[NL] Draft Regulation on exemption from investment obligation for on-demand audiovisual media services

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On 1 October 2024, the *Commissariaat voor de Media* (Dutch Media Authority – CvdM) published an important draft regulation on exemption from the investment obligation for on-demand audiovisual media services. This follows the enactment of an amendment to the Dutch Media Act requiring streaming platforms – with an annual Dutch turnover of more than EUR 10 million – to invest 5% of that turnover in Dutch audiovisual productions such as series, films and documentaries (see IRIS 2024-1/15, IRIS 2023-7/10 and IRIS 2022-8/16). The new draft regulation contains rules on how exemptions from these investment obligations may be applied for.

Since 1 January 2024, certain providers of on-demand audiovisual media services are required to invest in Dutch audiovisual products. This so-called investment obligation is based on Article 13(2) of the EU's Audiovisual Media Services Directive. The investment obligation aims to strengthen the Dutch audiovisual offering, and is a result of the increasing pressure on Dutch audiovisual productions due to changes in the media landscape and the strong increase in offerings that are distributed and shown by international players in particular. The investment obligation does not apply to every provider of an on-demand media service. The investment obligation only applies if the on-demand media service has a relevant turnover per financial year of more than EUR 10 million. If the relevant turnover exceeds this threshold, the provider must invest 5% of said turnover in Dutch cultural audiovisual product, of which at least half in documentaries, documentary series, drama series or feature films.

The new draft regulation sets out that the CvdM may grant an exemption in exceptional cases. First, under Article 2(1), the CvdM may grant an exemption from the investment obligation if the provider demonstrates to the satisfaction of the CvdM that compliance would be "practically impossible" or "unjustified given the nature or subject of the media service in question", or the use of "innovative formats". Second, in determining whether an exemption applies, the CvdM may in any case take into account the nature and size of the target group of a media service or specific economic circumstances on the part of the provider. The CvdM may also take into account the specific requirements that apply in the context of the investment obligation, such as the requirement that the provider must use half of the amount to be invested for a documentary film, documentary series,

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drama series or feature film, for which types of offering a certain minimum duration always applies. Crucially, in light of the objective of the investment obligation, however, the starting point remains that an exemption can only be granted in very exceptional cases. The mere fact that the provider produces or offers little or no Dutch cultural audiovisual content is “not sufficient grounds for an exemption”.

The regulation stipulates that an application for an exemption must be submitted no later than 1 July of the year following the financial year for which the exemption is requested**.** The application for an exemption must contain all relevant information on the basis of which the CvdM can make a decision. If a provider offers multiple on-demand audiovisual media services, an application must be submitted for each on-demand audiovisual media service. Furthermore, it is stated that the CvdM in principle grants an exemption for the duration of one financial year. In exceptional cases, a maximum of three financial years applies. Finally, the CvdM may revoke or amend an exemption. For example, at the request of the provider, in the event of a relevant change in circumstances or if it appears that incorrect or incomplete information was provided in the application for an exemption. The provider has a duty to report to the CvdM any change in the circumstances on the basis of which an exemption was granted.

The CvdM has requested stakeholders and interested parties to respond to the draft regulation, and the consultation period runs until 29 October 2024.

Dutch Media Authority, Authority consults on draft Regulation on exemption from investment obligation for on-demand audiovisual media services, 1 October 2024

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