

2022 Commercial Media Institutions Sponsoring Policy Rule

Dutch Media Authority Policy Rule concerning the Sponsoring of Commercial Media Institutions (2022 Commercial Media Institutions Sponsoring Policy Rule)

The Dutch Media Authority,

Having regard to Part 3.2.3 and Articles 3.29a, 3.29d, 7.11 and 7.12 of the 2008 Media Act and Article 4:81 of the General Administrative Law Act,

Decrees:

CHAPTER 1. GENERAL

Article 1. Scope

This policy rule will apply to the media content of commercial media institutions within the meaning of the 2008 Media Act, including on-demand commercial media services (such as VOD services and video uploaders).

Article 2. Definitions

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

- *Act*:

the 2008 Media Act;

– *media content*:

programme content (television and radio) and on-demand audiovisual media content (VOD services and video);

- *video*:

on-demand audiovisual media content that has been created by a user and has been uploaded by such user or another user to a video platform.

Article 3. Prohibition on sponsoring

1. Media content consisting of news, current affairs or political information will not be sponsored (Article 3.15(2) of the Act).
2. Media content consisting of *news* will be understood as: media content consisting of delivering news facts, possibly with a limited explanation, and (live) reports on newsworthy events.
3. Media content consisting of *current affairs* will be understood as: media content consisting of further exploring in depth, explaining and placing in context of topical news facts.
4. Media content consisting of news and current affairs will in any event not be understood to include:
 - media content consisting of a weather report;
 - media content consisting of traffic information.

5. Media content consisting of *political information* will be understood as: media content reporting on politicians, political parties (and their positions), and the political decision-making process.

CHAPTER 2. SCOPE OF THE TERM SPONSORING

Article 4. Loan for use or contribution of minor significance

1. The definition of sponsoring states that it involves the provision of financial or other contributions (Article 1.1(1) of the Act).
2. 'Other contributions' will not be understood to include any contribution that is not, or not identifiably, displayed or mentioned, and:
 - a. that has been given on loan for use by a third party; or
 - b. the value of which in proportion to the total cost of realisation or acquisition of the media content is of minor significance, but in any event does not exceed an amount of EUR 1,000 per television programme or EUR 200 per radio programme.
3. The name of the party providing a contribution as referred to in paragraph 2 will only be mentioned or displayed:
 - a. in a neutral fashion at the beginning or at the end of the media content; and
 - b. combined with no more than the words '*with thanks to*'.
4. This article will not apply to any contributions provided for purposes of creating videos.

CHAPTER 3. SPONSOR REFERENCE

Article 5. Definitions of the terms name, (figurative) mark and other distinctive sign

For purposes of Article 3.16(2) of the Act, the following terms will have the following meanings:

a. name:

the name under the articles of association, or the trade name, of the sponsor or event sponsor;

b. (figurative) mark:

any names, drawings, letters, digits, shapes of goods or of packaging and all such other signs that are capable of graphic depiction as may serve to distinguish the sponsor or event sponsor from other parties;

c. other distinctive sign of the sponsor:

any other sign by which the sponsor or event sponsor can be distinguished.

Article 6. Design of the sponsor reference

1. Any sponsored media content will clearly state, either at the beginning or at the end, that the media content is sponsored, and by whom (Article 3.16(1) of the Act). This obligation will in any event be deemed to have been complied with if this reference uses one of the following texts:
 - a. *this programme is/was brought to you by/brought to you with the help of;*

- b. *this video is/was brought to you by/brought to you with the help of;*
- c. *this programme is/was sponsored by;*
- d. *this video is/was sponsored by;*
- e. *I have received payment for this programme from;*
- f. *I have received payment for this video from; or*
- g. *I have received the following products from;*

provided that, in the case of videos, this reference is also included in the related description.

2. A reference as referred to in paragraph 1 will in any event not contain:
 - a. any positive qualification;
 - b. any slogan encouraging the viewer to purchase products or services, in particular through specific advertising thereof;
 - c. any signature tune;
 - d. any address, email address, telephone number; or
 - e. any Internet address or channel on a video platform, unless this relates to the trade name of the sponsor.
3. Between 06:00 a.m. and 09:00 p.m., sponsors engaging in the production or sale of alcoholic beverages will be mentioned or displayed in a neutral fashion (Article 3.16(2)(a) of the Act). This is understood as: a mention or display consisting exclusively of the name or (figurative) mark of the sponsor, and in the event of display in a still image. This obligation will not apply to on-demand audiovisual media content.
4. In the reference, individual sponsors may be mentioned or displayed jointly or in any combination. For each sponsor, no more than one name, (figurative) mark or other distinctive sign will be mentioned or displayed.

Article 7. Reference to contributions not being sponsoring

1. The definition of the term sponsoring states that the contribution is provided by a company or a natural person not normally engaging in the provision of media services or media content (Article 1.1(1) of the Act).
2. If a party other than a party as referred to in paragraph 1 has provided a contribution for the production or acquisition of media content in order to promote or enable its distribution, it must be clearly mentioned, for purposes of informing the public, that the contribution has been provided and by whom (Article 3.18 of the Act). In such event, articles 4 and 6 of this policy rule will apply.
3. Parties as referred to in paragraph 2 will in any event be understood to include government institutions and other institutions not pursuing a business.

CHAPTER 4. MISCELLANEOUS

Article 8. Reference to an event sponsor

1. For media content consisting of the report or coverage of an event not intended primarily for broadcasting, the names or (figurative) marks of those persons, businesses or institutions that have provided a financial or other contribution for the realisation of the event may be mentioned or displayed (Article 3.19(1) of the Act).
2. An event not intended primarily for broadcasting will be understood as: an event that would have taken place even if it had not been, or would not be, broadcast as media content.
3. The mention or display of a name or (figurative) mark of an event sponsor in the title of media content consisting of the report or coverage of an event will not be deemed to constitute surreptitious advertising, provided that the relevant references are not predominant.

Article 9. Promotional context

The mentioning and displaying of the sponsor in the media content may not encourage the public, by means of specific promotions, to purchase or rent products or services from the sponsor (Article 3.17(2) of the Act). The public will be deemed to have been encouraged, by means of specific promotions, to purchase products or services if these are placed in a promotional context.

CHAPTER 5. FINAL PROVISION

Article 10. Short title and effective date

1. This policy rule will be referred to as the 2022 Commercial Media Institutions Sponsoring Policy Rule.
2. The 2012 Commercial Media Institutions Sponsoring 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](https://www.cvdm.nl)).
4. This policy rule will come into effect on the day following its publication in the Government Gazette.

DUTCH MEDIA AUTHORITY, R. Eringa-Wensing, President

P.V. P. Eijssvoegel, Commissioner

EXPLANATORY NOTES

1. General

This policy rule applies to sponsoring in the media content of commercial media institutions. Media content is understood to include both programmes on television and radio and the offering of video on demand (VOD) services and videos that are uploaded on video platforms such as YouTube, Instagram and TikTok. In these explanatory notes, we will explain the rationale behind this policy rule, what is meant by sponsoring, how it differs from advertising messages and product placement, and who are governed by this policy rule. The article-by-article explanatory notes will explain the purpose and purport of the articles in this policy rule.

Amendments

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 Sponsoring Policy Rule.

This amendment has aligned the regulations for providers of on-demand media services with the regulations for providers of broadcasting services (television and radio) where possible. Another important consequence of the amendment to the Act is that 'video uploaders' which upload videos to video platforms may now fall under the supervision of the Authority. This is the case if they meet the criteria as set forth in (the decision tree in) the 2022 Qualification of On-Demand Commercial Media Services Policy Rule. Video uploaders that meet these criteria will have to comply with the same rules as other on-demand commercial media services.

Article 6 of the present policy rule specifies how the sponsor reference should be presented (also for video uploaders). In the elaboration thereof - with a view to the existing practice for video uploaders -, we have also taken into account the Advertising Code for Social Media & Influencer Marketing of Stichting Reclame Code.

Rationale behind the rules

The starting point for commercial media institutions is that, in principle, sponsoring is permitted. If the media content is sponsored, however, it is subject to several rules based on the Act. These rules ensure that the public knows when there is commercial influencing. Therefore, it is important for sponsored media content to mention that it is sponsored, and by whom. The relevant reference may, however, not be an advertising message in disguise.

If a sponsor reference is not in compliance with the rules of the Act and this policy rule, it constitutes prohibited surreptitious advertising. Such a violation may lead to sanctions imposed by the Authority, such as a warning or a fine.

What is sponsoring?

Sponsoring is the situation where a third party provides a contribution to the commercial media institution. That contribution may either be financial or consist of products or services. The idea behind this is that the relevant third party contributes to the realisation of the media content. There can, however, not be any hidden commercial influencing. Therefore, the Act requires that it be clearly mentioned that the media content is sponsored, and by whom. Products or services from the sponsor may, however, be mentioned or displayed in the media content. The complete definition of sponsoring is set forth in Article 1.1(1) of the Act.

In no event may news, current affairs and political information be sponsored. This applies both to radio and television programmes and to on-demand audiovisual media content (Article 3.15(2) and Article 3.29d of the Act).

Reference to contributions not being sponsoring

The definition of the concept of sponsoring states that there must be a contribution by a company or a natural person not normally engaging in the provision of media services or media content (Article 1.1(1) of the Act). Only those parties qualify as sponsors within the meaning of the Act. Therefore, this also means that the sponsoring rules apply to those parties only.

It is, however, also possible that a party other than that referred to in the definition of sponsoring provides a contribution. Examples of such parties are of government institutions and charities. The legislator has determined that for that type of contribution, too, it must be clearly stated that the contribution has been provided, and by whom, in order to inform the public. For that reason, those institutions must be mentioned as well, even though they do not legally qualify as sponsors.

Difference with advertising messages and product placement

In essence, sponsoring differs from advertising messages or product placement.

Advertising messages are communications unmistakably intended to encourage the public to purchase a certain product or service. These may also be communications that are intended to build goodwill among the public in respect of a certain trademark or business, for purposes of encouraging the public to purchase products or services. This is not the case for sponsoring. Neither the sponsor reference nor sponsored media content may be used to encourage the public to purchase products or services. A promotional context (such as in advertising messages) is, therefore, not permitted in the event of sponsoring.

Product placement is the situation where a product or service is mentioned or used in the media content by naturally embedding it in the storyline. Product placement always takes place against payment (either in cash or by way of a similar consideration, such as a free car). The products or services are promoted, for example by mentioning them, discussing them or actively using them in the media content programme. Just as sponsoring, product placement must not encourage the public to purchase products or services. A promotional context (such as in advertising messages) is, therefore, not permitted in the event of product placement either. An important difference with sponsoring is, however, that the arrangements about the use of the product in product placement are, therefore, more far-reaching. Although sponsor products may be displayed in the media content, they may not be embedded in its storyline.

This policy rule applies to sponsoring only. The 2022 Commercial Media Institutions Advertising Policy Rule and the 2022 Commercial Media Institutions Product Placement Policy Rule elaborate further on the rules in respect of advertising messages and product placement.

Who are governed by this policy rule?

This policy rule applies to all commercial media institutions within the meaning of the Act. These include the classic broadcasting services (radio and television programme channels) and online streaming services (VOD services). Individual video uploaders which post videos on third-party platforms (such as YouTube and Instagram) may be governed by this policy rule. This is the case if the video uploader qualifies as an on-demand commercial media institution. The criteria currently used by the Authority in its regulatory framework are as set forth in the 2022 Qualification of On-Demand Commercial Media Services Policy Rule.

This policy rule only discusses the sponsoring rules for radio and television programme channels and on-demand audiovisual media content. These are not applicable to on-demand commercial audio services (such as podcasts). Those audio services have not been brought under the scope of the Act and are, thus, also beyond the scope of this policy rule (Article 3.29a of the Act). Such audio services may, however, be subject to different regulations, such as the consumer protection regulations, which come under the supervision of the Netherlands Authority for Consumers and Markets. The Dutch Advertising Code (of Stichting Reclame Code) also contains provisions relating to this type of media content.

2. Article-by-article explanatory notes

Chapter 1. General

Article 1 (Scope)

This policy rule applies to commercial media institutions within the meaning of the Act. These include both the broadcasting services (television and radio) and the on-demand commercial media services, such as VOD services and video uploaders (to the extent meeting the criteria of the 2022 Qualification of On-Demand Commercial Media Services Policy Rule).

Article 2 (Definitions)

The terms as used in this policy rule have the same meanings as in Article 1.1 of the Act. To the extent that any terms are used in this policy rule that are not described in the Act, those terms are defined in this article.

Article 3 (News, current affairs and political information)

News, current affairs and political information must not be sponsored. This applies both to programmes and to on-demand audiovisual media content (Article 3.15(2) and Article 3.29d of the Act). With this prohibition, the legislator intends to rule out any risk of commercial/political influencing of this type of editorial content. This article explains what is meant by media content consisting of news, current affairs or political information.

Commercial influencing of a weather report or traffic information would not be obvious. Therefore, the weather report and the traffic information can be sponsored on the condition that it is separate media content (i.e. not an item within media content consisting of news or current affairs).

Chapter 2. Scope of the term sponsoring

Article 4 (Loan for use or contribution of minor significance)

This article sets the lower limit for sponsoring. Any contribution below that limit does not constitute sponsoring within the meaning of the Act, which means (*inter alia*) that no sponsor reference is needed. The idea behind this is that such a contribution is limited in scope and that the media content would have been realised even without that contribution.

It follows from the definition of sponsoring that there must be a financial or other contribution. The provision of financial contributions will at all times, irrespective of the scope, qualify as sponsoring. For non-financial contributions, however, this will not necessarily be the case. This type of non-financial contributions relates to products given on loan for use and products or services of minor significance.

Contributions of minor significance

These are products or services the value of which is of minor significance in proportion to the total cost of the media content. This will be reviewed for each private individual or business. That value must be determined for each individual case in relation to the total budget, calculated for each individual episode. For television and radio, this value may in any event not exceed EUR 1,000 per television programme and EUR 200 per radio programme. A contribution of minor significance may not be subject to the sponsoring rules.

Incidentally, the supply of one or more editors by a third party free of charge will, indeed, be considered sponsoring because that kind of contribution is not of minor significance. After all,

without that contribution, the media content could not be realised, or not be realised in the same way.

Not identifiable

In addition, neither a loan for use nor a contribution of minor significance may be displayed (in an identifiable manner). Therefore, the contribution may not identify its provider.

Paragraph 3

The reference to the party that has provided the contribution may not contain more than the words 'with thanks to' followed by the name of the provider. If necessary in order to identify the provider, the main activity or the place of establishment may be added to the name (for example where the contribution originates from a branch of a company with more than one branches). The reference may only be displayed or mentioned at the beginning or at the end of the media content. This means that a reference will, for example, be made in the opening or closing credits. In addition, the name of the provider of the contribution must be displayed in a neutral fashion.

Although this is not a sponsor reference within the meaning of the Act, this intends to improve the provision of information to the public. The public must be able to distinguish between third parties that have provided a contribution as referred to in paragraph 1 and the sponsors, so that the reference must be different.

Paragraph 4

Sponsoring of videos is not subject to the aforesaid lower limit. This means that, as soon as a contribution has been provided for the realisation of a video, all sponsoring rules apply. The rationale behind this is that, unlike for television and radio programmes, no objectively determinable lower limit can be set for videos (given the nature thereof and variation therein).

Chapter 3. Sponsor reference

Article 5 (Definitions of the terms name, (figurative) mark and other distinctive sign)

Article 3.16 of the Act provides that, in order to inform the public, it must be clearly stated that the media content is sponsored, and by whom. In paragraph 2 of that article, the legislator indicates how that reference must be represented, namely:

- a. for sponsors engaging in alcoholic beverages, between 06:00 a.m. and 09:00 p.m.: by way of a neutral mention or display of the name or the (figurative) mark;
- b. in other situations: by way of mention or display of the name, the (figurative) mark or other distinctive sign.

This article explains what is meant by the words 'name', '(figurative) mark', and 'other distinctive sign'.

Article 6 (Design of the sponsor reference)

Sponsored media content must clearly state that it is sponsored, and by whom. This article indicates how this obligation can be complied with. Furthermore, this article indicates what references are not permitted (due to their promotional context).

Paragraph 1

This paragraph provides which references will, in principle, be deemed sufficiently clear. This is the case if the text as stated is used and (for videos) if the description of the video states that it is sponsored. Even when using these texts, the reference must at all times be clearly legible or audible. Incidentally, the *description of the video* is also understood to include the caption or any other text that can be retrieved at any time and that is directly connected with the video (i.e. not on the channel or elsewhere on the website). The reference is to be made at the beginning or at the end of the media content, and may further be included at the beginning or at the end of any advertising messages included therein.

For some video platform services (such as YouTube and Instagram), the video uploader may indicate that the video contains some form of advertising. The platform will then place its own notice with the video. If such a notice includes the words as stated in this article, the reference will, in principle, be sufficiently clear. In a concrete situation, however, the Authority may decide that a certain notice of a video platform service constitutes an insufficient sponsor reference. For example because it is not clear enough or is not displayed for long enough. In such event, the specific notice will not suffice for the reference as referred to in this article.

Notices such as '*with thanks to*', '*with the help of*', '*this programme is brought to you by*', or '*in cooperation with*' do not sufficiently make clear that the media content is sponsored. The same holds true for terms such as '*partner*' or '*collab*'. Those notices do not unambiguously indicate that the media content is sponsored (and by whom). This means that that type of references are insufficient sponsor references.

The list in this paragraph 1 is not exhaustive. This means that the Authority may also decide that another way of including the sponsor reference is clear. It is, therefore, permitted to use terms other than as listed in this paragraph 1. It will then be up to the provider of the commercial media institution to assess whether the relevant text makes it sufficiently clear that the media content is sponsored (also given the terms used, the audience, the placement, duration, context, etc.).

Paragraph 2

A sponsor reference must not contain any specific advertising to encourage the public to purchase products or services (Article 3.16(2)(b) of the Act). The rationale behind this is that the reference serves to inform the public only, and does not have the same purpose as (promotional) advertising messages.

This paragraph 2 contains a non-exhaustive list of references that the Authority will in any event consider to be such impermissible advertising. These may include contact details, such as a physical address, e-mail address and telephone number, but also an Internet address or a channel on a video platform. The Authority considers this information as promotional, since those channels will generally contain the direct possibility to offer (and purchase) products or services. If, however, the sponsor's trade name also includes an Internet address (such as bol.com or vliegtickets.nl), that reference will, indeed, be permitted.

Paragraph 3

Between 06:00 a.m. and 09:00 p.m., sponsor references relating to alcoholic beverages must be made in a neutral fashion.

This obligation in paragraph 3 will not apply to on-demand audiovisual media content.

Paragraph 4

According to Article 3.16(2)(b) of the Act, the reference is made by displaying the name, (figurative) mark or other distinctive sign. Since a sponsor reference may not serve as an advertising message, it may not mention or display more than one name, (figurative) mark or other distinctive sign per sponsor.

Article 7 (Reference to contributions not being sponsoring)

The definition of the term sponsoring states that there must be a contribution by a company or a natural person not normally engaging in the provision of media services or media content (Article 1.1(1) of the Act). This article of this policy rule explains what rules will apply to other parties.

In the event of contributions by parties other than those referred to in the definition of sponsoring, a reference will be required as well (Article 3.18 of the Act). These may include government institutions and other institutions not pursuing a business (see paragraph 3 of this article 7 and the general explanatory notes). But just as for sponsoring, a lower limit has been set. Contributions below that limit will not require a reference. The idea behind this is that such a contribution is limited in scope, and that the media content would have been realised even without that contribution.

For businesses and private individuals, this lower limit is set in article 4. The rules, however, are the same as for other parties. Contributions provided by other parties will at all times require a reference if the contribution is financial in nature. For non-financial contributions, however, this will not necessarily be the case. This type of non-financial contributions relates to products given on loan for use or products or services of minor significance. Those contributions may not be displayed or mentioned in an identifiable manner and, furthermore, the reference to the party that has provided the contribution may not consist of more than the words 'with thanks to' (followed by the name of the provider). For a further explanation of this provision, please refer to the explanatory notes to article 4.

Paragraph 3

A government institution, such as a municipality, does not pursue a business and does, therefore, not qualify as a sponsor. Other institutions not pursuing a business may include institutions as referred to in Article 1.1(2) of the Act; these institutions will not qualify as sponsors either.

The term 'business' in the definition of sponsoring is broadly interpreted and also includes not-for-profit organisations if they participate in economic transactions in any way by supplying goods or services. The starting point used by the Authority is that organisations in the following categories will, in principle, not be deemed to pursue a business:

- charitable foundations or funds bearing the CBF quality mark;
- charitable foundations or funds not bearing the CBF quality mark, provided that their articles show that they are independent civil-law foundations subject to independent decision-making, as recorded in regulations (in particular in relation to the allocation of contributions);
- the permanent national charitable lotteries, including 'Sporttotalisator', which hold a licence under the Betting & Gaming Act [*Wet op de kansspelen*]; and
- other civil-law foundations if and to the extent that the contribution is funded out of subsidies provided by the government or earmarked budgets for a socially relevant and non-commercial object.

Characteristic of these organisations is that they have socially relevant and non-commercial objects. In several situations, these organisations will carry out duties assigned or encouraged by the government. This may become evident from subsidies or earmarked budgets.

Chapter 4. Miscellaneous

Article 8 (Reference to an event sponsor)

Paragraphs 1 and 2

For media content consisting of the report or coverage of an event, the sponsor of that event may also be mentioned or displayed. That reference must then be made in the same way as for other sponsors of media content. Therefore, this reference may not contain any promotional context either (see also the criteria in article 7 of this policy rule).

Such a reference is permitted only if the event is not primarily intended for broadcasting. This is the case if the event would still have taken place even if it would not be broadcast. In addition, given the definition of event, it must relate to an organised event that is accessible to the public in the field of sports or culture (Article 1.1 of the Act).

Paragraph 3

The name of a sponsored event may sometimes include the name of the event sponsor. If the event is reported, the name of the event may be reflected in the title of the programme or the on-demand media content, even if it contains the name of the sponsor. The Authority assumes that the commercial media institution will mention the name of the sponsor in the title without intending to advertise, provided that the name is not predominantly mentioned.

Article 9 (Promotional context)

In principle, media content may mention or display products or services of the sponsor. Furthermore, the name, (figurative) mark and products or services of the sponsor may be included in the title. Those references must, however, not encourage the public, by means of specific advertising, to purchase products or services of the sponsor (Article 3.17 of the Act). Those products and services may, therefore, not be placed in a promotional context.

A promotional context will in any event be deemed to exist in the following situations:

1. providing sales information, as becomes evident, *inter alia*, from the displaying or mentioning of:
 - prices of products/services;
 - sales outlets, etc.;
2. a call to purchase the products or services;
3.
 - broadcasting too prominent mentioning/displaying of products, services or (figurative) marks;
 - broadcasting long or frequent descriptions/mentions/displays of products or services;
 - excessive zooming in or out on a product or service;
 - full-screen display of products or services;
 - an insufficient distinction between the programme and a (permitted) advertising message;

4. the use of publicity material of the sponsor.

The Authority may decide in other situations, too, that there is a promotional context.

Chapter 5. Final provisions

Article 10 (Short title and effective date)

The 2012 Commercial Media Institutions Sponsoring Policy Rule is repealed and superseded by the 2022 Commercial Media Institutions Sponsoring Policy Rule.

In addition to this policy rule, the 2012 Commercial Media Institutions Advertising Policy Rule and the 2014 Commercial Media Institutions Product Placement Regulation have been revised. These revised policy rules will be referred to as the 2022 Commercial Media Institutions Advertising Policy Rule and the 2022 Commercial Media Institutions Product Placement Policy Rule. The three aforesaid policy rules will all be simultaneously published in the Government Gazette and will take effect at the same time.