

## 2023 Commercial Media Institutions Quota Policy Rule

### **Dutch Media Authority Policy Rule on European, recent and independent media content, original Dutch or Frisian language programme content and programme content subtitled for the hearing impaired (2023 Commercial Media Institutions Quota Policy Rule)**

The Dutch Media Authority,

Having regard to Articles 3.20 up to and including 3.25, Article 3.29c of the 2008 Media Act and Article 4:81 of the General Administrative Law Act,

Decrees:

#### **I. DEFINITIONS AND SCOPE**

##### **Article 1. Definitions**

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

a. *Act*:

the 2008 Media Act;

b. *Decree*:

the 2008 Media Decree;

c. *Regulation*;

the 2008 Media Regulation;

d. *catalogue*:

the arrangement of the audiovisual media content in a database making audiovisual media content accessible to the user;

e. *European works*:

works within the meaning of Article 1(1)(n) and Article 1(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 within the meaning of Article 3.22(1) of the Act;

h. *subtitling*:

Dutch or Frisian language programme content subtitled in Dutch;

i. *producer*:

the party creating the programme content;

j. *programme content*:

television programme content;

k. *programme channel*:

television programme channel;

l. *recent work*:

an independent work that is no more than five years old;

## **Article 2. European works**

1. A *producer* within the meaning of Article 1(3) and (4) of the Directive will be deemed to be established in a Member State if its business is permanently established there and has tenured staff that engage in both work and commercial activities in the European Union.
2. If it is not known which producer has realised a work, the term *producer* will be understood to include the distributor of the work. In such event, the Member State where the distributor is established will be deemed to be the Member State where the producer is established.
3. Paragraph 2 will apply only if the media institution that has distributed the work has demonstrated, to the Authority's satisfaction, that it has made sufficient efforts to retrieve the relevant information about the producer of the work.

## **Article 3. Independent works**

1. In line with Article 3.22(1) of the Act, *independent works* will be understood to include:
  - a. programme content produced by an independent producer in cooperation with a media institution, if the media institution does not qualify as the producer of the relevant programme content;
  - b. an independent work acquired by a media institution.
2. *Independent works* will not include:
  - a. programme content produced solely by a media institution;
  - b. programme content produced by a producer which has supplied over ninety percent of the programme content produced by it over the past three financial years to the same media institution.

## **II. EUROPEAN WORKS**

### **Article 4. Method of calculation of the share of European, independent and recent works on programme channels**

1. The attained share of European, independent and recent works within the meaning of Articles 3.20 up to and including 3.22 of the Act will be determined on the basis of the total programme content per television programme channel per calendar year, with the exception of the media content within the meaning of Article 3.23 of the Act.
2. Reruns of programmes will count towards the attained share of European, independent and recent works.

## **Article 5. Method of calculation of the share of European works of audiovisual media content on on-demand commercial media services**

1. The attained share of European works by an on-demand commercial media service within the meaning of Article 3.29c(1) of the Act will be determined on the basis of the number of European titles in the relevant catalogue as a percentage of the total number of titles in the catalogue.
2. A title will in any event be understood to include a feature film and a season of a series. An episode of a series may qualify as a title if it is comparable with a feature film.

## **Article 6. Programme content reach**

For purposes of Article 3.23(2) of the Act, programme content will be understood as *programme content that can be received in only one municipality or a limited number of neighbouring municipalities* if the programme content targets the relevant municipality or municipalities and is not also distributed via another part of the national broadcasting network or in other municipalities through a programme channel.

## **Article 7. Promoting European works on on-demand commercial media services**

Promoting European works on an on-demand commercial media service within the meaning of Article 3.29c(2) of the Act can be assured, *inter alia*, through:

- a. the provision for a section dedicated to European works, accessible from the home page of the service;
- b. the option to search for European works in the search function available as part of that service; or
- c. the use of European works in the campaigns of that service or a minimum percentage of European works recommended in the catalogue of that service, for example by using banners or similar tools.

## **Article 8. Exemption from the share of European works for low turnover and low audience**

1. The obligation to attain the share of European works and to promote those works within the meaning of Article 3.29c(1) and (2) of the Act will not apply to providers of on-demand commercial media services with *low turnover* or *low audience*.
2. *Low turnover* will be understood as an annual turnover not exceeding 2 million euros, including the annual turnover of partner and linked enterprises.
3. *Low audience* will be understood as a user share of less than 1% of the assumed number of potential users of on-demand commercial media services in the Member State targeted by the provider of the on-demand commercial media service. The assumed number of potential users of on-demand commercial media services is based on 80% of the population of the Member State targeted by the relevant on-demand commercial media service.
4. In order to qualify for application of paragraph 1, the provider of the on-demand commercial media service must file a request for an exemption with the Authority. The request for an exemption must be accompanied by all the relevant information based on which a decision can be made.

#### **Article 9. Exemption from European works on programme channels**

1. Special circumstances may warrant specific programme channels to be granted a partial exemption from the share of European works within the meaning of Article 3.20(1) of the Act, however, the percentage cannot be set below ten.
2. For purposes of determining whether there are special circumstances as referred to in paragraph 1, the nature of the programme channel, the programming, the target group, insufficient opportunities to acquire rights to European works, and extraordinary economic circumstances may, *inter alia*, be considered.
3. If it has been demonstrated to the Authority's satisfaction that there are special circumstances under which a programme channel cannot be required directly to meet the requirement of the share of European works, such share may be reduced for a period not exceeding three calendar years.
4. If it has been demonstrated to the Authority's satisfaction that, given the circumstances referred to in paragraph 2, there are special circumstances under which a programme channel cannot be required to meet the requirement of the share of European works, the share referred to in Article 3.20(1) of the Act may be reduced for the term of the consent to provide the programme channel, provided that the programme format of the programme channel remains unchanged.
5. The request for an exemption must be filed, together with a substantiation, with the Authority.

#### **Article 10. Exemption from European works of audiovisual media content on on-demand commercial media services**

1. Exemptions from the share of European works for audiovisual media content of on-demand commercial media services within the meaning of Article 3.29c of the Act may be granted if it has been demonstrated to the Authority's satisfaction that, given the nature or subject matter of the relevant on-demand media service, compliance would be infeasible or unjustified.
2. For purposes of determining whether there are circumstances as referred to in paragraph 1, the nature of the on-demand commercial media service, the nature of the audiovisual media content, the target group, insufficient opportunities to acquire rights to European works, and extraordinary economic circumstances may in any event be considered.
3. If it has been demonstrated to the Authority's satisfaction that there are circumstances under which an on-demand commercial media service cannot be required directly to meet the requirement of the share of European works, such share may be reduced for a period not exceeding three calendar years.
4. If it has been demonstrated to the Authority's satisfaction that, given the circumstances referred to in paragraph 2, there are circumstances under which an on-demand commercial media service cannot be required to meet the requirement of the share of European works, the percentage referred to in Article 3.29c of the Act may be reduced, provided that the programme format of the on-demand commercial media service remains unchanged.
5. The request for an exemption must be filed, together with a substantiation, with the Authority.

### **III. DUTCH AND FRISIAN LANGUAGE WORKS**

#### **Article 11. Original Dutch and Frisian language works**

*Original Dutch or Frisian language works* within the meaning of Article 3.24(1) of the Act will be understood to include:

- a. programme content that is voice-recorded in the Dutch or Frisian language;
- b. programme content containing components that were not original Dutch or Frisian language works but that have been given a Dutch or Frisian language voice-over.

#### **Article 12. Method of calculation of the share of original Dutch and Frisian language works on programme channels**

The attained share of original Dutch and Frisian language works within the meaning of Article 3.24 of the Act will be determined on the basis of the total programme content per programme channel per calendar year. Reruns of programmes will be counted.

#### **Article 13. Exemption from the share of original Dutch and Frisian language works on programme channels**

1. Special circumstances may warrant specific programme channels to be granted a full or partial exemption from the share of original Dutch or Frisian language works for programme content within the meaning of Article 3.24(2) of the Act.
2. For purposes of determining whether there are special circumstances as referred to in paragraph 1, the nature of the programme channel, the programming, the target group, the territorial reach of the programme channel, and extraordinary economic circumstances may in any event be considered.
3. If it has been demonstrated to the Authority's satisfaction that there are special circumstances under which a programme channel cannot be required directly to meet the requirement of the share of original Dutch or Frisian language works, such share may be reduced for a period not exceeding three calendar years.
4. If it has been demonstrated to the Authority's satisfaction that, given the circumstances referred to in paragraph 2, there are special circumstances under which a programme channel cannot be required to meet the requirement of the share of original Dutch or Frisian language works, such share may be reduced, or set at nil, for the term of the consent to provide the programme channel, provided that the programme format of the programme channel remains unchanged.
5. If a programme channel nearly entirely focuses on a broadcasting area outside the Netherlands, the percentage referred to in Article 3.24(1) of the Act may be set at nil for the term of the consent, provided that the format of the programme channel remains unchanged.
6. The request for an exemption must be filed, together with a substantiation, with the Authority.

#### **Article 14. Subtitling of original Dutch language works on programme channels**

Original Dutch language works subtitled for the hearing impaired within the meaning of Article 17 of the Decree will be understood as original Dutch language works:

- a. that are voice-recorded in the Dutch language;
- b. containing components that were not original Dutch language works but that have been given a Dutch or Frisian language voice-over or that have been voice-recorded in the Dutch or Frisian language and that have been subtitled in accordance with Article 18a of the Regulation.

#### **Article 15. Method of calculation of the subtitling percentage on programme channels**

1. The percentage of subtitling within the meaning of Article 17 of the Decree will be determined on the basis of the total programme content per programme channel and per calendar year allotted to works that qualify as original Dutch language works within the meaning of Article 14 of this policy rule.
2. Reruns of programmes will count towards the attained subtitling percentage.
3. For purposes of determining the total programme content as referred to in paragraph 1, the programme content consisting of works voice-recorded in the Dutch language *and* particularly aimed at children below the age of 8 will not be counted.
4. For purposes of determining the total programme content as referred to in paragraph 1, separate music videos will not be counted.

#### **Article 16. Exemption from the subtitling percentage on programme channels**

1. Special circumstances may warrant specific programme channels to be granted a full or partial exemption from the subtitling percentage for programme content within the meaning of Article 3.25(2) of the Act.
2. For purposes of determining whether there are special circumstances as referred to in paragraph 1, the nature of the programme channel or extraordinary economic circumstances may in any event be considered.
3. If it has been demonstrated to the Authority's satisfaction that there are special circumstances under which a programme channel cannot be required directly to meet the subtitling percentage requirement, such percentage may be reduced for a period not exceeding three calendar years.
4. If it has been demonstrated to the Authority's satisfaction that, given the circumstances referred to in paragraph 2, there are special circumstances under which a programme channel cannot be required to meet the subtitling percentage requirement, such percentage may be reduced, or set at nil, for the term of the consent to provide the programme channel, provided that the programme format of the programme channel remains unchanged.
5. The request for an exemption must be filed, together with a substantiation, with the Authority.

#### **Article 17. Programme channel reach**

For purposes of Article 17 of the Decree, the commercial media institution must promptly notify the Authority as soon as it has a technical reach of at least 75 percent of all the households in the Netherlands.

## **IV. REPORTING DUTY AND SUBSTANCE OF THE REPORT**

### **Article 18. Quota reporting duty**

1. Once every two years, before 1 June, the commercial media institutions having programme channels with a national market share equal to or in excess of 0.3% in at least one Member State will submit a report to the Authority on the level of compliance with Articles 3.20(1), 3.21, 3.24(1) and 3.25 of the Act and Article 17 of the Decree in the previous two years.
2. The commercial media institutions having programme channels with a national market share below 0.3% will, at the Authority's request, submit a report to the Authority on the level of compliance with Articles 3.20(1), 3.24(1) and 3.25 of the Act.
3. Once every two years, in the uneven-numbered years, before 1 June, the providers of on-demand commercial media services will submit a report to the Authority on the level of compliance with Article 3.29c(1) of the Act in the previous two years.
4. In addition to submission of the report as referred to in paragraph 3, the providers of on-demand commercial media services will simultaneously submit a report on the level of compliance with the obligation in Article 3.29c(2) of the Act to promote European works on the on-demand commercial media service (article 7 of the policy rule).

### **Article 19. Programme channel report**

1. The reports referred to in article 18, paragraphs 1 and 2, of this policy rule will contain information both in absolute terms and in percentages on the basis of a one-week sample taken every quarter of the year reported.
2. The reports referred to in article 18, paragraphs 1 and 2, of this policy rule will report for each work distributed on the components as included in the reporting schedules on the website of the Authority.
3. The media institutions will report in the manner as required by the Authority.
4. On prior request, the Authority may permit a media institution to report in a manner other than as referred to in paragraph 3.
5. The Authority will determine which weeks will be used for the sample as referred to in paragraph 1 of this article. The Authority will communicate this in the course of the relevant calendar year.
6. Paragraph 2 will not apply to commercial media institutions having programme channels with a technical reach of less than 75% of the Dutch households, to the extent relating to the subtitling component in the reporting form.

### **Article 20. Reporting of on-demand commercial media services**

1. The reports referred to in article 18, paragraph 3, of this policy rule will contain information on the basis of a full year or on the basis of the first day of the four sample weeks for each year reported as referred to in article 19, paragraph 1.
2. The reports referred to in article 18, paragraph 3, of this policy rule will report for each work distributed on the components as included in the reporting forms on the website of the Authority.

3. The providers of on-demand commercial media services will report in the manner as required by the Authority.
4. On prior request, the Authority may permit a provider of an on-demand commercial media service to report in a manner other than as referred to in paragraph 3.
5. If it has been established that the audiovisual media content (on a channel) of a provider of an on-demand commercial media service is at least the percentage stated in the 'Declaration of European works' as made available on the website of the Authority, the report may be limited to completing, signing and submitting that form.
6. The Authority will determine which weeks will be used for the sample as referred to in paragraph 1 of this article. The Authority will communicate this in the course of the relevant calendar year.

## **V. FINAL PROVISION**

### **Article 21. Short title and effective date**

1. This policy rule will be referred to as the 2023 Commercial Media Institutions Quota Policy Rule.
2. The 2022 Commercial Media Institutions Quota Policy Rule will be repealed.
3. This policy rule will be made public by its publication in the Government Gazette and on the Dutch Media Authority website ([External link:www.cvdm.nl](http://www.cvdm.nl)).
4. This policy rule will come into effect on the day following its publication in the Government Gazette.
5. Any exemptions granted prior to the effective date of this policy rule will continue to be governed by the policy rule applicable at the time of granting, with the exception of the provisions on the reporting duty.

*Dutch Media Authority, A. Asante, President*

*P. Eijssvoogel, Commissioner*

## **EXPLANATORY NOTES**

### **1. General**

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

Accessibility of media content 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 requires the availability of subtitled media content for the hearing impaired. The requirements regarding mandatory subtitling of original Dutch language works guarantee the accessibility to media content for them.

A diverse society requires diversity of media content, i.e. offering all sorts of (target) groups, opinions and stories room to feature. Diversity of media content is, for example, guaranteed by the required shares allotted to European, and independent works, and Dutch and Frisian language works. This means that the media content must, in principle, contain at least a certain percentage of European

and independent works and at least a certain percentage of Dutch and Frisian language works, and that at least a certain percentage of original Dutch language works must be subtitled for the hearing impaired.

On 1 November 2020, the 2008 Media Act was amended in view of the implementation of the European Audiovisual Media Services Directive 2018/1808/EU of 14 November 2018 amending Directive 2010/13/EU. This amendment of the law has led to the adoption of the 2022 Commercial Media Institutions Quota Policy Rule, simultaneously repealing the 2019 Programme Quota Policy Rule.

In 2018, the Directive was revised in order to provide a modernised legal framework in response to the significantly and rapidly evolving European media landscape. Over the past few years, technical developments have allowed for new types of services and user experiences. The medium of television still plays an important role, but newer ways of viewing are becoming more and more popular.

In addition, new types of media content are increasingly gaining importance, and providers of on-demand commercial media services and video platform services are ubiquitous in today's media landscape. In light of these developments, the Directive needed to be updated. The revision of the Directive in 2018 envisaged to create a more level playing field for the European media industry and, thus, to improve its competitiveness. At the same time, the media users, and particularly minors, will be better protected against illegal and harmful content.

The Act and the Directive distinguish 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 provide media content on the basis of a chronological schedule, which has been adopted and is distributed for simultaneous reception by all or part of the general public (programme content). Providers of on-demand media services, however, provide media content at the viewer's individual request and at a moment of their choice (audiovisual media content). The revision of the Directive in 2018 has aligned the regulations for on-demand media services with the regulations for broadcasting services where possible. This means, *inter alia*, that the content provided by on-demand commercial media services must contain at least 30% European works.

With this policy rule, the Authority gives shape to its practice of monitoring compliance with the quotas. The effect of this policy rule is limited to the commercial media institutions. The public media institutions are subject to a different regime on certain points, as worked out in further detail in the 2023 Commercial Media Institutions Quota Policy Rule.

#### ***Amendment of the policy rule on account of a technical adjustment***

In 2023, the policy rule was adjusted on two points. The reporting date was adjusted from 1 May to 1 June. This is in line with the reporting cycle for the public media institutions. Furthermore, article 20, paragraph 5, provides for the possibility for commercial media institutions to limit their reporting of the share of European works in their on-demand content to filling out the 'Declaration of European works' form. In this respect, the previous policy rule required that the content consisted of 100% European works. That percentage was deleted and the provision now refers to the percentage as stated in the 'Declaration of European works' form.

## **2. Article-by-article explanatory notes**

### ***1. Definitions and scope***

#### *Article 1 (Definitions)*

The terms derived from the Act as used in this policy rule have the same meanings as described in Article 1 of the Act. To the extent that any terms are used in this policy rule that are not described in Article 1 of the Act, those terms are defined in this policy rule.

#### *Article 2 (European works)*

Article 2, paragraph 1, of the policy rule is based on guidelines of the European Commission of July 2011, drawn up for purposes of monitoring compliance with Articles 16 and 17 of the Directive (Doc CC AVMSD (2011) 2).

In actual practice, it has become evident that, for commercial media institutions, it is sometimes impossible to identify the producer of a work. This problem particularly presents itself in old works. In those limited situations, the country where the distributor is established may be deemed to be the country of origin of the works. This does not alter the fact that the commercial media institution must make sufficient efforts to uncover the identity of the producer. If the name of the distributor is stated, the commercial media institution must indicate why the producer cannot be identified. The distributor is understood as the party that originally marketed the work for further distribution on, *inter alia*, programme channels and on demand.

#### *Article 3 (Independent works)*

For purposes of the definition of the term 'independent producer', criteria such as ownership of the work company and the amount of programmes supplied to the same commercial media institution should be properly taken into account. Those criteria can also be derived from guidelines drawn up by the European Commission for purposes of monitoring compliance with Articles 16 and 17 of the Directive (Doc CC AVMSD (2011) 2).

Programme content that has been realised by a commercial media institution in cooperation with an independent producer ('co-productions') will qualify as independent works if the commercial media institution does not qualify as the producer of the relevant content. In such event, the commercial media institution must indicate that, and why, the relevant content is a co-production. If so requested, the commercial media institution must provide the Authority with further information on this subject.

A programme produced by a commercial media institution will not qualify as an independent work. A work acquired by a Dutch commercial media institution which has been produced by a Dutch or foreign media institution will not be deemed to be an independent work either. A work acquired by a Dutch commercial media institution which has been produced by a foreign independent producer will, indeed, qualify as independent, irrespective of whether the Dutch commercial media institution acquired such work from the independent producer or from a media institution.

The assessment of whether a work is an independent work within the meaning of article 3, paragraph 2, under b, of the policy rule will be based on the information as provided by the commercial media institution. If so requested, the commercial media institution must demonstrate that a producer does not supply more than 90% of its works to one single commercial media institution. Pursuant to article 3, paragraph 2, under b, of the policy rule, a programme produced by a producer that has produced only one programme will qualify as an independent work as well.

## ***II. European works***

### *Article 4 (Method of calculation of share of European, independent and recent works on programme channels)*

For programme channels as referred to in paragraph 1, the calculation of the percentage of European, independent and recent works must be based on the total programme content, not counting the programme content consisting of news, sports, games (with the exception of educational media content with a game component), advertising, teleshopping, and teletext. Reruns of programmes will count towards the percentages. The terms referred to here are explained as follows:

#### *Programme content consisting of news*

Programme content that is broadcast frequently, at least once a week, and reports on events that have occurred within the past seven days. It will in any event not include:

- a. programme content consisting of a weather report;
- b. programme content consisting of traffic information.

#### *Programme content related to sports*

Programme content containing match results, flashes, highlights and analyses as well as interviews ('current sports news'), as well as (full or partial) live and comprehensive match or event coverages ('sports coverage').

#### *Programme content of a game-related nature*

Game shows, whether or not run by a game show host, featuring (recurring) panel members or contestants participating in a game.

#### *Programme content consisting of advertising or teleshopping messages*

Programme content mainly aimed at encouraging the public to purchase a particular product or use a particular service, or at building goodwill for a particular business, branch or institution in order to promote the sale of products or the purchase of services, or programme content featuring demonstrations of products which may be supplied to the viewer against payment. As related to teleshopping messages, this pertains to both the individual teleshopping messages and teleshopping message segments.

#### *Programme content consisting of still images*

Programme content using letters, digits and symbols only.

### *Article 5 (Method of calculation of the share of European works of audiovisual media content on on-demand commercial media services)*

The method of calculation of the share of European works of audiovisual media content on on-demand commercial media services is based on the guidelines of the European Commission pursuant to Article 13(7) of the 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 number of European titles in the catalogue must be calculated as a percentage of the total number of titles in

the catalogue. For cross-border on-demand commercial media services, where the substance of the catalogue varies from Member State to Member State, the required share of European works must be attained for each national catalogue and must be reported for each Member State. This way, the share of 30% European works can effectively be attained in each Member State.

A title will in any event be understood to include a feature film and a season of a series. At the request of an on-demand commercial media service, an episode of a series may qualify as a title. To that end, the production or acquisition costs of the relevant episode must be made transparent. If the production or acquisition costs of an episode exceed 2 million euros, the episode may be equated with a feature film and count as a title towards the share of European works.

#### *Article 6 (Programme content reach)*

A commercial media institution that provides programme content that can be received only in a limited number of neighbouring municipalities need not comply with the obligations of Articles 3.20 up to and including 3.22 of the Act. It should be assessed whether a commercial media institution provides programme content for a local audience. In addition to the reach, the contents of the programme must also be intended for such local audience. This means that, for example, programme content that consists purely of films and can be received only in a number of neighbouring municipalities does not come under the exception of Article 3.23(2) of the Act, because the contents of the programme does not qualify as local.

#### *Article 7 (Promoting European works on on-demand commercial media services)*

Unlike viewers of programme content on programme channels, users of on-demand commercial media services choose for themselves what they want to see and when. The extent of the content in a catalogue may obstruct the visibility and findability of a European work within the meaning of the Directive if it is not made known as such. To further the distribution and promotion of European works, the Act implementing the amendments made to the Directive provides for the obligation to bring these works to the attention of the public. This may be done, *inter alia*, in the manner as described in this provision, but this list is not exhaustive. Also given the rapid development of digital technologies, such as automated recommendation systems that can be used for promotional purposes, the Authority has not chosen to provide an exhaustive description of measures. Providers of on-demand commercial media services themselves may also take other measures to promote European works in a manner that they deem appropriate and effective. The Authority, which monitors compliance with this provision, will, where necessary, request additional information to assess whether these measures are in line with the purpose. Pursuant to article 17, paragraph 4, of the policy rule, providers of on-demand commercial media services must, if so requested, report on their compliance with this obligation, even if they hold an exemption for European works within the meaning of articles 8 and 10 of this policy rule.

#### *Article 8 (Exemption from the share of European works for low turnover and low audience)*

Article 13 of the Directive provides that the required share of 30% European works does not apply to providers of on-demand commercial media services with a low turnover or a low audience. This provision has been implemented in Article 3.29c(3) of the Act. The provision is included in the Directive in order to ensure that obligations relating to the promotion of European works do not undermine market development and in order to allow for the entry of new players in the market. For that reason, the required share of European works does not apply to providers without any significant market presence.

### *Low turnover*

In line with the guidelines of the European Commission of 7 July 2010 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 threshold is set at 2 million euros. If the annual turnover of the on-demand commercial media service remains below that threshold, this exemption possibility may be invoked. In this respect, the total turnover is taken from the (most recent) financial statements or profit and loss account. The turnover of partner and linked enterprises counts towards the turnover. The terms 'partner enterprises' and 'linked enterprises' are interpreted on the basis of the definitions of those terms as included in Article 3 of the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (2003/361/EC).

### *Low audience*

If the annual turnover of the on-demand commercial media service exceeds the 2 million euro threshold, so that the exemption possibility cannot be invoked on account of a 'low turnover', the media service may still, on balance, only serve a low audience, so that it does not have any significant market presence. In such event, the exemption may be invoked on account of the 'low audience' criterion. The on-demand commercial media service may also opt to limit the request to the 'low audience' criterion only. The criteria of 'low turnover' and 'low audience' are not cumulative.

The calculation of the share of users of the relevant on-demand commercial media service is based on the total share of users in a representative week of the year to be designated by the media service. The share of users of an on-demand commercial media service will, in principle, be understood as the number of paying subscribers, the number of unique accounts or the number of unique visitors, depending on the specific on-demand commercial media service. It is up to the provider of the on-demand commercial media service submitting the request for an exemption to identify and substantiate the number of users. Furthermore, it must be substantiated why the week chosen provides a representative image of the number of users of the media service.

Subsequently, the share of users of the relevant on-demand commercial media service will be calculated as a percentage of the assumed number of potential users of on-demand commercial media services in the Member State targeted by the provider of the on-demand commercial media service. On the basis of research and insights, the Authority has set the number of assumed potential users at 80% of the total population of the Member State targeted by the provider of the on-demand commercial media service. If the share of users of the relevant on-demand commercial media service remains below 1% of the share of assumed potential users, the audience will be deemed to be 'low' and this exemption possibility may be invoked.

Below are three examples of situations to illustrate the calculation of a 'low audience'.

- 1. *Content distributed exclusively within the Netherlands*

For purposes of this policy rule, if a provider of an on-demand commercial media service only targets the Netherlands, the number of inhabitants is based on the population as estimated by Statistics Netherlands (CBS) as at 1 January of the year in which the request is submitted.

As an illustration: in January 2020, the population of the Netherlands was 17,407,585. As not every inhabitant of the Netherlands can and wants to use on-demand commercial media services, the assumed number of potential users is deemed to be 80%. Based on the number of inhabitants as estimated by CBS in January 2020, the calculation of the share of assumed potential users should be based on a population of 13,931,054. If, in the representative week chosen by the on-demand

commercial media service, the share of users remains below 139,310 (i.e. 1% of the national share), the exemption may be granted.

- *2. Content distributed in multiple Member States with the same substance*

If an on-demand commercial media service targets more than one Member State with the same catalogue, the calculation must be based on 80% of the total number of inhabitants of the Member State where the provider has the largest share of users. After all, in line with the intention of this exemption possibility, an exemption can only be granted to providers of on-demand commercial media services that do not have any significant market presence.

Subsequently, the share of users in the representative week chosen by the on-demand commercial media service must be calculated as a percentage of the total number of inhabitants of that Member State, which qualify as users of an on-demand commercial media service. The population of a Member State can be found on the website [External link:https://europa.eu/webtools/rest/charts/export/html/](https://europa.eu/webtools/rest/charts/export/html/). As an illustration: if a provider of an on-demand commercial media service targets the Netherlands, Belgium and Luxembourg, the calculation will be based on the country with the largest share of users of the service. The assumed number of potential users of an on-demand commercial media service is deemed to be 80% of the total number of inhabitants of that country.

If, in the representative week chosen by the media service, the share of users remains below 1% of this number, an exemption may be granted. Since, in this example, the catalogue has the same substance in every Member State in which it is distributed, the exemption will, thus, automatically apply to the other Member States. This means that, after obtaining an exemption, the provider of the on-demand commercial media service need not comply with the required 30% share of European works for the countries for which the calculation was not performed either. In the request, the provider of the on-demand commercial media service must, however, specify the Member States to which the request for an exemption relates. Furthermore, the proportion in the share of users must be made transparent, so that the Authority can assess whether the calculation was performed for the Member State with the largest share of users.

- *3. Content distributed in multiple Member States with a different substance*

For providers of on-demand commercial media services that distribute media content by way of a catalogue with different country editions, an exemption must be requested for each country. This means that the share of users in the representative week chosen by the media service must be calculated as a percentage of the assumed number of potential users of an on-demand commercial media service in that country. In this situation, too, the calculation is based on a share of 80% of the total number of inhabitants of the relevant country. If the share of users of the relevant on-demand commercial media service remains below 1% of the assumed number of potential users, an exemption may be granted.

As an illustration: if a provider of an on-demand commercial media service distributes media content in Lithuania and Slovenia, and the catalogue is different for each country, a request for an exemption must be submitted for both country editions. In the request, it must be made transparent that the share of users remains below 1% of the total share of assumed potential users of the population (i.e. 80% of the total number of inhabitants of the country as known on 1 January of the year of the request). As an example of this calculation, reference is made to the calculation set forth under 1 above for a provider of an on-demand commercial media service targeting the Netherlands only.

## *Exemption*

It is up to the provider of an on-demand commercial media service to demonstrate that the low turnover or low audience criterion has been met. To that end, verifiable information must be submitted. If the low turnover or low audience criterion is met, in principle, an exemption will be granted for the period that the on-demand commercial media service remains below the threshold of an annual turnover of 2 million euros (low turnover) or the number of users remains below 1% of the total number of assumed potential users in the relevant Member State or Member States (low audience). Therefore, during that period, the required share of 30% European works need not be complied with and European works need not be promoted to the public. In such event, an exemption as referred to in Article 3.29c(4) of the Act will not be necessary. The provider of the on-demand commercial media service must notify the Authority of any changes to its annual turnover or number of users (audience) as soon as possible. The Authority may request a provider of the on-demand commercial media service holding an exemption to provide up-to-date information on the annual turnover and the number of users.

### *Article 9 (Exemption from European works on programme channels)*

In special circumstances, the Authority may grant a partial exemption from the share of European works for programme channels of commercial media institutions because Article 3.20(2) of the Act provides that the percentage cannot be set below ten. The programme content must, therefore, at all times include at least 10% European works.

Special circumstances as referred to in paragraph 2 may relate to the target group of the programme channel (targeting a very specific group, for example children), the nature of the programme channel (for example a very specific type of content, such as American crime series or Asian animations which, at that time, are not produced in Europe), insufficient opportunities to acquire (rights to) European works, or to extraordinary economic circumstances, such as start-up problems for new programme channels. Special circumstances may be deemed to exist where one, or a combination, of these circumstances occurs. These circumstances are not exhaustive.

Paragraph 3 provides for an exemption possibility in the situation where new programme channels cannot comply with the required percentage of European works from the beginning, for example due to start-up problems. In the situation where a programme channel already exists but the commercial media institution was formerly established in another country, an exemption as referred to in paragraph 3 may still be granted. In such event, in its assessment of the request, the Authority will consider, *inter alia*, the question as to whether the commercial media institution providing the programme channel was established in another Member State and whether the channel held an exemption from the share of European works.

Such an exemption may be granted for a period not exceeding three calendar years. During that period, the share must grow towards the required share of 50%. If the commercial media institution demonstrates, or makes it plausible, that there are special circumstances that warrant an exemption, the percentage will, in principle, be set at 10% for the period from the start of the programme channel up to and including the first full calendar year, 15% for the second calendar year, and 25% for the third calendar year. If the programme channel starts on 1 January, the first year will count as a full calendar year. The percentages stated in this growth model may be adjusted at the request of a commercial media institution on the basis of the specific circumstances of the programme channel. In such event, the commercial media institution must indicate, and substantiate, why the percentages set are not feasible as well as what percentages would be feasible.

Paragraph 4 provides for an exemption possibility for the term of the consent. In that situation, too, it must be substantiated that there are special circumstances in which a programme channel cannot be required to satisfy the percentage of European works. In this respect, *inter alia* the circumstances referred to in paragraph 2 may be considered.

Before the period for which an exemption is requested, the commercial media institution must submit a substantiated request to the Authority. It is up to the commercial media institution to demonstrate that there are circumstances that warrant an exemption. The possibility of a temporary exemption granted pursuant to paragraph 3 being replaced or converted into an exemption as referred to in paragraph 4, either consecutively or in the course of the term of validity, cannot be ruled out. In the situation where a commercial media institution provides a programme channel with various country editions, a request for an exemption must be submitted for each of those country editions.

A commercial media institution holding an exemption as referred to in paragraph 3 or 4 will still be required to report on the share of European works as referred to in article 17 of this policy rule, so that it can be determined whether it satisfies the percentage set in the exemption.

*Article 10 (Exemption from European works of audiovisual media content on on-demand commercial media services)*

The Authority may grant an exemption from the share of European works for audiovisual media content on on-demand commercial media services if, given the nature or subject matter of the relevant on-demand commercial media service, compliance with the share of European works would be infeasible or unjustified.

In the assessment of whether this is the case, *inter alia* the circumstances as referred to in paragraph 2, namely the target group of the on-demand commercial media service (targeting a very specific group, for example children) or the nature of the on-demand media service (such as a service providing, for example, exclusively horse races or baseball matches or opera, which, at that time, are not produced in Europe), insufficient opportunities to acquire (rights to) European works, or extraordinary economic circumstances, such as start-up problems for new on-demand commercial media services, may be considered. Special circumstances may be deemed to exist where one, or a combination, of these circumstances occurs. These circumstances are not exhaustive.

Paragraph 3 provides for an exemption possibility in the situation where providers of on-demand commercial media services cannot comply with the required share of European works from the beginning, for example due to start-up problems. The exemption may be granted for a period not exceeding three calendar years. During that period, the share must grow towards the required share of 30%. If the provider of the on-demand commercial media service makes it plausible that there are special circumstances that warrant an exemption, the percentage will, in principle, be set at 10% for the period from registration of the on-demand commercial media service up to and including the first full calendar year, 15% for the second calendar year, and 25% for the third calendar year. If the provider of the on-demand commercial media service starts on 1 January and registers with the Authority accordingly, the first year will count as a full calendar year. In the situation where an on-demand commercial media service already exists but its provider was formerly established in another country, an exemption as referred to in paragraph 3 may still be granted. In such event, in its assessment of the request, the Authority will consider, *inter alia*, the question as to whether the provider of the on-demand commercial media service was established in another Member State and whether the provider held an exemption from the share of European works.

The percentages stated in this growth model may be adjusted at the request of the provider of the on-demand commercial media service on the basis of the specific circumstances of the media service. In such event, the provider of the on-demand commercial media service must indicate, and substantiate, why the percentages set are not feasible as well as what percentages would be feasible.

Paragraph 4 provides for an exemption possibility for as long as the provider of the on-demand commercial media service provides the relevant content. In that situation, too, it must be substantiated that there is a situation as referred to in paragraph 1, in which the on-demand commercial media service cannot be required to satisfy the percentage of European works. In this respect, *inter alia* the circumstances referred to in paragraph 2 may be considered.

Before the period for which an exemption is requested, the provider of the on-demand commercial media service must submit a substantiated request to the Authority. It is up to the provider of the on-demand commercial media service to make it plausible that there are circumstances that warrant an exemption. The possibility of a temporary exemption granted pursuant to paragraph 3 being replaced or converted into an exemption as referred to in paragraph 4, either consecutively or in the course of the term of validity, cannot be ruled out. If a provider of an on-demand commercial media service distributes media content in multiple Member States where the substance of the catalogue varies from Member State to Member State, an exemption must be requested for each country.

A provider of an on-demand commercial media service holding an exemption as referred to in paragraph 3 or 4 will still be required to report on the share of European works as referred to in article 17 of this policy rule.

### **III. Dutch and Frisian language works**

#### *Article 11 (Original Dutch or Frisian language works)*

The purpose of Article 3.24(1) of the Act is to promote the Dutch and Frisian languages.

Voice-recording as referred to in article 11, under a, of the policy rule is understood, *inter alia*, as commenting, using a voice-over or voice-acting for animated films. Original Dutch or Frisian language programme content cannot be understood to include programme content subtitled or dubbed in Dutch or Frisian. The list in article 11 of what qualifies as an original Dutch or Frisian language work is not exhaustive. For example, programme content also qualifies as original Dutch or Frisian language if the relevant programme content is evidently original Dutch or Frisian language programme content. Evidently original Dutch or Frisian language programme content should in any event be understood to include cable news, i.e. the repeated and consecutive repetition of programme content consisting exclusively or nearly exclusively of still images.

#### *Article 12 (Method of calculation of the share of original Dutch or Frisian language works)*

Unlike the method of calculation of the share of European, independent and recent works, the Act does not provide that certain programme content will not count towards the share of original Dutch and Frisian language works.

#### *Article 13 (Exemption from original Dutch or Frisian language works on programme channels)*

It follows from the parliamentary history that the ratio of this programme quota intends to ensure that commercial media institutions make a minimum contribution to Dutch culture.

In the assessment of whether there is a special situation, *inter alia* the following circumstances may be considered: the target group of the programme channel (very specific target group, for example

children), the nature of the programme channel and the programming, the territorial reach of the programme channel (for example if specific programme content is distributed that targets also (or particularly) a broadcasting area outside the Netherlands). Special circumstances may be deemed to exist where one, or a combination, of these circumstances occurs. These circumstances are not exhaustive.

There may be circumstances in which new programme channels cannot comply with the required percentage of original Dutch or Frisian language works from the beginning, for example due to start-up problems. In special situations, an exemption will be granted for such new programme channels for a period not exceeding three calendar years. During that period, the share must grow towards the required share of 40%. If the commercial media institution makes it plausible that there are special circumstances that warrant an exemption, the percentage will, in principle, be set at 0% for the period from the start of the programme channel up to and including the first full calendar year, 15% for the second calendar year, and 25% for the third calendar year. If the programme channel starts on 1 January, the first year will count as a full calendar year. The percentages stated in this growth model may be adjusted at the request of the commercial media institution on the basis of the specific circumstances of the case. In such event, the commercial media institution must substantiate why the percentages as set above are not feasible as well as what percentages would be feasible.

Paragraph 4 provides for an exemption possibility for the term of the consent. In that situation, too, it must be substantiated that there are special circumstances in which a commercial media institution cannot be required to satisfy the share of Dutch or Frisian language works. In this respect, *inter alia* the circumstances referred to in paragraph 2 may be considered.

If a commercial media institution demonstrates that the programme content targets virtually exclusively countries outside the Netherlands, the Authority will, upon request, set the share of original Dutch or Frisian language works at 0% for the term of the consent. The Authority is of the opinion that, in such a situation, it is not realistic to maintain the 40% share as required by law.

Programme content is deemed to target countries outside the Netherlands, for example, if the programme content is of an interactive nature and it is impossible to participate in the Netherlands. There may also be other circumstances that demonstrate that the programme content targets virtually exclusively countries outside the Netherlands. For example in the event of programme content that cannot be received in the Netherlands uncoded, or programme content that is distributed in a language other than Dutch (spoken subtitled or dubbed). Even if the programme channel can be received, for example through satellite distribution (with a large footprint) or the open Internet can also be received in the Netherlands, the programme content may still target virtually exclusively countries outside the Netherlands.

In addition, the share may be set at 0% for the term of the consent if a commercial media institution demonstrates that the programme channel - given the nature of the programme content, the programming and the target group - targets all, or a substantial part, of Europe. In that specific situation, the commercial media institution will be required to make it plausible that, given the nature of the programme content and the programming, compliance with the required share of original Dutch or Frisian language works disproportionately interferes with the business model of the programme channel.

Before the period for which an exemption is requested, the commercial media institution must submit a substantiated request to the Authority. It is up to the commercial media institution to demonstrate that there are circumstances that warrant an exemption.

The possibility of a temporary exemption granted pursuant to paragraph 3 being replaced or converted into an exemption as referred to in paragraph 4, either consecutively or in the course of the term of validity, cannot be ruled out. An exemption for Dutch or Frisian language works will not automatically entail an exemption for subtitling. Where necessary, if a programme channel has a reach of at least 75 percent of all the households in the Netherlands, a separate exemption will have to be requested as referred to in article 16 of this policy rule.

*Article 14 (Subtitling of original Dutch or Frisian language works)*

Accessibility of the media content is an important pillar of the Media Act. In order to follow programmes on television, persons with a hearing impairment depend on subtitling or a signer. Article 7 of the Directive provides that the Member States must ensure that the services provided by providers of media services under their jurisdiction are made continuously and progressively more accessible to persons with disabilities through proportionate measures. Meeting the subtitling requirement is one of the measures to realise this purpose.

For the subtitling obligation, it is irrelevant whether Dutch programme content has subtitling burnt into the image or subtitling that can be retrieved using teletext, set-top box or other supporting (digital) technologies or devices.

*Article 15 (Method of calculation of the subtitling percentage)*

The subtitling percentage must be based on the programme content allotted to original Dutch language works. For purposes of Article 17 of the Decree, programme content consisting of advertising and teleshopping messages, programme content for speakers of Dutch abroad, and visual radio content will be disregarded. Programme content voice-recorded in the Dutch language and specifically intended for children below the age of 8 will not be counted here either (the national public service broadcaster sets the 'reading threshold' for subtitling at approximately 8 years. This threshold is also used for commercial media institutions). If the subtitling obligation were to apply to this programme content as well, that might have the unintended effect that commercial media institutions distributing this voice-recorded programme content fall back on the original foreign language version, with Dutch subtitling, in order to save costs. This would be to the detriment of young children, who are not yet capable of reading subtitles. For purposes of Article 17 of the Decree, separate music videos will be disregarded, even in the event of a programme component consisting exclusively of music videos. A separate Dutch language music video will, therefore, not count towards the programme content allotted to original Dutch works. If the Dutch language music video forms part of an original Dutch language work, the music video need not be subtitled. The work will, however, as a whole count towards the total television programme content.

*Article 16 (Exemption from the subtitling percentage on programme channels)*

For commercial media institutions, at least 50 percent of the total programme content on a programme channel with a reach of at least 75 percent of all the households in the Netherlands consisting of original Dutch language works must be subtitled. There is, however, a growing number of commercial media institutions that have a reach of 75 percent of households in the Netherlands with their original Dutch language television programmes (for example as part of television packages of package providers) but that have a limited market share. For those parties, given the relatively high costs of subtitling, it is not always possible to meet the requirement of 50 percent. Therefore, Article 3.25(2) of the Act offers media institutions the possibility of a full or partial exemption from the subtitling requirement of 50 percent under special circumstances.

In the assessment of whether there is a special situation that warrants an exemption, *inter alia* the nature of the station or extraordinary economic circumstances, such as a start-up phase of a new station, may be considered. These circumstances are not exhaustive.

There may be circumstances in which commercial media institutions cannot comply with the required percentage of original Dutch or Frisian language works for new programme channels from the beginning. In special situations, an exemption will be granted for such new programme channels for a period not exceeding three calendar years. During that period, the share must grow towards the required share of 50%. If the commercial media institution demonstrates, or makes it plausible, that there are special circumstances that warrant an exemption, the percentage will, in principle, be set at 10% for the period from the start of the programme channel up to and including the first full calendar year, 15% for the second calendar year, and 25% for the third calendar year. If the programme channel starts on 1 January, the first year will count as a full calendar year. The percentages stated in this growth model may be adjusted at the request of the commercial media institution on the basis of the specific circumstances of the case. In such event, the commercial media institution must indicate, and substantiate, why the percentages set above are not feasible as well as what percentages would be feasible.

Paragraph 4 provides for an exemption possibility for the term of the consent. In that situation, too, it must be substantiated that there is a special situation in which a commercial media institution cannot be required to satisfy the subtitling percentage of Dutch or Frisian language works. In this respect, *inter alia* the circumstances referred to in paragraph 2 may be considered.

Before the period for which an exemption is requested, the commercial media institution must submit a substantiated request to the Authority. It is up to the commercial media institution to demonstrate that there are circumstances that warrant an exemption. The possibility of a temporary exemption granted pursuant to paragraph 3 being replaced or converted into an exemption as referred to in paragraph 4, either consecutively or in the course of the term of validity, cannot be ruled out.

#### *Article 17 (Programme channel reach)*

Pursuant to Article 17 of the Decree, only commercial media institutions with a reach of at least 75% of all the households in the Netherlands must subtitle at least 50% of the total original Dutch language programme content.

#### **IV. Reporting duty and substance of the report**

##### *Article 18 (Quota reporting duty)*

The commercial media institutions with programme channels with a technical reach in the Netherlands equal to or in excess of 75% or a national market share equal to or in excess of 0.3% in at least one European Member State must report once every two years on the level of compliance with the required shares of European independent works and original Dutch or Frisian language works, and on the required subtitling percentage.

The commercial media institutions with programme channels with a technical reach of less than 75% of the Dutch households and a national market share of less than 0.3% must report on the level of compliance with the required shares of European independent works and original Dutch or Frisian language works, and on the required subtitling percentage, at the request of the Authority only. This request for a report will be communicated to the relevant commercial media institution before commencement of the first sample week, stating the weeks to which the sample will relate.

Paragraph 3 provides that providers of on-demand commercial media services must report once every two years on the level of compliance with the required share of European works.

Paragraph 4 provides that, in addition to submitting the report as referred to in paragraph 3, the provider of on-demand commercial media services must simultaneously report on the way in which its catalogue promotes European works as referred to in article 7 of the policy rule. Here, too, the reporting form as required by the Authority must be used.

Even if a commercial media institution holds an exemption for a programme channel or an on-demand commercial media service holds an exemption for its service (temporarily) to derogate from the required share of European works (articles 9 and 10), the duty to report on the share of European works and the promotion of those works will continue to exist. This way, the Authority can determine whether the percentage stated in the exemption is actually attained. This means that, even in that situation, the share of European works in the media content must be reported in the manner as described in this provision. The reporting duty will not apply if the provider of the on-demand commercial media service holds an exemption as referred to in article 8 of these policy rule (low turnover or low audience).

#### *Article 19 (Programme channel report)*

Article 19 of the policy rule provides what period and what information must be included in the reports of the commercial media institutions.

Paragraph 1 provides that commercial media institutions must report on the basis of a one-week sample taken every quarter of each year reported. In the course of the relevant year, the Authority will communicate the sample weeks on its website.

As regards the way in which the reports must be submitted, the Authority has developed a reporting form which must be completed by the commercial media institutions. In order to complete the reporting form accurately, it is necessary to include all the programmes broadcast, including commercial slots and promos, in the report. An explanation for proper completion is attached to the reporting form. The reporting form must be completed even if an exemption has been granted setting a lower percentage of European or Dutch or Frisian language works. If the commercial media institution fails to report in the manner as required by the Authority and, thus, provides incomplete or insufficient information, the Authority may impose an order subject to a penalty or an administrative fine.

Paragraph 4 contains an exception for the mandatory way of reporting as required by paragraph 2. There may be circumstances in which it is not possible for a commercial media institution to report in the manner as required by the Authority. For example, the programme content of a music channel consists largely of non-stop music videos. In such event, it would be obvious to report at video level on the percentages of European, independent and recent works broadcast. In those situations where there is a clear programme, for example a programme consisting of videos, such as a hit chart, the information must be provided on the programme as a whole. The mandatory way of reporting may be derogated from only with the prior consent of the Authority.

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

Article 20 of the policy rule provides what period and what information must be included in the reports of the providers of on-demand commercial media services.

Paragraph 1 provides that providers of on-demand commercial media services may choose either to report on the share of European works attained for the full year or for the first day of each of the four sample weeks (i.e. a total of four days a year). Reporting for a full year will provide the most accurate view of the share of European works attained but may, at the same time, particularly for the providers of smaller on-demand commercial media services, entail a considerable administrative burden. For that reason, providers of on-demand commercial media services may also choose to report in the same sample weeks as applicable to submission of the report for the programme channels. The reporting duty will apply to the uneven-numbered years and relates to the two preceding years. This means that, given the effective date of the amended Act, i.e. 1 November 2020, the providers of on-demand commercial media services must submit a report for the years 2021 and 2022 before 1 May 2023.

As regards the way in which the reports must be submitted, just as for the programme channels, the Authority has developed a reporting form which must be completed by the providers of on-demand commercial media services. An explanation for proper completion is attached to the reporting form. If the provider of the on-demand commercial media service fails to report in the manner as required by the Authority and, thus, provides incomplete or insufficient information, the Authority may impose an order subject to a penalty or an administrative fine.

Paragraph 4 contains an exception for the mandatory way of reporting as required by paragraph 2. There may be circumstances in which it is not possible for a provider of an on-demand commercial media service to report in the manner as required by the Authority. For example, the media content of a music channel consists largely of non-stop music videos. In such event, it would be obvious to report at video level on the percentages of European works broadcast. In those situations where there is a clear work, for example a programme consisting of videos, such as a hit chart, the information must be provided on the production as a whole. The mandatory way of reporting may be derogated from only with the prior consent of the Authority.

Paragraph 5 provides for the possibility for commercial media institutions to limit their reporting of the share of European works in their on-demand content to completing the 'Declaration of European works' form. To that end, it must have been established that a content channel includes at least the percentage of European works as stated in the form. In such event, to avoid any unnecessary administrative burden, a commercial media institution may limit itself to completing the aforesaid declaration, which can be found on the website of the Authority. The declaration must be completed for each separate reporting cycle.

## ***V. Final provision***

### *Article 21 (Short title and effective date)*

The 2022 Commercial Media Institutions Quota Policy Rule is repealed and superseded by the 2023 Commercial Media Institutions Quota Policy Rule.