[NL] The Dutch Media Authority publishes draft Policy Rule on the qualification of on-demand commercial media services

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On 4 March 2025, the Dutch Media Authority (*Commissariaat voor de Media*) published the draft 2025 Policy Rule on the qualification of on-demand commercial media services (draft 2025 Policy Rule). It will replace the previous policy rule adopted in 2022 (2022 Policy Rule).

Both the 2022 Policy Rule as well as the draft 2025 Policy Rule are based on the Dutch Media Act of 2008 (the Act), which was amended in 2020 in the course of the implementation of revised Directive 2010/13/EU of the European Parliament and of the Council 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 (Audiovisual Media Services Directive). Recital 3 of the revised Audiovisual Media Services Directive noted that channels or any other audiovisual services under the editorial responsibility of a provider can constitute audiovisual media services in themselves, even if they are offered on a video-sharing platform which is characterised by the absence of editorial responsibility. Accordingly, the 2022 Policy Rule established that in addition to more conventional media institutions making audiovisual media content available on their own platforms (for instance, Netflix and Disney+), on-demand commercial media services may also be provided by those offering such content via third-party video platform services, such as YouTube and TikTok (video uploaders). A service qualifies as an on-demand commercial media service if, in addition to falling within the definition of Article 3.29a of the Act, it also meets the criteria set out under the policy rule. Article 3.29b of the Act also stipulates that all providers of on-demand commercial media services must notify the Media Authority when they start, change or terminate the provision of their service. However, the 2022 Policy Rule established that video uploaders must register their media service with the Media Authority and will be actively supervised by it only if they answer all questions in the decision tree included in the annex to the policy rule in the affirmative. This exemption was aimed at relieving small-scale, non-professional video uploaders from extensive administrative or financial obligations. The questions included in the decision tree of the 2022 Policy Rule were as follows:

1. Do you have an account on YouTube, TikTok or Instagram?

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2. Do you have at least 500,000 followers or subscribers on one of those accounts?

3. On your account with 500,000 or more followers or subscribers, have you posted at least 24 videos in the past 12 months?

4. Do you earn money, do you receive products or services, or do you obtain any other advantage as a result of the creation and/or posting of videos on your account?

5. Does the advantage referred to in step 4 accrue to a business that you have registered with the Chamber of Commerce?

The draft 2025 Policy Rule aims to amend the decision tree by eliminating the question concerning the number of followers or subscribers. As a result, a larger group of video uploaders with their media service will fall under the active supervision of the Media Authority. However, video uploaders with fewer than 100,000 followers or subscribers will be exempted from reporting obligations as well as the obligation to pay supervisory fees on a yearly basis. Such video uploaders must comply with all other relevant obligations under the 2008 Media Act. The upcoming amendments seek to ensure a more level playing field within the Dutch media landscape.

The Dutch Media Authority also announced a public consultation to seek input from stakeholders in the field of audiovisual media services. The insights collected will be used to revise the draft policy rule before publication in the Government Gazette (*Staatscourant*).

Beleidsregel kwalificatie commerciële mediadiensten op aanvraag 2025

https://www.cvdm.nl/nieuws/commissariaat-opent-consultatie-van-beleidsregel-kwalificatie-commerciele-mediadiensten-op-aanvraag-2025/

2025 Policy Rule on the qualification of on-demand commercial media services

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