, the Authority is not required to prove the culpability. In principle, the Authority may assume the culpability if the capacity as the violator has been established. It is up to the violator to invoke the absence of any fault, and to demonstrate that absence (Parliamentary Papers II 2003-2004, [29 702, no. 3](#), p. 134). If it turns out that the violator is not to blame for the violation, no administrative fine will be imposed (Article 5:41 of the Awb). Furthermore, in the event of reduced culpability, the principle of proportionality may result in imposing a lower fine.

Violated standard

The Authority has divided the standards to be enforced into categories A, B and C. Classification of a standard in any given category depends on a general assessment of the nature of the relevant standard and the interests that it seeks to protect.

Severity of the violation

The Authority will assess the severity of the violation in the concrete situation based on the circumstances of the case.

Violation of core values

In this assessment, the Authority will consider the extent to which the core values that the Authority intends to protect - the independence, diversity, and accessibility of the media content - have been harmed by the violation. The media content must be independent of any political or commercial influence, must be accessible, and must be diverse. Independence means that viewers and listeners must be able to count on independent reporting by public and commercial media institutions, and on information that is not determined by political or commercial interests. There must be a clear separation between the editorial staff on the one hand and commerce and politics on the other. If, for example, the media content contains (permitted) sponsoring or product placement, that must be recognisable for the viewer or listener. Moreover, independence means that public media institutions must have completely free control over the content of their programmes. They may not serve any third parties. Accessibility means that all inhabitants of the Netherlands must have access to information at a reasonable cost and with as few limitations as possible. Accessibility also means that providers of media content must have access to platforms on which it can be distributed. This does, however, not apply to all information. Some harmful information may be too accessible and, consequently, unsafe. The law is intended to avoid exposure of minors to seriously harmful images. Diversity of the media content means that a large variety of subjects must be able to be presented in various ways. There must be room for all kinds of (target) groups, opinions and stories. Diversity of media content supports free opinion forming and freedom of speech.

Violation of supporting basic principles

These three core values are supported by the basic principles of lawfulness, transparency and integrity. In the assessment of the severity of the violation in the concrete situation, the Authority will

also consider the extent to which these principles have been harmed by the violation. Lawfulness is about the lawfulness of the expenditure of public media institutions. The legitimacy of the public system is strongly connected with the confidence of the public and of politics in the way in which public resources are spent. An essential condition for the supervision of the independence of the media content and of the lawful expenditure of media resources by public media institutions is transparent accounting. This applies both to accounting for expenditure and to the origin of income, for example from sponsoring. Furthermore, the executive and supervisory boards of public media institutions are expected to act with integrity. In that respect, they must not only focus on the business interests of a media institution, but also consider the public interests on which the 2008 Media Act is based.

Miscellaneous

In the assessment of the severity of the violation, the Authority may consider other circumstances as well. In its assessment of the concrete situation, the Authority will review whether there are any circumstances based on which it qualifies the violation as minor (severity level I) or very severe (severity level III). Absent any such circumstances, the Authority will assume that the violation is severity level II.

The violator

The policy rule distinguishes between public and commercial media- institutions on national, regional and local level. This division is self-explanatory when considering the differences in (territorial) reach or level of distribution that occur in actual practice with the associated impact or severity of the violation. For the commercial broadcasters, the boundaries between the three distinguished levels are determined by the number of households that these broadcasters reach. In principle, the Authority bases its determination the reach of a commercial media institution on the number of households on the basis of which the regulatory fees were calculated in the calendar year preceding the year in which the violation took place, pursuant to Article 3.30 of the 2008 Media Act.

If paragraphs 5 and 6 of Article 6 of this policy rule do not apply to the violator, the amount of the basic fine will be as per the table in paragraph 4 of this provision (table 1). This shows that those basic fines apply, for example, to the national public media- institutions, the provider of a broadcasting network, and (commercial) media- institutions with a reach of more than 500,000 households.

Following on from the system for linear commercial media services, where the technical reach of the media service is the basis when imposing an administrative fine, for on-demand commercial media services, it has been opted to qualify the fine on the basis of the technical reach. The vast majority of these services can be used via the publicly accessible Internet, on demand. Therefore, potentially, these services have national reach. This means that, in principle, these on-demand commercial media services accessible via the Internet come under the table with the highest amounts (table 1). The Authority can, however, imagine that there may be circumstances under which it would not be fair to impose a fine of the highest fine category on media services that provide their services exclusively via the Internet. When determining the amount of the fine, the Authority may, *inter alia*, consider the scope and the turnover of the media service. On-demand commercial media services with a more limited technical reach, such as services with a limited number of subscribers, come under a lower fine category, according to the scope of their technical reach.

Basic fine

Based on the reach of the specific violator, the category under which the violated standard comes, and the severity of the violation in the concrete situation, the Authority will determine the 'basic fine'. The Authority will base its determination of the amount of an administrative fine in the concrete situation on the amount of that basic fine.

Fine increasing and mitigating circumstances

When determining the eventual amount of an administrative fine, the Authority will consider any fine increasing and mitigating circumstances. This may lead to an increase or reduction of the basic fine on which the eventual amount is based. If and to what extent circumstances may lead to an increase or reduction will depend on the circumstances of the case.

For the fine increasing situation where the Authority has previously established the same or a similar violation on the part of the violator, it is not necessary, but it is possible, that an (irrevocable) sanction was imposed for the relevant violation in the past. Incidentally, the Authority will not still impose a separate sanction for the violation that is considered as a fine increasing circumstance when imposing an administrative fine.

If an unlawful cash advantage or advantage capable of being expressed in monetary terms has been obtained as a result of the violation, the Authority may consider that as a fine increasing circumstance. In such event, the fine may be increased to the maximum set for that violation in Article 7.12 of the 2008 Media Act in order to take away the unlawful advantage obtained.

The fine mitigating circumstance that the violation took place despite the precautions taken by the violator will have to be substantiated by the violator. To that end, it will have to be demonstrated that the precautions can reasonably be considered as such. The foregoing also applies to the situation where the violator has taken such measures after the violation as will most likely prevent repetition of the violation. In this respect, a mere promise on the part of the violator is not sufficient.

Derogation

If the exceptional circumstances of the case give rise thereto, the Authority may derogate from the foregoing system of calculation of the amount of a fine, for example if, at the Authority's discretion, according to the regular system of calculation, the fine would not constitute an adequate response in terms of punishment or special or general prevention. If the violator invokes this option for derogation, it will be up to the violator to demonstrate that there are circumstances justifying such derogation.

Article 10. (Effective date)

No specific transitional provisions are deemed necessary when this policy rule comes into effect. This policy rule will apply to what is in existence at the time of its coming into effect, such as existing legal positions and relationships (direct effect). This applies without prejudice to the provisions of Article 5:46(4) of the General Administrative Law Act. It follows from the foregoing that, when imposing an administrative fine, if the 2011 Sanctions Policy Line is more favourable for the violator, that policy line will continue to apply to any violations committed prior to the effective date of this policy rule.

In respect of this provision, Article 2.170(7) of the 2008 Media Act, the policy rule will apply as from the time at which such provision is no longer excluded in Article 7.12(1) of the 2008 Media Act; see, *inter alia*, the Legislative Proposal on 'Amendment of the 2008 Media Act for purposes of tightening the new service procedure, modernising the procedures for appointment of supervisory boards and boards, modernising the board, and clarifying the position of *Ster*, as well as technical improvements,

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